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Material Facts and Property Disclosures

From Janet Wickell, Your Guide to Home Buying / Selling.

Home Buying Essentials

Home owners in most states in the US are required to fill out a property disclosure form that discloses material facts about the house they are selling. Material facts are details about the condition or legal status of the property, such as:

- The age of its components
- Any defects that exist
- Encroachments—where someone has built on another's property line
- Lawsuits or claims that affect ownership—such as an ex-wife who hasn't relinquished ownership rights

Even if your state is one of the few that does not require sellers to fill out a specific disclosure form, its real estate laws probably do require sellers to inform you of all known repair and legal issues. Your agent or your state [real estate commission](#) can tell you what types of disclosures sellers are required to make in your area.

The exact questions that are asked on property disclosure forms vary from state to state, but they cover many of the same topics:

Examples of Material Facts

- Age of shingles and other roof components
- Leaks in the roof or foundation walls
- Existing mold or mildew within the home
- Damage from wood destroying insects
- Problems with sewer or septic systems
- The amount of property taxes paid per year
- The square footage of the home
- A planned roadway that will slice ten feet from the property's front yard
- The home is in an airport's flight path
- Details about an individual who claims to have an interest in the property
- Information about a structure on the property that overlaps an adjacent property
- An oil or gas tank is buried on the property

Things That Are Not Material Facts

- Personal information about a seller, such as a job relocation or divorce
- The seller's reasons for moving
- An agent cannot legally discuss whether or not current or former occupants have HIV/AIDS.

What Your Agent Can Tell You

Seller's agents are not allowed to disclose personal information about sellers.

Buyer's agents may disclose personal information about sellers to their buyer clients, except AIDS/HIV as discussed above.

Details that May or May Not Be Material Facts

- That a death occurred in the home, even if it was a homicide. Neither is considered a material fact in North Carolina, so disclosure is not made unless a buyer specifically asks—then the agent must be truthful. Your state laws may differ.

- That a home is considered by some to be haunted.

Agents Aren't Home Inspectors, But...

Agents are not expected to be home inspectors, but they can be held accountable for material facts they are aware of—or *should have been* aware of.

- If a seller covers rotting exterior wood with another siding before an agent sees the home, the agent wouldn't be expected to have knowledge of it. But if the agent sees the cover-up, the agent must disclose the problem—even if the owner does not.
- If an agent notices that everything in the basement is sitting on blocks, the agent should ask if there's a water problem (and be suspicious if the answer is no).
- If the agent sees that the seller has pans sitting around the floor after a heavy rain, the agent should question the seller about the integrity of the roof—and be prepared to tell buyers that the roof probably leaks.

Disclosure Essentials

- Ask as many questions as necessary about the home before you make an offer. Get responses to important questions *in writing*, so that you have proof of a seller's response.
- Make sure your offer to purchase is contingent on a satisfactory home inspection.
- Even if sellers are not required to furnish a property disclosure, they should disclose known problems.

No Representation

Sellers often declare *no representation* when they are unaware or unsure of a problem. It doesn't necessarily mean they are being evasive.

- The home might be part of an estate settlement and the person handling the sale simply doesn't know the answers.
- Maybe it's a vacation residence that the seller hasn't used recently.
- The seller's attorney might have told them to answer in that way to lessen liability if problems are found after closing.

Stating *no representation* is not a tactic that should be used to avoid disclosing a problem, and it's unfortunate that some sellers attempt that type of deception. If your new home's disclosure sheet is less than informative, question everything, and make sure you hire a home inspector who'll take a close look at every system in the house.