

# Disclosing Lawsuits To Buyers Of Residential Property

Sellers of existing residential property are required by California law to make various disclosures to a prospective buyer. [See generally [Disclosures In Real Property Transactions](#), published by the California Department of Real Estate.] Among the disclosures required when selling one to four residential units are significant defects or malfunctions that the seller is aware of in various construction components including walls, ceilings, floors, foundation, etc.

The Real Estate Transfer Disclosure Statement is the document in which the seller details these and other problems. Sellers also have a general common law duty to disclose material facts that might affect the value of the property.

Lawsuits involving the property are among the items that must be disclosed. But as noted in a recent [article](#), the disclosure law is silent on whether a seller must disclose only pending lawsuits. The question becomes, must a seller disclose prior lawsuits in addition to currently pending suits?

[Calemine v. Samuelson](#) (2009) dealt with this issue in the context of water intrusion. In *Calemine*, the seller disclosed prior water intrusion but failed to disclose two prior lawsuits related to the issue. The 2nd District Court of Appeal reversed the trial court, holding that “[a] triable issue of fact remained as to whether the prior litigation was a material fact which should have been disclosed.”

If you are a property owner, disclosing all lawsuits, including prior lawsuits is the best course of action. Doing so may cause a buyer concern, but failing to do so risks moving forward and closing the deal, then facing a lawsuit by the seller. Litigation and the threat of legal action can often times be avoided if the proper disclosures have been made.

At Tharpe & Howell, we serve the distinct needs of a wide variety of clients in both commercial and residential construction matters. Our practice is “ground-up,” handling our client’s transactional needs as well as virtually every type of construction claim including: construction defects and delays; construction site injuries, earth-movement including floods, landslides, storm and earthquake claims; structural failures and building collapse; water-intrusion; contract disputes; environmental claims including mold and asbestos; insurance claims and insurance coverage disputes; and operations, labor and management claims. For more information, please contact us at (818) 473-5720 or email your request to [cabusinesslawreport@tharpe-howell.com](mailto:cabusinesslawreport@tharpe-howell.com).