

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 382 (Becker)
Version: January 4, 2024
Hearing Date: January 11, 2024
Fiscal: No
Urgency: No
ID

SUBJECT

Single-family residential property: disclosures

DIGEST

This bill requires sellers of single-family residential properties to provide prospective buyers with a notice stating that it may be advisable to obtain an inspection of the home's electrical systems, and a list of the various safety risks and other potential concerns arising from substandard, recalled, or faulty wiring and limited electrical capacity.

EXECUTIVE SUMMARY

Many homes in California have older electrical systems and electrical panels that can be faulty or inadequate for modern home electrical demands. This is especially true as California moves toward a greener society and increases electric vehicle and electric appliance use throughout the state, as electric vehicle chargers and electric appliances place higher demands on homes' electrical systems than older systems are capable of handling. Replacing such older panels and electrical systems may be costly for homebuyers of older homes. To help address the risks and financial consequences of these older home electrical systems, this bill requires a seller of a single-family home or their agent to provide a prospective buyer with a notice advising the prospective buyer of the advisability of obtaining an inspection of the electrical system and of the risks and limitations of older electrical systems.

This bill is author-sponsored, and is supported by the Natural Resources Defense Council, RMI, the Building Decarbonization Coalition, the Institute for Market Transformation, and the Western Electrical Contractors Association. The Committee has received no opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires a seller of a single-family residential property or their agent to provide to a prospective buyer a completed Transfer Disclosure Statement (TDS), and various other disclosures. (Civ. Code §§ 1102-1102.19.)
- 2) Requires a seller to disclose and describe, as part of the TDS, whether the single-family residence has any significant defects or malfunctions in various components of the home, including the electrical systems. (§ 1102.6.)
- 3) Requires a seller of any single-family residence to deliver the required disclosures:
 - a) as soon as practicable before transfer of title, in the case of a sale;
 - b) as soon as practicable before execution of the contract in the case of a sale by a real property sales contract, a lease together with an option to purchase, or a ground lease coupled with improvements. (§ 1102.3.)
- 4) Exempts transfers of single-family residences that are made pursuant to a court order, pursuant to a foreclosure or mortgage default, by a fiduciary in the administration of a trust, guardianship, conservatorship or estate, from one co-owner to one or more other co-owners, to a spouse, pursuant to a dissolution of marriage or legal separation, to or from any governmental entity, and made under various other circumstances, as specified. (§ 1102.2.)
- 5) Provides that, if any information disclosed is subsequently rendered inaccurate as a result of any act, occurrence, or agreement after the disclosure is delivered it does not constitute a violation of the disclosure requirements. (§ 1102.5.)
- 6) Allows that any disclosure may be amended in writing by the seller or their agent as soon as practicable. (§ 1102.9.)
- 7) Requires that disclosures are delivered to a prospective buyer by personal delivery or by mail, and allows delivery to the prospective buyer's spouse. (§ 1102.10.)
- 8) Specifies that no transfer of a single-family residence shall be invalidated solely because of the failure to comply with the disclosure requirements, but that a person who willfully or negligently violates or fails to perform the disclosure duties shall be liable for actual damages. (§ 1102.13.)
- 9) Creates a duty on real estate agents representing sellers in certain transactions to make a competent visual inspection of the property and disclose to the prospective buyer or tenant all facts materially affecting the value or desirability of the property. (§ 2079.)

This bill:

- 1) On or after January 1, 2026, requires a seller, or a seller's agent, to provide a prospective buyer the following disclosure statement:
 - a) "In a purchase of real property, it may be advisable to obtain an inspection of the electrical systems of any buildings, including, but not limited to, the main service panel, the subpanel(s), and wiring. Substandard, recalled, or faulty wiring may cause a fire risk and may make it difficult to obtain property insurance. Limited electrical capacity may make it difficult to support future electrical additions to the building(s), such as solar generation, electric space heating, electric water heating, or electric vehicle charging equipment."

COMMENTS

1. Author's Statement

The Author states that:

Many homes, especially older homes, contain electrical service panels that are widely known to have serious safety problems. The National Fire Protection Association reports that home electrical systems are responsible annually for about 31,500 home fires and 400 home fire-related deaths and are also the leading cause of home fire property damage. In addition to the serious safety concerns, these unsafe panels and wiring may make it very expensive or impossible to obtain property insurance for the home – at a time when property insurance is already becoming more expensive and harder to get for all homeowners. At the same time, the state's efforts to reduce greenhouse gas emissions are creating new demands on the electrical systems of our homes for EV chargers, electrical water heaters, and electrical space heating. Many older homes have insufficient electrical capacity to support these extra loads, which could force the homeowner to spend thousands of dollars to replace their electrical panel and possibly other wiring within the home.

Prospective home buyers should be warned of these potential problems and advised that an assessment of the electrical systems of a building may be a prudent precaution prior to completing a purchase of the home. SB 382 will require sellers of residential property to include a disclosure with this kind of warning and advice. Most residential building buyers are not sophisticated about electrical systems and are often unaware of regulations that may force them to spend thousands of dollars upgrading outdated, under-sized, or dangerous electrical systems. SB 382 will help protect prospective home buyers from making costly mistakes when evaluating a building by making sure that they are

properly informed of any lurking electrical system problems and can fairly evaluate those problems in their purchase decisions.

2. The growing issue of old and faulty electrical systems in California homes

Many homes across California utilize old electric panels and wiring systems. These systems may not be up to industry standard, have open recalls, contain faulty or failing wiring, and may be a safety risk to homeowners. For example, safety concerns about Federal Pacific Electric “stab-lok” circuit breakers have been raised since the 1980s.¹ Testing and reports suggest that these panels may malfunction and fail to cut electricity to a short circuit, which can result in electrocution or fire. A report by the Consumer Protection Safety Commission found that the panels did fail some calibration test requirements required to obtain an Underwriters Laboratories, Inc. (UL) safety standards rating accepted in the United States, though the commission was unable, due to funding, to complete an assessment of the safety risk the faulty breakers created.² Millions of the panels were sold and installed in homes across the United States between the 1950’s and 1980’s, and many likely still exist in homes in California.

The risks caused from faulty or old electrical systems is not hypothetical. Data from the National Fire Protection Association (NFPA) shows that electrical failure or malfunction caused at least 46,700 home fires a year from 2015 to 2019 in the United States.³ These home fires caused an estimated average of 390 deaths and 1,330 injuries a year, along with \$1.5 billion in direct property damage a year. While these numbers are not solely from aging electrical systems or circuit breakers, such systems and older electrical panels can be a source of such electrical failure and malfunction. NFPA’s report notes that:

Aging electrical systems in older homes can be a source of arc faults, either through normal wear and tear or because the systems cannot accommodate the greater demands of modern appliances. Circuits can also be overloaded by providing electricity to too many appliances, often through power cords.

¹ See, Tony Kovalski and David Paredes, “Federal pacific circuit breakers: investigation finds decades of danger,” NBC Bay Area (Sept. 29, 2012 at 9:23 am), available at <https://www.nbcbayarea.com/news/local/federal-pacific-circuit-breakers-investigation-finds-decades-of-danger/1930189/>; Penna Electric, “unsafe electrical panels: outdated types that should be replaced immediately,” available at <https://www.pennaelectric.com/unsafe-outdated-electrical-panels/#federal-pacific-electric>.

² U.S. Consumer Product Safety Commission, *Commission Closes Investigation of FPE Circuit Breakers and Provides Safety Information for Consumers*, 83-008 (Mar. 3, 1983, revised Feb. 18, 2011), available at <https://www.cpsc.gov/Newsroom/News-Releases/1983/Commission-Closes-Investigation-Of-FPE-Circuit-Breakers-And-Provides-Safety-Information-For-Consumers>.

³ Richard Campbell, *Home Fires Caused by Electrical Failure or Malfunction*, National Fire Protection Association (Nov. 2021), available at <https://www.nfpa.org/education-and-research/research/nfpa-research/fire-statistical-reports/electrical-fires>.

These panels and potentially unsafe electrical systems continue to pose a safety threat to Californians, and pose a risk of harm and substantial expenses in replacement for potential buyers of older homes.

At the same time that the issue of aging and substandard home electrical systems is emerging in California, the state is also dealing with a crisis in residential home insurance. Many insurance companies are refusing to insure California homes, or are pulling out of the state's homeowner insurance market entirely. For companies that do continue to provide homeowners insurance in California, the company may refuse to insure a home's electrical system because of its age and type. For example, the consumer guide site Credible lists Challenger electrical panels, Federal Pacific panels, GTE Sylvania panels, and Zinsco panels as types of electrical panels found in older homes that may not be covered by an insurer.⁴

These trends in California's real estate and insurance markets come at a time when the state and its residents are increasingly moving towards electric vehicles and electric home appliances. As part of its effort to stem global warming and improve air quality, the state continues to advance the goal of making California's car fleet zero-emissions. As it does so, more and more Californians will drive electric or hybrid vehicles, and thus require electric vehicle charging capabilities in their homes. Additionally, local agencies are beginning to address global warming and air quality through zero-emission appliance requirements, such as in the Bay Area, where the Bay Area Air Quality Management District recently amended its regulations to phase out natural gas furnaces and water heaters and require new furnaces and water heaters be zero-emissions. The California Air Resources Board is currently considering similar statewide rules.

However, older electrical systems and panels may not be equipped to handle the increased electrical requirements of electric appliances and EV charging systems. This is because older homes can only handle a certain amount of electrical current, and the increased electricity demands of electric appliances and an electric vehicle charger may exceed the capacity of the older panel.

Considering these various concerns, it is important that future homebuyers in California are aware of the limits and potential issues of the electrical systems of their potential home, and of the potential consequences both for their safety and ability to cover their electricity demands, before an actual issue arises.

⁴ Kevin Payne, "Does homeowners insurance cover electrical panel replacement?" Credible (Mar. 29, 2023), available at <https://www.credible.com/blog/home-insurance/electrical-panel-replacement/#conditions-insurance-cover-electrical-panel-replacement>.

3. Current disclosures required by law to be given to potential buyers of single-family residential properties

This bill adds a provision to sections 1102 to 1102.19 of the Civil Code (Article 1.5 of Chapter 2, Title 4 of Part 4, Division 2 of the Civil Code relating to Property), which relates to disclosures required to be provided to a potential buyer of a single-family residential property. That Article contains the Transfer Disclosure Statement (TDS), a statutorily-mandated document of disclosures that a seller must provide a potential buyer, outlining the conditions and issues with the property of which the seller is aware (Cal. Civ. Code § 1102.6). Disclosures required by the TDS include any known significant defects in the insulation, roof, foundation, plumbing and sewers, and electrical systems, among others. It requires an explanation of any noted defects, and also requires a comprehensive list of appliances and other features present on the property, along with an extensive questionnaire relating to specific dangers or issues known about the property. In addition to the TDS contained at section 1102.6, Article 1.5 includes a number of other required disclosures and notices that a seller must make to a potential buyer. For example, section 1102.19 requires a seller to disclose to a potential buyer whether the property is located in a designated high or very high fire hazard severity zone, and section 1102.6, subsection g, requires every real property sale contract to include a notice regarding the requirement that a property appraisal be unbiased.

With some specified exceptions, the disclosure requirements in Article 1.5 apply to any transfer by sale, exchange, real property sales contract, lease with an option to purchase, or a ground lease coupled with improvements of a single-family residential property (Cal. Civ. Code § 1102(a)). The disclosures must be provided to the prospective buyer either as soon as practicable before transfer of title, or in the case of a sale by a real property sales contract, a lease together with an option to purchase, or a ground lease coupled with improvements, as soon as practicable before the making or acceptance of an offer (Cal. Civ. Code § 1102.3). The seller must indicate that they have complied with the disclosure requirements in Article 1.5, either on the real property sales contract, lease, or on an addendum or separate document.

If a disclosure or amendment to any previously-made disclosures is delivered after the execution of an offer to purchase the home, section 1102.3 provides that the prospective buyer is allowed three days (if the disclosure is delivered in person) or five days (if the disclosure is delivered by mail or electronically) in which to back out of the sale without repercussions (Cal. Civ. Code § 1102.3(c)). This provision provides buyers with an easy remedy if an issue arises in the disclosures that is material to the buyer's decision to purchase the property, and can create an opportunity for additional negotiations between the parties around the issue.

In addition to the disclosures required by Article 1.5, existing law also imposes on real estate agents representing clients in certain transactions the duty to make a competent

visual inspection of the property to disclose to the prospective buyer or tenant all facts materially affecting the value or desirability of the property (Cal. Civ. Code § 2079).

4. This bill will require potential buyers to be advised of the potential risks associated with old, recalled, or faulty electrical systems

In addition to the various disclosures and notices required by Article 1.5, this bill would require that sellers provide to prospective buyers of single-family homes a notice regarding potential issues with a home's electrical panels. Specifically, the bill requires that prospective buyers be advised that it may be advisable to obtain an inspection of the electrical systems, including of the main service panel, subpanels, and wiring. It additionally includes notices regarding potential issues that substandard, recalled, or faulty wiring and limited electrical capacity may pose, stating:

Substandard, recalled, or faulty wiring may cause a fire risk and may make it difficult to obtain property insurance. Limited electrical capacity may make it difficult to support future electrical additions to the building[s], such as solar generation, electric space heating, electric water heating, or electric vehicle charging equipment.

This notice would not be required to be provided to prospective buyers until January 1st, 2026.

Thus, starting in 2026, this bill would ensure that prospective home buyers are made aware of the importance of obtaining an inspection of the electrical system, and alert prospective buyers to some of the issues that might arise from an old or faulty electrical system. It does not require any specific disclosure regarding the home's electrical system itself, though the TDS and realtor's duty to disclose facts materially affecting the value of the property arguably cover significant defects and other electrical issues. This bill also does not amend the TDS itself, instead providing for the notice in a new section of Article 1.5, therefore allowing the seller to provide the notice in a separate document. However, the same provisions relating to the other disclosures required by Article 1.5 would apply to this bill's provisions: the notice would need to be provided within the timeline of section 1102.3 as described above, and a prospective buyer would have the prescribed three or five days from disclosure to potentially terminate the sale.

5. Like other disclosure requirements in Civil Code section 1102, a potential buyer would have some remedies for a willful or negligent violation of this bill's disclosure requirement

Civil Code section 1102.13 specifies that just the failure to comply with the disclosure provisions of Article 1.5 shall not be a sole basis to invalidate the transfer of title of the residential property at issue. However, the section does provide that a person who willfully or negligently fails to perform the duties or violates the disclosure

requirements in Article 1.5 is liable for any actual damages that a buyer suffers as a result of that violation (Cal. Civ. Code § 1102.13).

Because this bill is adding a new section to Article 1.5, the provisions at Civil Code section 1102.13 providing liability would apply to a violation of this bill's requirements. Thus, if a seller willfully or negligently fails to include the notice required by this bill, a buyer may be able to sue the seller for actual damages. This would mean that, if a buyer is not provided the required notice, and perhaps would have requested a replacement of the home's electrical panel or some other remedy if they had received such a notice – for example, because they intended to install an electric vehicle charging station in the home – they may be able to recover the costs they incurred after the violation. However, the buyer would have to prove the failure was willful or negligent, and would not be able to undo the sale, just as they would not be able to do with any other violation of the disclosure provisions in Article 1.5.

Actual damages may be difficult to prove in any future suit from a seller's failure to comply with the provisions of this bill, as this bill only requires a general notice be provided, and not a required disclosure of any actual defect or issue with the property itself. Any such actual defect likely would already be disclosed under separate disclosure requirements in Article 1.5. Thus, because the notice required by this bill is a general notice and not of any specific condition of the home, drawing a causal connection between a failure of the seller to provide the notice and any harm suffered by the buyer may be too attenuated. For example, if a panel would require replacement for the home's electrical system to be able to support electrical vehicle charging, proving a connection between the failure to provide the buyer with this bill's general notice and a buyer's damages would require showing that the buyer would have requested the panel be replaced by the seller if they had been advised of the potential issue with panels that lack the capacity to support electrical additions. If a panel is defective, the buyer would likely already be on notice of the issue regardless of whether they were provided with this bill's general notice. Therefore, it would likely be difficult to prove a buyer suffered a concrete harm solely from not receiving the general notice provided by this bill. Regardless of these practical impediments, a buyer not provided with the notice provisions of this bill could potentially take legal action against the seller, if they could show that they incurred actual damages as a result, and that the seller willfully or negligently failed to provide the notice.

6. Arguments in Support

According to the Natural Resources Defense Council, RMI, Building Decarbonization Coalition, and the Institute for Market Transformation, who are in support of SB 382:

[SB 382] will ensure that prospective homebuyers are informed of problems with the electrical panels and other electrical systems of residential buildings for sale so that they can avoid being surprised later by the need to spend thousands of dollars to fix these foreseeable problems.

Many homes, especially older homes, contain electrical service panels that are widely known to have serious safety problems, which can lead to fires or electrocution. The National Fire Protection Association reports that home electrical systems are responsible annually for an average of about 31,500 home fires and 400 home fire-related deaths. These fires also cause \$1.3 billion in direct property damage annually.

At the same time, it is important that homes' wiring and service panels are safe and serviceable as we transition from polluting fuels to clean electricity to power EV chargers, electrical water heaters, and electrical space heating. Homeowners planning to increase their use of electricity have the right to know the condition of these systems so that they can make informed purchases.

Many residential building buyers are unaware of issues that may force them to spend thousands of dollars upgrading outdated and dangerous electrical systems. SB 382 will protect prospective home buyers from making costly mistakes when evaluating a building by making sure that they are properly informed of any lurking electrical system problems.

SUPPORT

Building Decarbonization Coalition (BDC)
Institute for Market Transformation (IMT)
Natural Resources Defense Council (NRDC)
RMI
Western Electrical Contractors Association (WECA)

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None.

Prior Legislation:

AB 892 (Holden, Ch. 310, Stats. 2019) revised the form for the real estate transfer disclosure statement, and defined the terms "single-family residential property" and "single-family residential real property," among other changes.

AB 1289 (Arambula, Ch. 907, Stats. 2018) made a series of modifications to the Real Estate Law provisions contained in the Civil Code.

AB 2884 (Irwin, Ch. 285, Stats. 2018) made a series of modifications to the Real Estate Law provisions contained in the Business and Professions Code.

SB 1406 (Petris, Ch. 1574, Stats. 1985) required specified written disclosures by the seller of real property to the buyer on a transfer disclosure statement, and created a duty for seller to make a record of compliance with the disclosure requirements.

PRIOR VOTES:

This bill was amended on January 3, 2024 to completely change the bill's provisions, and therefore any prior votes are irrelevant.
