

Property Disclosure Basics

Historically, a buyer who made the decision to purchase a specific home assumed all of the risks associated with homeownership. Those risks included things that they did not know about the home they were purchasing. Thankfully, today's buyers have learned from the past. Assumed risk continues, but ignorance has fallen by the wayside.

To protect consumer interests, many states and localities have enacted laws requiring the current homeowner to complete legal disclosures about the property that is for sale.

The actual contents of each disclosure form vary, depending on the area. But generally, laws require homeowners to tell potential buyers about any known liens or other legal issues surrounding the home and any known or suspected defects. The area of legal issues is fairly standard. However, local requirements vary regarding the defects that must be reported. Sometimes minor defects may be overlooked by the owner, but at other times the homeowner must disclose every visible crack on the walls.



As a seller, when you complete a property disclosure form, you are required to provide only material facts. This article explains the difference between material facts and immaterial facts. Here are some examples of what you might need to write on your property disclosure form:

- The age of your home, the approximate age of any additions, and the age of the major systems and their components (furnace, circuit box, water heater, air conditioner, etc.)
- Any current problems with the home, or anything that you suspect could be happening within the home, such as a leaking roof, consistently clogged drains, or water in the basement. This might also include problems with the heating or cooling systems, plumbing, or electrical systems.
- Structural problems. This is a difficult area for many home sellers, because exterior cracks are common when foundations settle. It is often difficult for the average homeowner to recognize signs of trouble until there actually IS trouble with the structure. Therefore, you need to note any visible exterior cracking in the mortar joints if your home is brick. The same is true for interior walls. If you see cracking on the interior walls, it is always best to protect your interests and disclose the information.
- If at some point during the life of the home, you or some other owner built a portion of the home, driveway, or another item on a neighbor's property, it needs to be disclosed. Even if your neighbors were willing to lend you two feet of driveway width, the new owners of that home may want to reclaim that space as their own. As the seller, you must tell potential buyers that this possibility exists, so that they can make arrangements regarding the encroachment.
- Any and all legal issues surrounding the home in question. These legal issues could include tax liens, contractor liens, etc. Or, it might be that the home is at the center of an estate dispute or a nasty divorce in which one spouse refuses to give up his or her rights to the property. Try to clear up any legal issues prior to placing the home on the market. However, under some circumstances the sale simply cannot wait. In this case, try to be


completely honest with your potential buyers, unless you are willing to risk losing them once they discover the legal issues on their own.

As mentioned above, some states and localities may not require the completion of a formal property disclosure form. Just because there is no official form, you as the seller have an obligation to potential buyers to disclose known repair and legal issues related to your home. National laws govern the release of information carefully, so be certain to ask your realtor for information about what types of disclosure must be completed prior to placing your home on the market. If you aren't working with a realtor, call your state's real-estate commission to ask what types of disclosure are required and how they should be completed.


Every seller must prepare a disclosure of some sort. Here are some more specific examples of what you might need to add to your list of disclosed items:

Specific Examples of Facts to Disclose

- The approximate age of the home's roof and the materials used.
- Any current or past leaks from either the roof or the foundation.
- Any suspected or known presence of mold or mildew anywhere in the home.
- Termite or carpenter ant damage or infestation (current or past).
- Known or suspected problems with the plumbing system, including sewer backups or septic system problems.
- The amount of property, school and real-estate taxes as an annual rate.
- The square footage and dimensions of the home.
- Any knowledge of projects planned by the locality that will result in an inconvenience or loss of property for the new owner.
- All known legal disputes involving the house (e.g., estate or divorce).
- The presence of any utilities, fuel tanks, wells, etc. located on the property.



If you live in an area prone to natural disasters, such as flooding or earthquakes, you will probably need to disclose any damage your home has suffered as a result.



You Are Not Required to Release Information Unrelated to the Condition of the Home on a Disclosure Form

Many home owners become overzealous with the amount of information that they release to potential buyers. Sometimes, too much information is just as bad as not enough information being disclosed. Here are some examples of what you should NOT tell potential buyers on your disclosure paperwork:

- Personal information about you and your family, including ages, marital status, employment information, etc
- Information about why you are planning to move and where you will be living in the future.
- The medical condition of you or your family members and whether any of the current residents are HIV-positive.

There are some grey areas about disclosure, and the rules vary depending on where your home is located. Consider, for example, the following list of items that may or may not be required on a disclosure form.

- In most places, an owner does not have to disclose that a death occurred inside of the home. However, if the death was a homicide, the law treats the death differently and the information may need to be reported on a disclosure. Know that if you tell your agent about a death in the home, and the agent is asked about it later, he or she must answer the question truthfully.
- Methamphetamine labs are a new addition to many states' disclosure requirements. If you know that a meth lab was located in your home or on your property, then you need to disclose the information. The residue from methamphetamine production can be toxic and buyers need to know about this in advance.
- If you live in an area prone to natural disasters, such as flooding or earthquakes, you will probably need to disclose any damage your home has suffered as a result.
- Finally, if you believe that your home is haunted, in a handful of states you need to tell potential buyers. Check with your realtor for more information if you believe that this is an issue you need to disclose.