

IAR LEGAL HOTLINE



SELLER'S RESIDENTIAL REAL ESTATE SALES DISCLOSURE

On the Legal Hotline we regularly receive questions related to many topics of concern to REALTORS®. The following are based on recent actual questions received through the hotline. By no means are these the only issues of concern to members, so please let us know if you have any questions.

Q: The owner purchased the property as an investment property, and therefore, has never lived in the home. Now that renovations have been completed, the seller is ready to list with me. Since the seller has never lived in the home, is a Residential Seller's Disclosure required?

A: Yes. I.C. 32-21-5-1 generally requires sellers (including FSBs) of 1-4 residential units of property to provide a disclosure form to buyers covering known, significant defects in the major systems of a home. It applies to transfers by sale, exchange, installment sales contract, or lease with option to buy residential real estate.

However, the law does not apply to the following: 1) transfers ordered by a court (i.e. divorce, bankruptcy, condemnation, etc.); 2) transfers by a mortgagee who has acquired the real estate through foreclosure proceedings or by a deed in lieu of foreclosure; 3) transfers by a fiduciary in the course of an administration of an estate, guardianship, conservatorship, or trust; 4) transfers from one co-owner to another co-owner (i.e. by way of Quitclaim Deed); 5) transfers to a family member; 6) transfers due to the owner's failure to pay taxes (i.e. tax sale properties); 7) transfers to or from any governmental entity; 8) transfers involving new home sales; or 9) transfers to a living trust.

Since the law does not exempt an investor who has never lived in the home, the Sales Disclosure Form IS required in such a situation. Further, even though the seller has never lived in the home, seller does have knowledge regarding the home. The seller must answer the questions to the best of his/her ability, even though the seller may need to check "do not know" on some of the questions.

Q: Is a seller's disclosure form required when the property is being sold through a third party relocation company?

A: Yes. If the property is in the name of the employee and such employee is holding legal title to the property, then the employee is required to complete the form. However, if title has been transferred to the relocation company, then the relocation company would be required to complete the form as relocation companies do not fall under any of the exemptions to the Seller's Residential Disclosure law.



Q: Pursuant to a Purchase Agreement, an inspection was performed on a property. The inspection, which was paid for by the purchaser, revealed problems with the roof and the electrical system. The purchaser was unable to obtain financing and the deal eventually fell through. Should the listing broker disclose the contents of the inspection report (the defects) to a subsequent purchaser of the property?



A: Yes, and the Seller's Residential Real Estate Sales Disclosure should be amended by the seller, if applicable. The problems with the roof and the electrical system are more than likely considered material as well as latent defects which need to be disclosed to other prospective purchasers, pursuant to licensing law. Further, the listing broker now has "actual" knowledge concerning the problems. Therefore, even if the seller fails or refuses to disclose the defects on the Seller's Disclosure, the listing broker has an ethical obligation to disclose the defects. Of course, if the seller has the items repaired after the failed transaction then no disclosure is necessary (with the exception of those items which appear in the "Hazardous Conditions" section of the Seller's Disclosure).

The actual inspection report should not be provided to a subsequent purchaser without the consent of the purchaser who paid for the inspection.

Q: Since the property I have listed is an estate, it is exempt from the Residential Sales Disclosure Form. Isn't the estate also exempt from supplying a Lead Based Paint Disclosure?

A: No. The Federal Lead Based Paint law does not exempt an estate from disclosure as does the Indiana Real Estate Sales Disclosure law.

Q: What if the property condition materially changes after the Purchase Agreement has been executed by the parties, but prior to the closing of the transaction?

A: The law requires that sellers have a duty to amend the disclosure form if the property condition materially changes between the initial disclosure and the closing. Further, sellers must re-sign the form at closing for recertification purposes.

Q: What should a REALTOR® do if the seller refuses to complete the form?

A: Under the law, the seller does not have a choice. A brokerage firm may want to consider a company policy of declining a listing unless the seller complies with the law.

Q: What should a REALTOR® do if the buyer refuses to complete the form?

A: Under the law, the buyer must sign the disclosure form to acknowledge receipt of the completed form. However, the law says that a "buyer may not invalidate a real estate transaction or a contract to purchase real estate due to the buyer's failure to sign a seller's disclosure form that has been received or acknowledged by the buyer." IC 32-21-5-10 (c).

Q: Upon signing the form, does the buyer waive his or her rights to sue the seller for fraud or misrepresentation?

A: No, the buyer may still bring an action against the seller for damages or any other available remedy despite having signed the disclosure form if the seller engaged in fraud or misrepresented the property. The buyer's signature merely indicates receipt of the form.

Q: What should the listing broker do if the broker believes the seller is intentionally failing to disclose or misrepresenting an item on the form?

A: The listing broker should initially discuss the seller's actions with the seller. However, if the issue cannot be resolved, it is highly recommended that the broker decline the listing.



Q: What is considered to be a “defect” under the Property Disclosure Law?

A: Sec. 4 of the statute defines a defect as “a condition that would have a significant adverse effect on the value of the property, that would significantly impair the health or safety of future occupants of the property or that if not repaired, removed or replaced would significantly shorten or adversely effect the expected normal life of the premises.”

Q: Does the law apply to leases?

A: The law only applies to a lease with an option to purchase real estate. Thus, the disclosure form must be provided to the lessee/optionee prior to execution of the lease with option to purchase real estate and not when the option is exercised.

Q: Does the law apply to manufactured homes or mobile homes?

A: The law applies if the manufactured home or mobile home is being sold in connection with real estate since the real estate is improved by a dwelling unit for 1-4 families.

Q: If there are several buyers as well as co-owners, must they all sign the disclosure form?

A: Yes, all buyers signing the Purchase Agreement are required to sign the form. Further, all persons having an ownership interest in the property, regardless of the percentage (i.e. Tenancy in Common property), need to sign the form.

Q: Who signs the form if the seller is a corporation?

A: A person authorized to act on behalf of the corporation (i.e. an officer of the corporation) in the sale of the property would sign the form on its behalf.

Q: Does a seller have to give each buyer a form with the seller's original signature or will a copy suffice?

A: An original signature on every form is not necessary. Copies may be given to potential buyers.

Q: Does the disclosure form take the place of inspections in Indiana?

A: No, the law states, as set forth in the form, that the form is not a substitute for any inspections or warranties that the buyer may later obtain. As always, inspections should be requested and provided for in the Purchase Agreement.

Q: What if a buyer submits a Purchase Agreement prior to having received and signed a copy of the form?

A: If a buyer receives a disclosure form or an amended form after offer acceptance which discloses a defect, such buyer has two business days to rescind the offer and receive any deposits made.



Q: Do listing agents have a duty to inform the seller concerning his or her obligations to provide a disclosure form to the buyer?

A: An agent's statutory duties to the seller more than likely create an obligation to inform the seller client. Thus, it is highly recommended that REALTORS® inform their clients about the law and provide them with a copy of the official form.

Q: Would a buyer's agent have a duty to inform the buyer concerning his or her right to receive a disclosure form from the seller?

A: An agent's statutory duties to the buyer more than likely create such an obligation to inform the buyer client as to his or her rights under the law.

Q: Who should complete the property disclosure form?

A: The seller(s). REALTORS® should not attempt to complete the disclosure form for the seller. In other words, REALTORS® should not give a seller the opportunity to drag them into court for non-disclosure of a defect or an allegation of misrepresentation. All questions or clarifications should be referred to the seller's legal counsel.

Q: Should a REALTOR® pass out disclosure forms to all potential buyers attending open houses?

A: Most REALTORS® pass out disclosure forms to all open house attendees as a matter of practice. However, it is imperative that the REALTOR® make sure the form is returned and signed prior to the actual buyer submitting a Purchase Agreement on the property.

If you have further questions, please call the IAR Legal Hotline. As a reminder, the IAR Legal Hotline is available to Managing Broker members and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday. Call 1-800-444-5472 or complete the [online form](#). MBs, need to designate an agent to use the Legal Hotline? [Do it online here](#).