

# A Guide to the Seller's Disclosure Statement

**YOU** have decided to sell your house and you have selected a broker. The broker gives you a form entitled "Seller's Disclosure Statement" and asks that you complete it. The broker might even help you fill it out. The question is, what does it mean? What should you say?



Although there are a few exceptions, most people selling their house in Michigan will have to complete a Seller's Disclosure Statement. The state legislature passed a law in 1993 requiring that homeowners selling their house must provide information regarding the condition of the house to potential buyers.

The idea is to give buyers all of the information they need to make an informed decision about buying a particular house. A copy of the disclosure can be found online. A link to the statutorily mandated form is listed below.<sup>1</sup>

Many sellers are horrified by the thought of disclosing everything they know about the house. They are afraid that it will scare off potential buyers. The problem is, if you do not fill out the form honestly, you may face serious repercussions later, including having to defend against a lawsuit for fraud.

The truth of the matter is that most buyers know that all houses suffer damage at one time or another. The real questions are how did the owner address the issue and was the issue resolved? Many homeowners choose to make repairs to resolve those nagging issues before listing their home for sale.

The disclosure statement is not just about stating problems; you also should explain what you did to fix the problem. This gives potential buyers the opportunity to look at the repair and assure themselves that the problem was corrected.

For instance, if you state that you had a roof leak near a chimney and had it repaired, the buyer's inspector will look at the chimney and confirm that the leak was properly repaired. Even if the chimney leaks in the future, you disclosed it and the buyer confirmed that it had been repaired.

A portion of the form asks expressly about past instances of water intrusion, insect infestation and environmental issues. These are usually the most daunting. Be as specific as you can about when there was a leak and what you did to fix it.

If you had a leak a month ago and simply had your brother-in-law climb on the roof and caulk the flashing on the chimney, write that down. It might not be the best answer, but it puts the buyer on notice that there is an issue that needs to be addressed. Yes, that kind of answer may put off a buyer. But that is better than being sued a month after you sell the house because your brother-in-law did a poor job and the roof is leaking again. If your disclosure will hamper your sale of the house, it would be better to get the repair done correctly so that you can report it was fixed sufficiently.

Also tricky are the questions regarding structural issues: settling, flooding, drainage, structural or grading problems. Many brokers have counseled their clients that this question, because it is in the present tense, means only that you have to disclose current problems. If there was a problem in the past that was resolved, it does not have to be disclosed. That is one distinction you do not want to have to explain to a judge. If the issue was properly addressed, you should disclose it and describe the repair that was made. If the issue was covered up and not properly repaired, you need to disclose that the issue still exists.

You are better off negotiating a lower sales price with a buyer willing to make the repair after closing than to hide a problem that you think may eventually be discovered. The cost of litigation after the sale if there is a defect that was not disclosed will far outstrip the cost of making the repair.

As you can tell from the above, it's usually better to disclose more than you have to and detail how thorough you were in fixing the problem. Frankly, this will make you look like a conscientious homeowner and give the buyer greater comfort in entering into a transaction with you.

For any questions regarding the Seller's Disclosure Statement, or any other matter involving real estate disputes, please contact [Attorney Mark S. Frankel](#), or any of our other [Real Estate Attorneys](#).

---

i

[http://www.legislature.mi.gov/\(S\(mwahyddxpa0zy044ttmci3fj\)\)/mileg.aspx?page=GetObject&objectname=mcl-565-957](http://www.legislature.mi.gov/(S(mwahyddxpa0zy044ttmci3fj))/mileg.aspx?page=GetObject&objectname=mcl-565-957)