

## PROPERTY DISCLOSURE LIABILITY

The vast majority of legal claims against real estate salespeople involve allegations of misrepresentation, negligence, or fraud. Nearly 70 percent of all claims against real estate professionals are a result of misrepresentations that could have been prevented by proper disclosure, according to the NATIONAL ASSOCIATION OF REALTORS®. At the end of 2000, NAR found that approximately 30 states had laws requiring sellers to complete a property disclosure form. In addition, many states have consumer protection regulations that protect consumers against misrepresentation or unfair practices, some of which apply to real estate transactions.

## FOR THE BROKER

**Listing brokers can be liable if salespeople fail to properly disclose information. To protect yourself:**

- Be certain that all listing packages include a property disclosure form, where such a form is required by law.
- Refuse to accept a listing agreement unless it is accompanied by a signed disclosure form, where a property disclosure form is required.
- Train salespeople in interpreting and explaining the disclosure form and items requiring disclosure to sellers.
- Ensure that a copy of the property disclosure form is delivered to buyers, if required in your state.
- Purchase copies of the [Property Disclosure Pocket Guide](#) for your sales associates. (At the NAR Store Browser, use the search function to bring up the title.)

## 15 POINTS FOR DISCLOSURE

Many states have specific disclosure forms for real estate sales. If your state does not, here are some items you might want to include

- 1 Defects in the roof.
- 2 Defects in the electrical system.
- 3 Defects in plumbing, water heaters, or septic tanks.
- 4 Defects in heating or air conditioning.
- 5 Defects in the swimming pool.

- 6 Defects such as cracks, bulges, or water seepage in the foundation or basement.
- 7 Disputes over boundary lines, liens, or other encroachments.
- 8 Presence of asbestos, lead paint, radon, toxic wastes, underground tanks, or other environmental hazards.
- 9 Infestations by termites or other pests.
- 10 Location in a floodplain, wetland, or shoreline.
- 11 Defects in any mechanical equipment or appliances being sold with the property.
- 12 Awareness of pending changes in zoning, property tax assessments, or special assessments.
- 13 Adapted and abridged from West's Wisconsin Statutes Annotated Property Disclosure by Owners of Residential Real Estate. Copyright 1999 West Group.

## A LIABILITY GLOSSARY

- **Fraud.** Conduct that is intentionally deceptive. “Active fraud” occurs when individuals make affirmative statements they know are false. “Passive fraud” occurs when someone deliberately fails to reveal known material information.
- **Innocent misrepresentation.** Making an affirmative statement without knowing whether the statement is true or without any knowledge of a factual basis for the statement.
- **Negligent misrepresentation.** Making a statement that, while not intentionally wrong, is nonetheless mistaken due to lack of care in ascertaining or confirming the accuracy of the statement.
- **Negligence. Failure to use reasonable care to discover and disclose property defects.** This duty, which goes beyond disclosure of known information, isn't imposed in all states and has been explicitly rejected in several states. In any case, liability for negligence doesn't extend beyond discovery of defects that a real estate professional in the local area ordinarily would be expected to recognize and understand.

**TIP:** A cooperating agent may rely on the disclosures provided by the listing agent, unless there's obvious evidence information is incorrect.

Note: This information provides general legal information and should not be relied upon as legal guidance. Before acting, both the relevant laws and legal counsel should be consulted. This information should not be construed as specific legal advice nor as an opinion on particular facts, cases, or situations.