
A seller who willfully or negligently fails to provide a disclosure of Mello-Roos taxes (called a "Notice of Special Tax") may be liable in the amount of actual damages suffered by the buyer.

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What is a Notice of Special Tax?

Background:

In 1982, the Mello-Roos Community Facilities Act was passed, and provided a new means of financing needed public facilities and services. Because of its flexibility, the use of Mello-Roos financing spread rapidly throughout California. However, Mello-Roos is normally used to finance large projects, like schools or road systems, so the associated special tax amounts that appear on property tax bills can be very large. In the late 1980's, there was no mechanism in place to require disclosure of this tax in the real estate transaction. Consequently many homebuyers were not aware of the existence of Mello-Roos on their property, and made their purchase decision without factoring in the cost of the annual special tax, which often was significant. This led to a public outcry against Mello-Roos in the late 1980's, which provided pressure for new disclosure legislation.

Seller's Obligation for Special Tax Disclosure

In 1990, legislation was passed to require the disclosure of Mello-Roos taxes prior to the completion of a real estate transaction. The new law (California Civil Code §1102.6) requires sellers of property to provide a "Notice of Special Tax" to buyers if the property is located in a Mello-Roos community facilities district. The seller is required to make a good faith effort to obtain this disclosure notice from the sponsoring agency and deliver it to the prospective buyer.

The California Superior court ruled that Real Estate Disclosures could not be waived on an "as is" sale, a decision that was later affirmed in the California Civil Code. Most critically, any person who willfully or negligently fails to provide a disclosure may be liable in the amount of actual damages suffered by a buyer.

Notice of Special Tax

The legislation specifies the basic information that must be provided in the Notice of Special Tax:

- a warning that the district has the right to foreclose on delinquent property
- the current maximum tax for the parcel and the rate at which the maximum tax may increase
- the final date on which the special tax may be levied, regardless of whether all bonds have been paid off
- contact information for the sponsoring agency

The sponsoring agency (City, county or special district that created the Mello-Roos district) is required to provide a Notice of Special Tax for any parcel to anyone who requests it. The agency may take up to five days to deliver the notice, and may charge up to \$10 for the service.

Buyer's Rights

If the Notice of Special Tax is delivered to the buyer after a purchase agreement has been signed, the buyer has the right to terminate the agreement within three days of delivery in person, or five days after delivery by mail. The buyer must provide written notice of termination of the agreement to the seller or the seller's agent.