

**Real Property Transfer
Disclosure Statement**
(Chapter 64.06 RCW)
As amended 2003-2004

Property disclosure forms can be obtained for a fee from:

**Washington Association
of REALTORS®**
800-562-6024

Northwest MLS
425-820-9200

**Washington State Code
Reviser's Office**
360-753-6804

Forms may also be obtained for a fee from office supply stores. Call Washington Legal Blank, 800-824-4929, for the location nearest you.

Also, Washington county libraries have copies of all state regulations, which can be photocopied.

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Residential Seller Property Disclosure in Washington

Information for:

- ▶ Sellers
- ▶ Buyers
- ▶ Real Estate Licensees



Residential Seller Property Disclosure in Washington

The era of *caveat emptor* (buyer beware) in real estate is rapidly disappearing. Parallel to increased consumer protection in other industries, the purchasers of real estate, especially homes, are increasingly demanding and receiving full information BEFORE they make a final decision regarding purchase of a specific piece of real estate.

Since 1995, sellers of residential real estate have been required to provide the purchasers with a form which details any known defects with the property, unless the purchaser has expressly waived the right to receive the disclosure statement (some other exemptions may apply under RCW 64.06). The law applies to both for-sale-by-owner (FSBO) and real estate licensee-assisted transactions. Several revisions to the disclosure law were enacted by the legislature in 2003-2004.

This brochure discusses who needs to disclose, what the disclosures cover, how the disclosures are to be made, and when disclosure is required.

The property disclosure statement evolved in Washington State as a risk management tool to protect sellers and the

real estate licensees who represent them, as well as to inform purchasers of actual problems with property.

Before 1995 there were several variations of voluntary seller disclosure forms in use around the state, and many smaller communities were unlikely to participate in seller disclosures at all. The underlying law establishing mandatory seller disclosure statements (RCW 64.06) serves the purpose of substantially standardizing property disclosure in all areas of the state.

Disclosure of known material property defects is the responsibility of the seller. While no agency has specific enforcement authority for this law, real estate licensees have independent obligations of disclosure. In Washington, the Department of Licensing regulates the activities of real estate licensees.

The information contained in this brochure is an interpretation by the Washington Center of Real Estate Research and is not to be considered as legal advice. These guidelines are for information purposes only. Questions regarding specific use of the form or the residential property disclosure law should be addressed to a qualified real estate attorney.



Covered Property

- ▶ Real property consisting of, or improved by, one to four dwelling units (including new construction).
- ▶ Residential condominium, unless subject to other public offering requirements (most resale condominiums require disclosure).
- ▶ Residential timeshare, unless subject to other written disclosure requirements.
- ▶ Mobile or manufactured home, that is personal property.

Exclusions

- ▶ Foreclosure, or deed-in-lieu of foreclosure.
- ▶ Gift or transfer from parent to child or spouse to spouse (including through divorce).
- ▶ Transfer where buyer had interest within last two years, including through partnership, corporation, lease-holder, or transfers in a tax deferred exchange.
- ▶ Transfer of interest other than fee simple, except where required by the disclosure law.
- ▶ Transfer made by personal representative of the estate of decedent or by a trustee in a bankruptcy.

Specific Disclosures

Title—are there any options, boundary disputes, easements, assessments, zoning issues, covenants, etc., known to the seller?

Water—what is the condition of household water, irrigation and sprinkler systems? Are there any water rights issues?

Sewer/Septic Systems—are there defects or maintenance issues in plumbing and sewer connections, septic tanks, drain fields, etc.? Are separate fees involved?

Structural*—are there problems with the roof, foundation, dry rot or pests? Is the attic insulated?

Systems and Fixtures*—what is the condition of the electrical, plumbing, heating and cooling, security systems or satellite dishes?

Common Interest—is there a condominium or other homeowner association that must be considered?

General—is the property on landfill? Are there drainage problems? Is there damage from natural disasters? Are there other environmental concerns, i.e., lead paint, buried fuel tanks, drug-manufacturing, radio towers, etc.?

Manufactured/Mobile Homes—have alterations been made? Were permits/variances obtained?

Full Disclosure by Sellers—are there any other defects affecting the property known to the seller?

Buyer's Acknowledgement—buyer does not waive obligation to be observant. Real estate licensees are not liable for inaccurate disclosures. Disclosure is not part of contract.

When?

The legislation specifies several time periods, but allows for those periods to be modified by mutual agreement of the parties. The deadlines refer to standard business days (Monday-Friday, excluding holidays).

- ▶ A disclosure statement must be delivered to buyer within five days of mutual acceptance of a purchase and sale agreement.
- ▶ Purchaser has three days after receipt of the disclosure to nullify the purchase agreement or to modify the original contract.
- ▶ If a condition arises after the disclosure period which would have been covered by the form, the purchaser must be notified with an amended form, or the problem must be corrected at least three days prior to closing the transaction.

- ▶ To revoke the offer the buyer must deliver a separate signed written statement to the seller within the agreed time.
- ▶ Any time after the buyer acknowledges receipt of the seller's disclosure statement, the buyer can waive his/her right to revoke the offer and accept the seller's statement.
- ▶ The buyer may waive the right to receive a completed disclosure statement. (This approach is not recommended.)
- ▶ The option to decline to disclose and sell "as is" does not exist under the Washington law.

Licensee Role

The responsibility for completing the form lies with the seller of the property. However, real estate licensees should not simply hand the form to sellers and say it will be picked up later. Attorneys recommend completing the form prior to, or at the time of, taking a listing. In this way it is available in the event a prospective purchaser wishes to see it prior to making an offer. With the form in hand, considerable time will also be saved during the period of negotiation, after an offer is on the table.

In an effort to ensure both the seller and licensee are adequately protected, it is wise to advise the seller when completing the form. This does **not** mean completing the form for the seller. Perhaps the advice will take the form of asking questions about recent experiences. Perhaps it will be reacting to sellers' responses.

For example, if the seller indicates there is no problem with the roof and the licensee has seen a water stain on the ceiling in an upstairs bedroom, it would be wise to ask about the stain.

Real estate licensees or other parties involved in the sale of the property are released from liability concerning the statements made by the seller if the licensee has no "actual knowledge" of inaccurate information about the property.

Buyers are still responsible for using "diligent attention and observation" in reviewing the seller's disclosure statement and should always inspect the property carefully. It is still wise to engage the services of a qualified home inspector or other qualified expert to understand the extent of expected maintenance and repair expenditures in the near term.

The Form

The form itself, called a "Seller Disclosure Statement," is five pages long. For each disclosure item the seller is expected to respond yes, no, or don't know. For selected questions, if the seller indicates a condition is present, he/she is instructed to attach an explanation. For example, if there is a known boundary dispute, the seller would need to disclose the nature of the dispute.

Effective January 2005, the form will include a notice to buyers indicating that information regarding registered sex offenders may be obtained from local law enforcement agencies.

Completing the form thoroughly and honestly can help avoid disputes and lawsuits after the sale. Going through the form may also help the seller understand the negatives of the property as well as its distinguishing features.



* not required for newly constructed homes