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What sellers must disclose when listing a home in CT

Nicole Funaro

On the Internet on July 27 and in print on July 28, 2021

In this competitive real estate market, home buyers are often forgoing inspections to increase their chances of winning an offer on a home. But whether or not a buyer decides to forgo a home inspection, they can still learn about the property's condition through a home's disclosure form.

What is a home disclosure?

Drafted by the Connecticut Department of Consumer Protection, the residential property condition disclosure report requires the seller of a home to provide information on all aspects of the property and its condition to a prospective buyer before sale contracts are signed. The checklist form asks home sellers to answer "Yes," "No" or "Unknown" to a series of questions related to their house, which range from if the home is in a flood zone or wetlands, to if the house has any problems with the heat, plumbing, electricity and other basic systems.

According to Brian Amen, a real estate agent with Houlihan Lawrence's Riverside office, the simplest way to understand the function of a home disclosure is that it gives the buyer a brief history of the property.

"I think the most succinct explanation I've heard for a home disclosure is that it is a reflection of the owner's experience with the property," he said. "In other words, it doesn't encapsulate everything that could have been found, or everything that happened or things they don't know about. But what they've experienced and what they know should be accurately reflected on the home property disclosure."

Attorney Susan Kohn, who specializes in real estate law at The Law Offices of Susan Kohn in Westport, said that the disclosure form acts as a good starting

point for buyers to know what potential problems to look out for during a home inspection. And if previously undetected issues are uncovered, Kohn said the forms are not set in stone.

“Sometimes, the deal dies after the inspection, and the seller receives the most recent inspection,” she said. “They may then be in a position where they have to change their disclosure report. They have a continuing duty to update this.”

What needs to be disclosed legally in CT?

According to Kohn, sellers are given the form to fill out with their real estate agent as they list their home for sale and are required by the Connecticut General Statutes to present a home disclosure form to potential buyers.

"There's a whole part of the statutes that says if they don't give it to the buyer, the seller pays a \$500 fine," she said.

The form posted on the state of Connecticut's website states that according to the "Uniform Property Condition Disclosure Act," a home seller is "obligated" to answer the questions on the disclosure form and "disclose herein any knowledge of any problem" related to the following topics:

- Basement water problems
- Roof leaks
- Land use restrictions
- Any past or present litigation associated with the property
- Driveway problems
- Fuel tank issues
- If any part of the property is leased
- Fire damage
- If the home is insulated

- If there are materials with asbestos present in the house, among others.

How accurate are home disclosure forms?

Kohn said that home disclosures are filled out according to the seller's best knowledge, but a seller should make note of anything they've experienced during their ownership.

"It's 'yes, no or N/A' on the form, so if they have knowledge of something and they say 'unknown,' then they want to think real hard about it," she said. "The thing that we hear most is, 'The basement walls only leaked once — what do I disclose?' Well, the document asks if there's been any seepage in the basement and to explain the amount and frequency."

While the home inspection will likely bring to the surface anything that the seller may not have made known on the home disclosure, Amen said he advises his home sellers to be as transparent as possible when filling out these forms.

"A buyer, a new homeowner, anybody who's shopping for a home right now, they can usually deal with a lot, but what they don't deal well with is surprise," he said. "I feel really strongly about disclosures because for my buyer, I look at them as one step to the discovery of this property. For my seller, they're almost more important because it gives you the opportunity to set the tone for how forthright you're going to be — if you need to be about something — and to avoid surprises."

However, if there's an issue on the property not posed by any of the questions on the disclosure document, Kohn said a seller will have to disclose it "only if it's a latent defect that they know they can't conceal."

Amen said he advises his sellers to fill out the disclosures as completely as they can, and to go beyond selecting a checklist item in doing so.

"You really should take the opportunity to put it out there," he said. "Say what the issue was, and how you dealt with it. If you don't, somebody is going to ask, and it will raise questions of, 'Hey, what else don't we know about right now?' And that's not helping the seller."

Can a buyer sue if an issue wasn't disclosed?

Kohn noted that buyers are “relying on the seller to be truthful” in filling out home disclosure forms, but there is some recourse if buyers have reason to believe the document isn’t fully honest.

“The only things that you can sue on are basically non-disclosures — things that they didn’t disclose and purposely withheld — or misrepresentations [of an issue within the home],” she said.

According to Amen, a buyer could “potentially” have recourse for withheld information or misleading disclosures — but the trick is proving that previous owner knew it and purposely was not honest.

“As a general rule, it’s ‘buyer beware,’” he offered. “That’s why you have a home inspection to uncover the things that the seller may not have known about. But if the seller intentionally withheld or concealed something that was discovered after the homeowner took ownership, that could potentially be an issue.”

Tips for filling out or reviewing disclosure forms

On the seller side, Amen said stating everything that is potentially an issue is best, in his opinion.

“Once I tell a seller, ‘Hey, tell them what happened, and then tell them how you fixed it,’ I think that puts my owners at ease,” he said. “Or, if it was something that didn’t need fixing, talk about it anyway. For example, ‘We never used the basement, but twice a year we would get some water down there. Here’s where it happened.’ Just be honest, because it really makes life much easier on the owner.”

When it comes to reviewing the disclosures as a potential home buyer, if there are no solutions presented to issues referenced in the home, Amen said buyers should be comfortable asking if the problem was fixed or at least if the current owners researched a solution.

And if the form leaves buyers with more questions than answers, Amen said they should work with their real estate agent to find out more information.

“That’s where your agent comes in,” he said. “You can go to your agent and say, ‘What else in that disclosure do you see and what are more questions that maybe aren’t here that we should be asking?’ Disclosures can only go so far.”



