

10 Essential Disclosure Rules

Buyer beware? Not quite. It's the real estate practitioner who must be diligent about disclosing potential problems with a property.

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Although there are no national guidelines about what sellers and their real estate professionals must disclose, here are a few simple rules that can help you avoid legal trouble.

- 1. Make all existing reports known to the buyer.** If there's an inspection report, no matter how old, disclose it. Not providing an old report can be damaging to you and the seller if a problem crops up later on.
 - 2. Disclose anything that can materially affect value or desirability.** Deciding what affects the value is not judged subjectively, and it doesn't matter if the particular item bothered the seller. A good example is church bells. Some people love them; some hate them.
 - 3. Don't fill out the disclosure form for the seller.** Many real estate sales associates make this mistake. Such a practice is a huge gift to any lawyer who decides to sue you. If there's a dispute, the seller could claim the sales associate filled out the paperwork improperly and thus was at fault. If the seller insists you complete the form, or if the seller is elderly or disabled, it's best to record the conversation (with the client's permission), so there cannot be any dispute later. Keep in mind, however, a recording can both help and hurt. It can help by providing a record of what was said, but it can hurt if you gave bad advice.
 - 4. Don't make representations about permits.** Real estate professionals, depending on what's typical in their state, will sometimes pull the permit file from a city or county agency and include it in the disclosure packet. However, many permit files are incomplete or have errors. By pulling the file and including it in the packet without a disclaimer that you have not reviewed it, you're opening yourself up to a legal allegation that you represented the complete and correct permit history.
 - 5. Make it clear that any estimates you provide are just that.** If you don't have the exact square-footage figures to enter into the MLS, be sure to make clear that the numbers are just estimates. If the exact square footage is important to a buyer, suggest that the buyer have the home measured.
 - 6. Don't be someone you aren't.** You aren't a building inspector, an appraiser, a lawyer, or a contractor. If a buyer or a seller asks you a question that another professional should answer, refer the buyer or seller in writing to the appropriate professional.
 - 7. Properly attribute information.** Disclosed information often comes from private companies or government sources. Whether it's the size of the lot, the property's zoning, or use restrictions in a development, be sure that you and the seller properly attribute any such information to its source. As a buyer's representative, recommend that your clients independently verify any information they consider important with the appropriate source.
 - 8. Know your local and brokerage disclosure rules.** Different jurisdictions require sellers and real estate practitioners to complete different forms and provide different amounts of detail. In addition, some brokerages may have more stringent disclosure policies than others. You need to be well versed in the local requirements.
 - 9. Advise your client to get inspections.** If a room with a six-foot ceiling is advertised as a bedroom (an unlikely use given the low height) or you notice water marks on a basement wall (suggesting water damage), advise the client in writing to get the appropriate additional inspections.
 - 10. When in doubt, disclose.** If you're working with the seller and your client asks, "Should I disclose . . .?" your answer should always be "Yes." If it's important enough for your seller to ask this question, it's important enough to disclose. If you say "no," and there's a problem later, you'll be held responsible. If your clients don't want to disclose after you advise them they should, you're in a difficult position. You now know something that may be material. You have a choice to make: Stop working with the seller; disclose it yourself; or work with your manager and legal team to see if you can confirm, in writing, to the client that you advised the seller to disclose and the seller refused to do so. This last option may not protect you if you end up in court, so it's an issue to review with your management team.
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Source: E. David Marks and Serena Patitucci Torvik, [Miller Starr Regalia](#), Palo Alto, Calif. They can be reached at 650-463-7800.

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