

MAILBAG – Seller Disclosure

Hello, Michigan Realtors® and welcome back to From the Mailbag. Today, we are tackling a topic that receives frequent attention at our Legal Hotline. And that is...Michigan Seller Disclosure law. So, let's dive into some of those questions from the mailbag.

Question 1: I am listing vacant land. Should I have my seller complete a vacant land disclosure form?

Answer 1: Sellers of vacant land are not legally required to provide a disclosure form (at least not in Michigan). Sellers who *do* provide a vacant land disclosure form should be cautioned against making any representations that they are unsure about. The reason being is that a seller could be held liable for an innocent misrepresentation made on a VACANT LAND disclosure form. That is not the case with the statutory RESIDENTIAL disclosure form.

Question 2: I am a buyer's agent on a For Sale By Owner (FSBO) sale. The seller refuses to provide a Seller's Disclosure Statement. What can I do?

Answer 2: Not much. There is no way to force a seller to complete the Seller Disclosure Form, even when it's required by law. A buyer's only legal remedy when they do receive a completed form, is to walk away from the transaction at any time up until closing.

Question 3: My seller indicated on the Seller's Disclosure Statement that there were no known underground storage tanks on his property (in other words, he checked "no" rather than "unknown" when answering this question). The buyer has discovered that there is in fact an underground storage tank and is demanding that the seller pay for the removal. Is my seller responsible?

Answer 3: No. The Seller Disclosure Act specifically says that a seller is not responsible for an innocent mistake made when filling out the statutory Seller Disclosure Statement. If that seller had PURPOSEFULLY misrepresented the property, that's a different story.

Question 4: My seller says that her basement leaked 10 years ago, but that she had some grading work done, and it has not leaked since. Can she answer "no" to the question about basement leaks on the Seller's Disclosure Statement?

Answer 4: No, the seller needs to disclose the past water issues. Most of the questions on the disclosure form ask about the CURRENT condition of the property. But, the Michigan Court of Appeals has said that there is no time limitation to this question, given its wording (i.e., "Has there BEEN evidence of water"). In

that specific case brought before the Court of Appeals, the sellers were required to disclose the fact that their basement had flooded 26 years ago.

As always, thank you for tuning in to another installment of From the Mailbag. For more information on Michigan's Seller Disclosure law, be sure to check out the Letter of the Law video linked in the description, or reach out to the email listed below. Take care, and we'll see you next time!