



Water-Conserving Plumbing Fixtures

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Key questions

- **Does the water conservation law create any point of sale requirements?** See question #2
 - **What is the significance of it NOT creating a point of sale requirement?** See question #3
 - **Are there any forms that allow the seller to meet their disclosure obligations?** See question #8
 - **Should this box on the TDS be checked if the seller is uncertain about whether there are WCP fixtures installed?** See question #11
 - **How should a seller answer the question on the SPQ, "Are you aware of any non-compliant plumbing fixtures?" if they are uncertain?** See question #12
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Introduction

California law requires property owners (for properties built before 1994) to install water-conserving plumbing fixtures by 2017 for single-family properties and by 2019 for other properties. Additionally, if any property (built before 1994) is altered or improved after 2014, then water-conserving plumbing fixtures must be installed as a condition of final permit approval. (Cal. Civ. Code section 1101.4)

In 2012 the Transfer Disclosure Statement was expanded to include a check box for water-conserving plumbing fixtures. As explained in the TDS itself, the check box does not create a point of sale requirement. (Cal. Civ. Code section 1102.6.)

Beginning in 2017 a seller of a single-family property will also be required to disclose whether the property is in compliance with the law. This same disclosure requirement will apply to other types of properties beginning in 2019. Even then, the law creates no point of sale requirement. (Cal. Civ. Code section 1101.4 and 1101.5.)

Q 1. What is the purpose of the water conserving plumbing fixtures law ("WCP fixtures law")?

A The legislature thinks that water conservation is a cost effective approach to the challenges created by not having enough water. Those challenges include future economic health; environmental health; growing urban areas; water reliability; waste water treatment; energy and

other resource costs; and protecting and restoring aquatic resources. All of these issues were cited as reasons behind this effort to promote water conservation.

Q 2. Does the water conservation law create any point of sale requirements?

A No. There is nothing in the law that requires the installation of water-conserving fixtures as a condition of sale.

Q 3. What is the significance of it NOT creating a point of sale requirement?

A Because the WCP fixtures law does not create a point-of-sale requirement, there is no obligation on either agents or brokers to ensure that sellers or buyers install WCP fixtures. However, as in all transactions, agents should impress upon the seller the necessity of carefully and accurately completing the appropriate disclosure forms.

Q 4. If there are no point of sale requirements, then what is required?

A The law will require owners of real property to install water-conserving fixtures simply because they own the property regardless of whether they are selling it. The requirement for installation is not immediate, but will take effect in later years depending on the type of property or whether improvements are made. For single family properties built before 1994, the installation requirement takes effect on January 1, 2017. For multi-unit residential property and any commercial property, these requirements will apply starting January 1, 2019. See questions 25 and 26 below.

Q 5. I'm a homeowner selling my pre-1994 single-family house. Are there any installation requirements under this law?

A No. There is nothing in this law that requires installation of WCP fixtures as a condition of sale. However, if you haven't already installed water conserving plumbing fixtures on your pre-1994 single-family house, then beginning January 1, 2017, you will be in violation of the basic requirement of the law.

Q 6. Under the law WCP fixtures are not required as a point of sale. However, isn't it possible that lenders may require it as a condition of the loan?

A Yes. It's possible. Lenders may make their own underwriting decisions regardless of what the law technically does or does not require. If a lender requires the installation of WCP fixtures as a condition of the loan, that is his or her right to do so. At this time, however, we are unaware of any lender requiring it.

Q 7. What does the law require a seller to disclose regarding water conservation plumbing fixtures?

A Presently, the law only requires the seller to check the box on the TDS as to whether there are water conserving plumbing fixtures. Commencing January 1, 2017, for single family pre-1994 houses, the law will require a seller to disclose to the buyer the requirement of water conserving

plumbing fixtures and whether the real property has any noncompliant fixtures. This same requirement will come into effect for multi-unit residential and commercial property starting January 1, 2019. See questions 25 and 26 below.

Q 8. Are there any forms that allow the seller to meet their disclosure obligations?

A Yes. There are a few.

- First, the TDS will allow the seller to disclose to the buyer the legal requirements of the law. That's on the second page of the TDS in the fine print.
- Secondly, with the 2016 December forms release, the Seller Property Questionnaire (Form SPQ) will be revised to ask the seller whether they are aware of any non-compliant plumbing fixtures.
- Thirdly, on those transactions which are TDS exempt, the Exempt Seller Disclosure (Form ESD) will be amended to facilitate both disclosures. (Since for TDS exempt properties, neither the TDS nor the SPQ is used).
- Finally, with the December forms release there will be an optional disclosure form for "Water conserving Plumbing Fixtures and Carbon Monoxide Detector Notice" (Form WCMD). This form will provide an explanation of the technical requirements of the law. It is not actually a new form, but instead, is a revision of the existing "Carbon Monoxide Detector" form. Although, it is an optional form, agents should check with their broker to see if the brokerage requires its delivery.

Q 9. The TDS was changed to include a check box asking if the property has any water-conserving plumbing fixtures. Does that make it a point of sale requirement?

A No. In fact, the TDS box has an asterisk to the second page that says, "Installation of a listed appliance, device, or amenity is not a precondition of sale or transfer of the dwelling." (Cal. Civ. Code section 1102.6.)

Q 10. If the seller checks the box indicating that there are some water-conserving plumbing fixtures, is he or she representing that the fixtures are in compliance with this law?

A No. The TDS specifically says, "Fixtures in this dwelling may not comply with Section 1101.4 of the Civil Code." (Cal. Civ. Code section 1102.6.)

Q 11. Should this box on the TDS be checked if the seller is uncertain about whether there are WCP fixtures installed?

A If the seller is uncertain, its best to leave it blank.

Q 12. How should a seller answer the question on the SPQ (or ESD if TDS-exempt), "Are you aware of any non-compliant plumbing fixtures?" if they are uncertain?

A A seller who is uncertain should probably err on the side of caution by checking "yes" and stating that they are aware of noncompliant plumbing fixtures.

Q 13. How can a seller know for sure if the property has non-compliant plumbing fixtures?

A CAR form WCMD states the technical specifications of non-compliant fixtures. However, if the seller is unsure then they should consult with someone who has expertise in the matter such as a contractor, plumber or retrofit compliance company.

Q 14. What do agents need to know about compliance with the WCP fixture law?

A Agents should be aware that beginning January 1, 2107 owners of single family properties built before 1994 need to replace non-compliant fixtures with WCP fixtures - whether or not the owners are selling their property. And also, starting at the same time, sellers have certain disclosure obligations as discussed above in question 6 through 14.

However, generally agents do not have the expertise of contractors or plumbers, and therefore it is prudent to not offer definitive advice on whether there are or aren't non-compliant plumbing fixtures on the property.

Q 15. If the seller would like, at his or her option, to install WCP fixtures as part of a sale, where on the California Residential Purchase Agreement (Form RPA-CA) should this be indicated?

A Paragraph 7D under "Other Costs" is the appropriate place to indicate this.

Q 16. Is there sample language that could be used to negotiate for the installation of WCP fixtures?

A Yes, A seller or buyer may use the following language: [Buyer or Seller shall pay for]... the installation of water-conserving plumbing fixtures per Civil Code § 1101.3 if required by law not to exceed the cost of \$_____.

The phrase "water-conserving plumbing fixtures" is defined to mean plumbing fixtures in compliance with current, new-construction, building standards (Civ. Code 1101.3(e)). The suggested language on the contract, "if required by law," would leave open the possibility that the plumbing fixtures already meet the standards of the Civil Code and thus, there would be no obligation to upgrade them.

Q 17. What is the definition of "water-conserving plumbing fixture"?

A Water-conserving plumbing fixture means any fixture that is in compliance with current building standards applicable to a newly constructed real property. (Cal. Civ. Code section 1101.3.)

Q 18. What is the definition of "noncompliant fixture"?

A The law calls for installation of water-conserving plumbing fixtures only when the existing plumbing fixtures are "non-compliant." Noncompliant plumbing fixture means (1) any toilet manufactured to use more than 1.6 gallons of water per flush (2) any urinal manufactured to use more than one gallon of water per flush (3) any showerhead manufactured to have a flow capacity of more than 2.5 gallons of water per minute (4) any interior faucet that emits more than 2.2 gallons of water per minute. (Cal. Civ. Code section 1101.3.)

Q 19. Does the water conservation law apply to all types of property?

A No. The law only applies to property built and available for use on or before January 1, 1994. (Cal. Civ. Code section 1101.2.)

Q 20. Why does it only apply to buildings built before January 1, 1994?

A Under federal law, all residential toilets manufactured after January 1, 1994 must use no more than 1.6 gallons per flush. In California ultra-low flush toilets have been required in all new construction since January 1, 1992.

Q 21. When must the water-conserving fixtures be installed?

A It depends on what kind of property you own, and whether you make improvements. The law sets up three categories: "single-family residential real property," "commercial real property," and "multifamily residential property."

Q 22. What is a "single-family residential" property?

A A single-family residential property means any real property that is improved with, or consisting of, a building containing not more than one unit that is intended for human habitation. Therefore a condo, even a single condo occupied by only one family, is not a single-family residential property under this law. (Cal. Civ. Code section 1101.3.)

Q 23. What is a "multifamily residential real property"?

A A multifamily residential property means any real property containing more than one unit that is intended for human habitation. This would include the residential portions of a mixed use property. (Cal. Civ. Code section 1101.3.)

Q 24. What is a "commercial real property"?

A Commercial real property means any property that is not in the above two categories and includes hotels and motels. (Cal. Civ. Code section 1101.3.)

Q 25. If I own a single-family residential property, what are the requirements and when do they take effect?

A Beginning January 1, 2017 all single family property owners will be required to replace noncompliant plumbing fixtures with water-conserving fixtures regardless of whether any improvements are made and whether or not the property is being sold.

Beginning January 1, 2017 a seller must disclose in writing to the buyer the requirement of water-conserving fixtures and whether the real property has any noncompliant fixtures.

However, if you do any improvement requiring a permit after January 1, 2014 on a single-family property, the permit will not be issued unless all noncompliant plumbing fixtures have been replaced with water-conserving fixtures. (Cal. Civ. Code section 1101.4.)

Q 26. I own a multifamily residential property or a commercial property, what are the requirements and when do they take effect?

A Beginning January 1, 2019 all noncompliant plumbing fixtures in any multifamily residential real property and any commercial real property shall be replaced with water-conserving plumbing fixtures.

Beginning January 1, 2019 a seller of these types of properties must disclose in writing to the buyer the requirement of water-conserving fixtures and whether the real property has any noncompliant fixtures.

However, after January 1, 2014, if you do any improvement which either costs at least \$150,000 or increases total floor area by more than 10, then all nonconforming fixtures must be replaced with water-conserving plumbing fixtures. And replacement of nonconforming fixtures will be a condition of permit approval or certificate of final completion. However, if you only do improvements requiring a permit in a room then you only have to replace nonconforming fixtures in that room. (Cal. Civ. Code section 1101.5.)

Q 27. Who is required to make the disclosure as to whether the property is or isn't in compliance, the seller or the listing agent?

A The seller. The law specifically says a seller or transferor shall make the disclosure in writing. Earlier drafts of the bill attempted to make agents responsible for the disclosure, but these were removed from the final law.

Q 28. Are there any exemptions?

A Yes. There are exemptions for historical sites; property where it isn't technically feasible to install water-conserving fixtures; buildings where the water is permanently disconnected; buildings slated to be demolished; and a special exemption for a city (or county) itself that has an existing retrofit law. (Cal. Civ. Code section 1101.7.)

Q 29. Can I comply with this law by just putting a brick in my toilet?

A No. The law defines as nonconforming any toilet manufactured to use more than 1.6 gallons. Therefore, displacing water in the tank will not put you in compliance with the law, even though you might be saving just as much water.

Q 30. I am a landlord, and I want to install or test my water-conserving devices in the rental unit. Can I enter the property for that purpose?

A Yes, as long as you give the proper written notice for entry of a dwelling. (Cal. Civ. Code sections 1101.5, 1954.)

Q 31. I own a property in city where there is an existing retrofit law for water-conserving fixtures as a point of sale requirement (such as Los Angeles, San Diego or San Francisco). Are those retrofit laws still in force?

A Yes. Local laws passed before July of 2009 requiring retrofit of plumbing fixtures remain in effect. The state law also allows a locality to pass more restrictive requirements at any time.

Q 32. Can a city or county require greater water savings than the state law? Or have local laws now been superseded by the state law?

A No. A city, county or a retail water supplier has the authority to enact local ordinances or establish policies that will result in a greater amount of water savings than those provided under California's statewide law on water-conserving plumbing fixtures (Cal. Civ. Code section 1101.8).

Q 33. *Where can I find additional information?*

A This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit **C.A.R.**

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