

## Cover Sheet — Disclosure of Property Condition

**H**onesty is the best policy. The name of the game is full disclosure. The old rule of *caveat emptor* ("let the buyer beware") is obsolete and the tables are turned. In order to protect himself, a seller must be perfectly honest and proactive, laying all the cards on the table with any prospective buyer.

Each of the 50 states has a different requirement and a different form. Therefore, **the form provided with this cover sheet is only a sample of what these forms may look like. Your required form will be different than this sample.**

**The first thing you must do with this subject is obtain a copy of the disclosure form required by your state.** You can find your state's required disclosure form at [www.SellingHomeMadeEasy.com](http://www.SellingHomeMadeEasy.com) or [www.FsboLocal.com](http://www.FsboLocal.com), which provide links to each state's required form. Download and print a copy of your state's form for your own records. However, because state laws change frequently, new or revised forms could be mandated by your state at any time. Therefore, you cannot be sure the posted form is current. We recommend that you ask your attorney for the most recently published disclosure form required.

In addition to state required forms, some local governments (cities, counties or other) may also require pre-sale inspections, certifications and disclosures. We make no attempt in this handbook to provide information specific to a local government requirement. Always ask your attorney for guidance on local government requirements.

### Property Condition

All required disclosures should be completed, signed and dated by the seller, then delivered to a prospective buyer *before* he presents an offer to purchase. The disclosure is not required unless an offer will be made. Your disclosure should be delivered before you receive the prospect's offer. Have the buyer sign, date and return a copy of the disclosure before you physically receive the offer. Do not try to be clever by handing over a disclosure as you receive an offer. The Buyer must have an opportunity to modify his offer based on the disclosure. Have the buyer sign the form, date it, and enter the time of day he signs it. Keep a fully signed copy as proof of compliance with the law.

Disclose on the side of overkill when you complete a Property Disclosure. If you are in doubt about the need to disclose something, then disclose it. Do nothing to conceal defects. If defects are obvious but hidden behind or inside something, uncover them or disclose them. Do not minimize a problem through clever wording. Above all, be honest. Many state courts will award buyers penalties for fraudulent disclosures, sometimes triple their actual damages. If you have knowledge of a previous adverse inspection report revealing termites, mold, radon or other unfavorable conditions, then disclose the previous inspection and what was done to correct the problem. Anything you do to hide or avoid disclosing defects may come back to haunt you.

If a previous problem existed but is corrected, you are usually not obligated to disclose this. However, we feel you are best advised to disclose the situation *and* the remedy rather than risk being accused of dishonesty. This is particularly true if the correction is a temporary measure.

If there is an adverse condition that is not included in the list of standard disclosures used in your location, we recommend that you add the condition in handwriting. Consult an attorney if in doubt.

## Well, Septic, Sanitary Systems

If you don't have a well or septic system, you may ignore this subsection entirely. Wells, septic, and sanitary systems are potential deal-busters because defects with these systems tend to be expensive to fix. State and local health departments are often aggressive about forcing upgrades and maintenance of these systems when a property sells. Therefore, it is important for sellers to discover in advance what will be expected by your state and local government. Building code enforcement and health departments often require pre-sale inspections and certifications. Contact your local health department or code enforcement department and determine their requirements.

If your state requires a written disclosure of property condition, then wells, septic and sanitary systems may be included in the required disclosure report form. If required disclosure forms do not include wells or septic systems, then write out a handwritten statement describing the condition. Sign the statement and ask the buyer to sign your copy. If defects in one of these systems exist, the defects should be discussed like any other disclosed defect, and you should state in writing whether the seller or buyer agrees to pay for required remedies.

## The Effect of Disclosure

It is important to a smooth transaction for both the seller and buyer to understand the effect of a disclosed defect.

If a buyer offers to buy without conditioning his offer on repair of *disclosed* defects, then that buyer should be precluded from asking you after your deal is made to repair the item at your expense. If the buyer remains silent despite the disclosure when the offer is made, the natural presumption is that the buyer takes the defect into consideration when he decides how much he is willing to pay.

On the other hand, if the buyer makes an offer conditioned on fixing an item you disclosed, the opposite is true. The explicit agreement in this case is that the buyer is willing to pay the price, but only if the seller is willing to make the requested repair. That way, the seller has the benefit of knowing the repair is part of the deal up front and there is less room for surprise and argument later. Regardless of which alternative is followed, no one is in a position to claim they were taken by surprise concerning known, disclosed defects.

## Additional Measures to Avoid Problems

To go an extra step to avoid disputes over property conditions, download the form named "Agreement Concerning Property Conditions" from [SellingHomeMadeEasy.com](http://SellingHomeMadeEasy.com) or [Fsbolocal.com](http://Fsbolocal.com), read the instructions and use one of the two optional forms when you negotiate a sale or purchase of a home.

## Sample Residential Property Disclosure

The seller discloses the following information with the knowledge that even though the statements herein are not deemed to be warranties, prospective buyers may choose to rely on this information in deciding whether or not and on what terms to purchase the residential real property.

The seller represents that to the best of his or her actual knowledge, the following statements have been accurately noted as "yes" (correct), "no" (incorrect), or "not applicable" to the property being sold. If the seller indicates that the response to any statement, except number 1, is yes or not applicable, the seller shall provide an explanation, in the additional information area of this form.

**YES NO N/A**

1. \_\_\_\_\_ Seller has occupied the property within the last 12 months. (No explanation is needed.)
2. \_\_\_\_\_ I am aware of flooding or recurring leakage problems in the crawl space or basement.
3. \_\_\_\_\_ I am aware that the property is located in a flood plain or that I currently have flood hazard insurance on the property.
4. \_\_\_\_\_ I am aware of material defects in the basement or foundation (including cracks and bulges).
5. \_\_\_\_\_ I am aware of leaks or material defects in the roof, ceilings, or chimney.
6. \_\_\_\_\_ I am aware of material defects in the walls or floors.
7. \_\_\_\_\_ I am aware of material defects in the electrical system.
8. \_\_\_\_\_ I am aware of material defects in the plumbing system (includes such things as water heater, sump pump, water treatment system, sprinkler system, and swimming pool).
9. \_\_\_\_\_ I am aware of material defects in the well or well equipment.
10. \_\_\_\_\_ I am aware of unsafe conditions in the drinking water.
11. \_\_\_\_\_ I am aware of material defects in the heating, air conditioning, or ventilating systems.
12. \_\_\_\_\_ I am aware of material defects in the fireplace or wood-burning stove.
13. \_\_\_\_\_ I am aware of material defects in the septic, sanitary sewer, or other disposal system.
14. \_\_\_\_\_ I am aware of unsafe concentrations of radon on the premises.
15. \_\_\_\_\_ I am aware of unsafe concentrations of or unsafe conditions relating to asbestos on the premises.
16. \_\_\_\_\_ I am aware of unsafe concentrations of or unsafe conditions relating to lead paint, lead water pipes, lead plumbing pipes or lead in the soil on the premises.
17. \_\_\_\_\_ I am aware of mine subsidence, underground pits, settlement, sliding, upheaval, or other earth stability defects on the premises.
18. \_\_\_\_\_ I am aware of current infestations of termites or other wood boring insects.
19. \_\_\_\_\_ I am aware of a structural defect caused by previous infestations of termites or other wood boring insects.
20. \_\_\_\_\_ I am aware of underground fuel storage tanks on the property.
21. \_\_\_\_\_ I am aware of boundary or lot line disputes.
22. \_\_\_\_\_ I have received notice of violation of local, state or federal laws or regulations relating to this property, which violation has not been corrected.

**Note:** These disclosures are not intended to cover the common elements of a condominium, but only the actual residential real property including limited common elements allocated to the exclusive use thereof that form an integral part of the condominium unit.

**Note:** These disclosures are intended to reflect the current condition of the premises and do not include previous problems, if any, that the seller reasonably believes have been corrected.

If any of the above are marked "not applicable" or "yes", please explain here or use additional pages, if necessary:

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**Check here if additional pages are used:**  .....

Seller certifies that seller has prepared this statement and certifies that the information provided is based on the actual notice or actual knowledge of the seller without any specific investigation or inquiry on the part of the seller. The seller hereby authorizes any person representing any principal in this transaction to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

**Seller signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Seller signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

THE PROSPECTIVE BUYER IS AWARE THAT THE PARTIES MAY CHOOSE TO NEGOTIATE AN AGREEMENT FOR THE SALE OF THE PROPERTY SUBJECT TO ANY OR ALL MATERIAL DEFECTS DISCLOSED IN THIS REPORT ("AS IS"). THIS DISCLOSURE IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PROSPECTIVE BUYER OR SELLER MAY WISH TO OBTAIN OR NEGOTIATE. THE FACT THAT THE SELLER IS NOT AWARE OF A PARTICULAR CONDITION OR PROBLEM IS NO GUARANTEE THAT IT DOES NOT EXIST. THE PROSPECTIVE BUYER IS AWARE THAT HE MAY REQUEST AN INSPECTION OF THE PREMISES PERFORMED BY A QUALIFIED PROFESSIONAL.

**Prospective Buyer signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_

**Prospective Buyer signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Time:** \_\_\_\_\_