

Ten Questions Every Realtor Should be Asking About the Pool Safety Act

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1. What is the Pool Safety Act?

A California law known as the Pool Safety Act (SB442) was signed by Governor Brown and became on January 1, 2018. The law requires new or remodeled pools and spas to have two of seven specified child protective safety features. While existing pools and spas are not required to add additional safety features, the California Real Estate Inspection Association (CREIA) recommends all pools and spas have 2 of the 7 appropriate safety features identified in the Pool Safety Act to protecting our young and vulnerable. We further recommend the installation of a perimeter fence that separates the property from neighboring properties.

2. Why is the Pool Safety Act deemed necessary?

According to both federal Centers for Disease Control and Prevention's National Center for Injury Prevention and Control and the State Department of Public Health's EpiCenter data, drowning is the second leading cause of death for California children one to four years of age, inclusive. EpiCenter data shows that between the years 2010 and 2014 more than 160 children one to four years of age, inclusive, suffered fatal drowning, with the majority of the incidents involving residential pools. Between the years 2010 and 2015 more than 740 children one to four years of age, inclusive, were hospitalized after suffering a near drowning incident with the leading cause of hospitalization being brain injury due to the lack of oxygen, also known as asphyxiation. The Pool Safety Act was passed to make buyers and sellers aware of deficiencies in safety features in the home they are buying or selling. The pool safety is most effective when there are multiple layers of protection against accidental child drowning.

3. What does the Pool Safety Act Require?

The requirements of the Pool Safety Act are very detailed and specific. They are required of home inspectors in the Business and Professions Code and specified in the Health and Safety code. Several of the pool safety features include specific standards set by ASTM International, a universally recognized organization for establishing acceptable standards for materials and systems. Generally speaking, the Pool Safety Act sets forth seven safety features. **The Pool Safety Act requires the *home inspector to include in the home inspection report which of the seven are present and to state in the report if there are fewer than two safety features present.*** Please note the safety features, as noted below, are generalizations of the specific requirements in the Pool Safety Act. *(The ASTM International specification for Pool and Spa Alarms contains over 3,100 words. The specification for Pool and Spa covers is over 5,400 words)*

Pool Safety Act Feature Requirements

1. **A pool or spa fence that separates your pool or spa from the home.**

An enclosure with a minimum height of 60 inches. Access gates through the enclosure are required to open away from the pool or spa. The gates shall be self-closing, self-latching, and be no lower than 60 inches above the ground. The bottom of the fence can be no more than 2 inches above ground with no gaps or voids, which could allow passage of a 4-inch sphere. The fence should not be easily climbable.

2. **A removable mesh fence.**

A removable mesh fence that provides 360 degrees of protection for the pool/spa from the private single-family home. The top of fence needs to be a minimum height of 48 inches high. Hinged gates, if present, must be self-closing, self-latching, open outward from the pool or spa and accommodate a locking device 54 inches above

grade on the outside of the gate. Latching devices, which secure each barrier section shall be no lower than 45 inches above grade and provide security equal or greater than the hook-and-eye type latch with a spring retaining lever (safety gate hook).

3. A manually or automated safety pool cover.

The requirements for pool covers are too detailed and specific to list in this article. If a manual or power pool cover is present, it is strongly suggested that a licensed pool/spa contractor be employed to perform an evaluation and provide you with an expert opinion.

4. Exit alarms on doors and windows that provide direct access to the swimming pool or spa.

The exit alarms are required on all doors that lead to the pool/spa.

5. A self-closing, self-latching device on doors that prevents direct access to the swimming pool or spa.

A self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor on all doors that provide direct access to the pool/spa.

6. Pool and spa alarm that will sound upon detection of accidental or unauthorized entrance into the water.

A pool and spa alarm that detects surface motion or by pressure, sonar, laser, and/or infrared. Note: Alarms designed for individual use are not approved, including an alarm attached to a child that sounds when the child exceeds a certain distance or becomes submerged in water.

7. Other means of protection. There is provision for “other” means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the features set forth above and has been independently verified by an approved testing laboratory as meeting standards for those features established by the ASTM or the American Society of Mechanical Engineers (ASME).

4. When is a Pool Safety Feature Inspection Required?

A Pool Safety Feature Inspection is required when each of these conditions exist:

- (a) There is the transfer of real property **AND**
- (b) The property has a pool, spa or hot tub. [Note: The Health and Safety Code defines a swimming pool (pool) as any “structure intended for recreational bathing that contains water over 18 inches deep”. The Pool Safety Act applies to private, single-family dwellings.] **AND**
- (c) There is a home inspection conducted in conjunction with the transfer of the property. The home inspector is to conduct a “noninvasive, physical examination” [Business and Professions Code 7195 (a)(1)]

The requirements of the Pool Safety Act **does not apply** to any of the following:

- (a) Public swimming pools.
- (b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing and Materials (ASTM F1346).
- (c) An apartment complex, or any residential setting other than a single-family home.

5. I am having a pool inspection in addition to a home inspection, can the pool inspector conduct the Pool Safety Act Inspection?

The Pool Safety Act requires the home inspector to conduct the pool safety feature inspection and to include the findings in the home inspection report. The pool inspection, even if the pool inspector includes or comments on pool safety features, does not satisfy the requirements of the Pool Safety Act. A pool inspection is not a substitute for the requirements of the Pool Safety Act.

6. Is perimeter fencing part of the Pool Safety act?

Perimeter fencing is not referenced in the Pool Safety Act. However, perimeter fencing is required in the California Building Code which states in part, "Residential swimming pools shall be completely enclosed by a barrier complying with Sections 3109.4.1 through 3109.4.3." Perimeter fencing is intended to keep neighboring children out of the pool area.

7. Can my client waive the Pool Safety Feature inspection as part of the home inspection?

I posed this question to our association lawyer. He indicated a client could waive the pool safety feature inspection. However, the home inspector is still required by the Pool Safety Act to conduct the pool safety feature inspection and include it in the home inspection.

8. Is the buyer or seller required to make repairs for deficiencies in the Pool Safety portion of the home inspection?

No, there is no requirement to bring the property into compliance with the requirements of the Pool Safety Act. The inspection is a disclosure to the parties of the transfer.

9. Does the Pool Safety Act have implications for the Realtors® in the transfer of the property?

The Pool Safety Act does not refer to Realtors®. However, Realtors® perform an Agents Visual Inspection Disclosure (AVID). Realtors® are not home inspectors nor are they contractors and as such are not qualified to diagnose pool safety features. However, Realtors®, as part of their AVID, note what they see (or don't see) that may be of important to the buyer or seller. A spa or pool without a cover is an important safety deficiency and should appear on an AVID. An AVID does not diagnose, it describes. The pool lacks a cover. An AVID is especially important if the transfer of the property does not include a home inspection and therefore a pool safety feature inspection.

10. Is my home inspector qualified to conduct a Pool Safety Feature inspection?

There is significant exposure for all parties in the transfer of a property that has a pool, spa or hot tub. Your home inspector may be fully qualified to inspect the home. However, is the home inspector fully qualified to fully evaluate pool safety features? Specific training is essential to evaluate the pool safety features fully and accurately. To illustrate the point there are 18 specific items identified in the Pool Safety Act which are to be inspected by a noninvasive, physical inspection of a mesh fence. Training is critical to be able to identify what is required of the Pool Safety Act. CREIA has conducted training sessions throughout the state for both home inspectors as well as Realtors®

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