

FROM THE MAILBAG – SELLER DISCLOSURE ACT

Hello Michigan Realtors®! I'm Rebecca Gean and welcome back to "From the Mailbag!". This new monthly video series will explore various legal topics impacting your industry. Today's Q&A aligns with this month's Letter of the Law topic – The Seller Disclosure Act.

QUESTION: My client is the personal representative for the estate of his deceased father. He's selling his father's home and recalls that years ago, his father told him that he was having a problem with water in the basement. He has no idea whether the problem was corrected or continues to this day. If a personal representative has knowledge of a possible problem with the condition of the home, is he still exempt under the Seller Disclosure Act?

ANSWER: YES. A personal representative is exempt whether or not he or she has actual knowledge about the condition of the home. However, a personal representative can certainly voluntarily disclose known information and may choose to do so because he believes it is the right thing to do (or simply to avoid any post-closing dispute). In all events, a listing agent should never discourage his or her seller client from making a disclosure.

QUESTION: The owner of the home I am listing inherited the home from her father. She does not live in the home but the legal title is in her name. Does there need to be a Seller's Disclosure Statement?

ANSWER: YES. Its true that the sale of a home owned by an estate is exempt under the Seller Disclosure Act, but once the home has been distributed from the estate to an heir, it is no longer exempt. Moreover, a seller in this situation cannot comply with the Seller Disclosure Act simply by writing on the form that she "has never lived in the home." Since she is not exempt, she is still required to disclose whatever she knows about the condition of the home even if she has never lived there. So, for example, if she knows that her father had water in his basement from time to time, she is required to disclose that information on the Seller's Disclosure Statement.

QUESTION: A widow put her home in a trust and named her two children as successor trustees. After her death, one of the children moved into the home temporarily until it could be sold. Does there need to be a Seller's Disclosure Statement?

ANSWER: YES. A trustee (or personal representative) who is residing in a home must complete a Seller's Disclosure Statement. Only non-occupant fiduciaries are exempt under the Seller Disclosure Act.

Thank you for watching this installment of "From the Mailbag." Send your questions and suggestions for new topics to the email listed below. Based on input from you as well as the Michigan Realtors® Legal Hotline, we'll continue to work on legal content to help you as a Realtor®. Again, thank you for watching, and we'll see you next time!