



PROPERTY DISCLOSURES: WHAT AN AGENT SHOULD KNOW

The purpose of this article is to educate agents about the importance of providing to prospective buyers complete and accurate descriptions of the properties they may be marketing, the features and conditions of such properties, and the liability to which agents may be exposed for failing to do so. Many claims brought against REALTORS® involve allegations of misrepresentation, negligence or fraud. Frequently, buyers bring claims against REALTORS® after closing upon discovery of material defects.

In Indiana, a listing agent is legally required to disclose to a prospective buyer or tenant adverse material facts or risks actually known by the agent concerning the physical condition of the property and facts required by statute or regulation to be disclosed and that could not be discovered by a reasonable and timely inspection of the property by the buyer or tenant. An agent representing a seller or landlord does not owe a duty to conduct an independent inspection of the property for the buyer or tenant or to verify the accuracy of any statement, written or oral, made by the seller, the landlord, or an independent inspector. I.C. 25-34.1-10-10(d).

In general, an agent may rely on statements made by the seller unless the agent has observed or otherwise knows of facts or conditions on the property which give him reason to believe the seller's statements are untrue.

REALTORS® are legally and ethically obligated to treat buyers honestly and fairly. "Let the buyer beware" is, almost uniformly, no longer an adequate legal or ethical defense for an agent who fails to correctly disclose material defects in the property. A failure to satisfy these obligations exposes the agent to a variety of damages. To minimize liability for misrepresentation or a failure to disclose a material defect, agents should:

1. Advise the buyer or buyer's agent of all material defects that are known to be present.
2. Avoid statements of fact that have not been verified with either the seller or an independent investigation.
3. Have the seller complete the Seller's Residential Real Estate Sales Disclosure form, if applicable, and provide a copy to interested buyers. Independently confirm any representations or other statements made by the seller about the condition of the property **if** there is reason to believe the seller's statements are **not** correct.
4. Conduct a careful visual inspection of the property and make only those representations that are consistent with the results of that investigation.
5. Document answers to the buyer's questions about the condition of the property by either a memorandum in the file or letter to the buyer or buyer's agent.
6. Encourage the use of other professionals to determine the condition of the property.

In addition to the above, REALTORS® should take special precautions not to predict the future. Statements that can create liability are:

- . "This house is sure to appreciate."
- . "You won't have to worry about this basement flooding."
- . "This well will never run dry."
- . "A roof like this never leaks."

Examples of proper representations are:

- . "Property values in this neighborhood have risen twenty percent in the last three years."



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- . "The seller tells me that the basement has not leaked as long as they have lived here."
- . "This furnace is five years old, and the seller had it inspected last fall."
- . "A new well was dug last spring. You can review the plumbing contractor's specification form."

In each of the above examples, the buyer was not assured of future events, but positive information was conveyed.

If followed, these steps should significantly reduce an agent's liability for misrepresentation or failure to disclose property defects. Equally important, they will enhance an agent's professional image with buyers and sellers.

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