

Rules on Disclosures

Real estate is not a buyer beware business. Although there are no national guidelines about what sellers and their real estate professionals must disclose, there are a few simple rules that can help you avoid legal trouble.

1. **Provide all existing reports to potential buyers.** If you have access to an existing inspection report, no matter how old it is, disclose it. You are putting yourself and possibly your seller if future issues arise.
2. **Disclose anything that can materially affect value or desirability.** Anything that will influence a buyer's decision whether to buy needs to be disclosed. It won't always be easy to judge so it's better to disclose.
3. **Never fill out the seller's disclosure statement.** 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 is physically or otherwise unable to complete the form, you should advise them to get assistance from a friend, family member, or their attorney.
4. **Don't be the source.** When you obtain public information on a property regarding square footage, availability of utilities, lot size, etc., make sure you state where you obtained the information from.
5. **Recommend other professionals.** You aren't a home inspector, an accountant, 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.
6. **Don't make representations about permits.** It is common practice for real estate professionals to pull the permit file from a city or borough 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.
7. **When in doubt, disclose.** When you're working with a seller and your client asks if they should disclose something, 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 advise them 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.