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**Can A Real Property Seller Conceal A Recorded Document?  
When The California Recording Law Is Not Enough,  
And The Seller Must Disclose The Obvious.**

A recent California decision looked at a case where a seller of real property did not disclose recorded deed restrictions, but the buyer received a Preliminary Report from a title company which referred to the recorded restrictions, but did not describe them. The buyers claimed that they never read the preliminary report. When the buyers discovered the restrictions five years later, they sued the seller for failure to disclose.

The purpose of the recording law is to provide "constructive notice" of recorded documents regarding real property interests to resolve disputes regarding priority of interests. For example, a recorded deed of trust provides notice to a buyer that the property is subject to a lien, which if not paid before the title is transferred, remains attached to the property in the hands of the new owner. If the buyer did not check the recorder's office, too bad for him, as he has constructive notice.

However, in this case the court of appeals noted that a seller has a statutory duty to disclose deed restrictions -it is on the Transfer Disclosure Statement- how could the seller miss it? The court found that the preliminary report did not satisfy the seller's duty to disclose. It concluded that the existence of recorded documents does not prohibit the seller from suing for non-disclosure. However, the court did say that the seller may argue that the buyers could not justifiably rely on the seller's nondisclosure, because they did have a preliminary report which disclosed the existence of the deed restrictions. A reasonably prudent buyer is obligated to read the preliminary report.

This decision probably forces the seller into a trial on the issue of nondisclosure, or as the plaintiff's attorney will characterize it, fraudulent concealment. It only goes to point out the maxim the sellers should disclose everything. If it is mentioned in the Transfer Disclosure Statement, disclose it. If you think it might be important, disclose it. If you ask your attorney if something should be disclosed, you answered your own question-disclose it.

*Alfaro v. Community Housing Improvement System & Planning Assn.* (2009)  
171 CalApp 4th 1356