



Disclosure Statements

"it's the details that count"

Real Estate Brief

In business transactions, it's the details that count—whether you're buying a used car or negotiating a corporate merger. In the real estate world, that means—above all—making sure you disclose what you know or discover about the property or land your client is interested in selling. And it's not just disclosure that counts, but the adequacy of that disclosure. Housing inspector and syndicated columnist Barry Stone summed up disclosure very succinctly in a recent article. "Transfer disclosure laws consist of complex, legalistic verbiage, but in essence they are quite simple," wrote Stone. "Basically sellers and agents must disclose whatever they know that could be of concern to a buyer." If you forget or neglect to disclose something, you could be facing a lawsuit from an unhappy buyer. Here are three steps you should take to help stay out of trouble.

1 Provide a property disclosure form.

A property disclosure form is a seller's form. It offers your sellers the opportunity to disclose defects and other issues related to their property. As an agent, it's important not to fill it out for your clients, whether they're selling a \$50,000 empty lot or a \$3,000,000 mansion.

The disclosure statement should include any known material property defects. It might be a crack in the attic wall that's been there for years or the fact that the basement floods every spring. Or it might be a temperamental hot water heater.

And it's not just bricks and mortar items that count. If you or your seller has heard rumors that a developer is looking to purchase the lot next door and put up a high-rise building—destroying the view a buyer might otherwise pay a premium for—that needs to be disclosed too. Once something is disclosed, the responsibility then shifts to the buyer to check out the facts and make an informed decision about the property.

2 Spell out all the options.

While sellers have disclosure forms to fill out, buyers have choices to make too. As an agent, it's important to spell out these choices. Hertz, Avis, and other car companies have for years required renters to opt in or opt out of auto insurance. Real estate agents should consider taking a page from that book and creating a document that requires a buyer to make similar decisions. For example:

- I will I will not get a home inspection
- I will I will not get a pool inspection
- I will I will not get a septic tank inspection
- I will I will not hire a land surveyor

Or it might be a mold or asbestos inspection. The point is to commit a buyer, on paper, to deciding whether or not he wants to spend the money to look into certain issues. This insulates you later if, for example, there's a problem with the boundary line. You can hold up the inspection form and point out that the buyer opted not to spend \$1,200 to commission a new survey.

3 Know when to walk away.

While it's hard to turn down work, sometimes it's necessary. Most states hold that real estate agents, as professionals, should be aware of red flags around a property that the average person might not notice. Perhaps it's a freshly painted wall that could indicate recent water damage or an added-on solarium that might or might not be properly permitted. If you know or suspect something specific that your seller has not disclosed, then you need to talk to your client. If you cannot convince your client to disclose the information, you should walk away from the listing contract. The alternative—potential embroilment in a lawsuit—is a lot costlier.



310 North Midvale Boulevard
Madison, WI 53705
866-443-4309
866-443-4310 (fax)
insurance@onlinehsa.com



Schinnerer thanks Mark Stavros for his help. Mark is a partner in the Real Estate Practice Group of Manning & Marder in San Diego. The firm also has offices in Los Angeles, Irvine, San Francisco, and Scottsdale. Mark can be reached at 619-515-0269 or mds@mmker.com.

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