



SELLSTATE

## **SALES MEETING TOOL KIT: Part 8 PROPERTY DISCLOSURE**

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## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

According to a recent study by the NATIONAL ASSOCIATION OF REALTORS®, nearly 70 percent of all claims against professionals resulted from charges of misrepresentation, negligence, or fraud. Proper, timely disclosure would probably prevent many of these suits. In addition, federal and state laws mandate certain types of disclosure, such as the possible presence of lead-based paint in a home. Understanding what, when, and how disclosures should be made is critical in closing sales and keeping buyers and sellers satisfied.

This sales meeting tool kit will help your salespeople learn proper disclosure procedures to protect themselves, their clients, and your company from liability.

Use this tool kit—including a ready-to-go agenda, activities, and talking points—to help improve your salespeople's understanding of property disclosure and the pitfalls of failing to do it properly.

Each element of this tool kit is numbered at the top of the page so you can easily move through the content chronologically.

# SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

## Component 1: Facilitator Talking Points

These notes will guide you and your salespeople through an overview of property disclosure using activities and discussion. Disclosure is a complex topic and may warrant several training sessions to cover in depth.

### Before the Meeting:

- Review all the meeting documents in this kit.
- Know your state's and your company's policy on property disclosure.
- Know your state's and community's laws on disclosure under Megan's Law.

Print the following:

1. These facilitator notes—Component 1
2. The Property Disclosure Agenda—Component 2
3. Handout 1: What Is Liability—Component 3
4. Activity 1: Recognizing Improper Disclosure—Component 4
5. Activity 1: Explanations for Disclosure Scenarios—Component 5
6. Handout 2: Tips for Reducing Your Risks—Component 6
7. Handout 3: Disclosure Primer and Your Company's Property Disclosure Form—Component 7
8. Activity 2: Identifying Defect Red Flags—Component 8
9. Activity 2: Answers to Red Flags—Component 9
10. Activity 3: Lead Out Quiz—Component 10
11. Activity 3: Answers to Lead Quiz—Component 11
12. Handout 4: A summary of your state's disclosure requirements under Megan's Law—Component 12

# SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

## Component 1: continued

### Welcome (1 minute)

### True stories (2 min.)

1. Relate a personal story (with names changed if necessary) about a salesperson who was charged with misrepresentation.
2. Ask the group about whether any of them have been sued or threatened with suit by a past client. Ask if they would be comfortable sharing their experiences.

To segue from the true stories to the discussion, tell participants that according to the most recent NATIONAL ASSOCIATION OF REALTORS® "Legal Environment Scan," 21.9 percent of all reported cases against real estate professionals centered on the failure to properly disclose property information.

### Background and goals (2 min.)

According to a recent study by the NATIONAL ASSOCIATION OF REALTORS®, nearly 70 percent of all claims against professionals resulted from charges of some form of misrepresentation, negligence, or fraud. Even if charges are later dropped or the suit is decided in your favor, your losses are tremendous—in lost time, in lost reputation, and in attorney's fees. I wish I could say that after this meeting, you'll never have to worry about being sued; but we all know that mistakes can happen and that clients can overreact. But what I can promise is that if you learn and follow correct property disclosure procedures, your chances of facing legal action will be significantly reduced.

In this meeting, we will:

- Show how to recognize actions that create liability and how to avoid them.
- Explain the property disclosure form required in your state, or if no required form exists, explain the company's property disclosure form and how and when it should be completed.
- List some common property defects and learn how to identify them.
- Review the federal regulations on lead-based paint disclosure.
- Review federal and state regulations on disclosure under Megan's Law.

# SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

## Component 1: continued

### Handout 1: What Is Liability? (5 min.)

Read the definitions of fraud and misrepresentation in Handout 1. After reading each definition, ask a participant to describe a situation that creates this type of violation.

### Activity 1: Liability Scenarios (10 min.)

Read each of the three scenarios. Ask participants what disclosure violations occurred and what the salesperson in each story could have done differently. Use the explanations provided (Component 5) to guide the discussion.

### Handout 2: Reducing Your Risk (5 min.)

Review actions that salespeople can take to avoid the most common causes of liability. Reach each risk reduction tip and then ask one participant to give an example of how this would apply in a specific real estate transaction.

**Handout 3:** Along with this disclosure primer, provide copies of your company's property disclosure form or the form mandated by law in your state. (5 min.)

Ask participants to share how they introduce and explain the form to sellers. Emphasize the need for salespeople to explain the legal reasons for full disclosure to sellers. Remind participants of your procedure for keeping signed disclosure forms.

**Facilitator Note:** If you don't have time for the entire agenda, this point provides a logical break to divide the meeting into two parts.

### Activity 2: Identifying Those Defect Red Flags (5 min.)

After receiving a property disclosure statement, salespeople should make a visual inspection of the property and look for red flags that might indicate a problem. Ask participants to describe an indicator that the building component listed on the left side of sheet used in Activity 2 might have a defect or require repair. Write each item on a flip chart and have participants write the indicators in the blank space next to each component to keep as a reference. After completing the list, ask participants if they can add components and indicators to the list. Some other defects to mention include: faulty electrical systems, HVAC problems, and radon.

### Activity 3: Get the Lead Out Quiz (5 min.)

Let participants complete the short, basic quiz on disclosure requirements relating to homes that may have lead-based paint. Ask a participant for the right answer to each question, prompting yourself with the Lead Answer Sheet (Component 11). Emphasize that lead paint disclosure is an important responsibility of all real estate practitioners and that they should have a thorough understanding of the law.

## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 1: continued**

#### **Handout 4: Megan's Law Disclosure (3 min.)**

Obtain a summary copy of your state's requirements, if any, for notifying buyers about convicted sex offenders that live in a neighborhood. If your state does not have specific guidelines, review the suggested disclosure procedure on Handout 4.

#### **Adjourn.**

Thank participants for their time.

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# **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

## **Component 2: Property Disclosures Agenda**

**Welcome (1 minute)**

**True stories (2 min.)**

**Background and goals (2 min.)**

**Handout 1: What Is Liability? (5 min.)**

Read the definitions of fraud and misrepresentation.

**Activity 1: Liability Scenarios (10 min.)**

How disclosure problems occur in real life.

**Handout 2: Reducing Your Risk (5 min.)**

Tips for avoiding actions that produce liability.

**Handout 3: The Company's Disclosure Policy (5 min.)**

**Activity 2: Seeing those Defect Red Flags (5 min.)**

Recognizing clues that might indicate some common property defects.

**Activity 3: Get the Lead Out Quiz (5 min.)**

A reminder of how to inform buyers about the possible presence of lead-based paint in a home.

**Handout 4: Megan's Law Disclosure (5 min.)**

**Adjourn.**

**Running time:** 45 minutes.

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## SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

### Component 3: Handout 1, What is Liability?

**Active Fraud:** Incomplete or false statements purposely meant to conceal information. You lied on purpose.

**Passive Fraud:** Knowingly failing to disclose a defect about which you had actual knowledge. You didn't tell the whole truth. You lied by omission.

**Negligent Misrepresentation:** Making a false statement because you failed to act with reasonable care to determine whether or not something is true or were not careful enough in communicating the information you have.

**Negligence:** Failing to take reasonable care in discovering and disclosing information about the property.

No one expects you to know everything about a house. Real estate professionals aren't expected to know about "latent defects," defects that aren't apparent without in-depth inspection. But you should be knowledgeable enough as a real estate professional to recognize common property defects that are visible to the naked eye.

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## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 4: Activity 1, Scenarios: Recognizing Proper Disclosure**

#### **Scenario One**

Bob lists his house with Rae. When he completes the property disclosure form, Bob indicates that the house has never had any problems with water in the basement. However, on the house tour, Rae sees some suspicious marks that look like water stains on the lower basement walls. What should she do?

#### **Scenario Two**

Oliver shows a house to Stan and Laurel. The house, which was built in the 1960s and never remodeled, has insulation that may contain asbestos. However, the material has never been tested. Laurel is concerned because Stan is a heavy smoker and may be more prone to cancer if he breathes asbestos fibers. She asked Oliver if the insulation contains asbestos.

Oliver says he is no expert and can't tell. He tells Laurel that the property disclosure form does not indicate the known presence of asbestos, although the property has never been tested. Oliver also mentions that he has read that asbestos is only dangerous if it is crumbling. He suggests that Laurel have an asbestos inspection to be sure, but Laurel doesn't want to spend the money. After she buys the house, Laurel decides to add another bathroom. When the workers tear out the wall, they find asbestos and have to use expensive removal techniques to do the demolition. Laurel threatens to sue the sellers and Oliver to recover her expenses. What is Oliver's liability?

#### **Scenario Three**

Tracy is showing a house to the Larsons that has been vacant for six months. When the Larsons ask why, Tracy says that the owner had passed away. When the Larsons express amazement that an old couple would have moved to this neighborhood of young professionals, Tracy, concerned that the Larsons will get the wrong impression of the neighborhood and wanting to make the proper disclosure, says that the former owner was only 30 when he died from complications resulting from AIDS. "You'll find plenty of young people around here," she assures the Larsons. The Larsons buy the house, but reduce their offer by \$10,000 because of the stigma associated with the property. What was Tracy's error?

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## SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

### Component 5: Activity 1, Explanation to Disclosure Scenarios

**Explanation to Scenario One:** If you see evidence of possible water damage and do nothing, you may be acting negligently. Rae would fail to exercise reasonable care in finding out information about the property if she ignored the water stains. Her professional expertise puts her in a position where she should recognize the stains as an indication of a potential problem. Rae should first question Bob further, to ensure that he is not purposely withholding information. Next, she should suggest that Bob hire an expert to inspect the basement for potential problems. Finally, Rae must disclose the presence of the watermarks to buyers, share the results of any inspection that Bob has had done, and suggest that the buyers consider having an expert inspect the basement before the sale, if Bob chose to do nothing.

**Explanation to Scenario Two:** Overall, Oliver limited his liability by telling Laurel that he was not an asbestos expert and that he was not sure he could identify asbestos, which was outside of the scope of his professional knowledge. Oliver could have incurred liability if he had told Laurel that he was sure that the substance was not asbestos. Stating that he had read that asbestos was only dangerous when crumbling, or friable, provided information, but would probably not cause Oliver to be liable so long as his statement was clearly expressed as an opinion rather than stated as an established, objective fact.

**Explanation to Scenario Three:** Even though a stigmatized property may have no physical problems, an event such as a murder at the home might have a psychological impact on buyers' willingness to purchase a home or on the price they would be willing to pay. Therefore, property stigmas should be disclosed to avoid misrepresentation unless state law prohibits such a disclosure. The exception to this rule is persons with AIDS or who are HIV positive. These individuals are protected under the federal Fair Housing Laws, and the U.S. Department of Housing and Urban Development has advised that it views it to be illegal to disclose that the current or former occupant of a home had AIDS.

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## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 6: Handout 2, Seven Tips for Reducing Your Risks**

1. Be sure sellers understand the serious legal pitfalls of withholding material information about their home from prospective buyers.
2. Avoid statements of fact that you do not have reason to believe are true, based on your own examination of the property or on verification, either by the seller or by an independent investigation.
3. Never make statements that predict the future: "This property is sure to appreciate." "You will never have any water problems here." You open yourself up to charges of misrepresentation if your prediction is wrong.
4. Document information provided to the buyers, including answers to questions that concern the property.
5. Conduct a careful, visual inspection of the property, and disclose any evidence of defects to the purchasers.
6. When in doubt about anything concerning the property, say, "I don't know." Then investigate until you do.
7. Encourage the buyers to have a home inspection by an expert who is skilled in evaluating and diagnosing any specific property conditions that are of particular concern.

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## SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

### Component 7: Handout 3, Disclosure Primer and Your Company's Property Disclosure Forms

Approximately 30 states now have state-mandated disclosure forms. **If you do, be sure that you adapt this discussion to reflect the specific disclosure requirements of your state.** If your state doesn't have a disclosure requirement, your company form should probably include the following:

- A list of common property defects with checkboxes indicating whether each component has been a problem.
- A blank space to provide specifics about any component that has been a problem.
- A blank for the approximate age of each component, with attached documentation if available.
- A statement that the information provided is true to the best of the seller's ability, signed and dated.

#### **Fifteen Points for Disclosure**

- Defects in the roof
- Defects in the electrical system
- Defects in plumbing, water heaters or septic tanks
- Defects in heating or air conditioning
- Defects in the swimming pool
- Defects such as cracks, bulges, or water seepage in the foundation or basement
- Disputes over boundary lines, liens, or other encroachments
- Presence of asbestos, lead paint, radon, toxic wastes, underground tanks, or other environmental hazard
- Infestations by termites or other pests
- Location in a floodplain, wetland, or shoreline
- Defects in any mechanical equipment or appliances being sold with the property
- Awareness of pending changes in zoning, property tax assessments, or special assessments

Note that these are representative suggested items to be covered and are not intended to be a complete, comprehensive list of all items that might be included on the company's form.

*Adapted and abridged from West's Wisconsin Statutes Annotated Property Disclosure by Owners of Residential Real Estate. Copyright 1999, West Group.*

## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 8: Activity 2 Identifying Red Flags**

#### **Seven Physical Defects and Tips on Recognizing Them**

This exercise illustrates the identification of common defects and the "red flag" that may suggest their presence. Many other defects may exist and be indicated by other sorts of red flags.

Fill in a red flag that would alert you to the possible presence of each problem in the right-hand column.

<b>Defect</b>	<b>Red Flag</b>
1. Roof leak	
2. Termites	
3. Water seepage in the basement	
4. Poor foundations	
5. Plumbing problems	
6. Asbestos	
7. Underground storage tanks	
8. Soil instability/mud slides	

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## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 9: Answers for Activity 2, Identifying Red Flags**

#### **Eight Physical Defects and Tips on Recognizing Them**

This exercise illustrates the identification of common defects and the "red flag" that may suggest their presence. Many other defects may exist and be indicated by other sorts of red flags.

Fill in a red flag that would alert you to the possible presence of each problem in the right-hand column.

<b>Defect</b>	<b>Red Flag</b>
1. Roof leak	Water spots or discolorations on ceilings; mold or mildew in closets near roofline
2. Termites	Weakened or grooved wood, especially near ground level
3. Water seepage in the basement	Water marks on the floor, loose or cracked plaster or tile
4. Poor foundations	Large cracks or shifts in the foundation
5. Plumbing problems	Extremely low water pressure; clanking or banging when water is turned
6. Asbestos	Granulated, cement-like coating on pipes or supports; cotton-candy-like material sprayed on ceilings or walls
7. Underground storage tanks	Vent pipes visible above ground; oil sheens in wet areas
8. Soil instability/mud slides	Gullies in the soil; netting placed to hold soil in place; soil stains higher on exterior walls

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## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 10: Activity 3, Get the Lead Out Quiz**

Use this exercise as a way to review federal lead disclosure regulations. If your state has a law that contains stricter provisions, alter this quiz to reflect the requirements in your state. Contact your state EPA office for specifics on your state's lead law.

Answer True or False to each question.

1. Only residential properties built before 1965 contain lead paint and are covered by the federal disclosure regulations. T F
2. If the paint in a house covered by the Act is not flaking, peeling, or chipping, I don't need to give buyers notification because the lead paint is not dangerous. T F
3. The buyers have ten days to have the house tested for lead before the purchase contract goes into effect. T F
4. Owners of older houses must test for lead paint before a sale. T F
5. The best time to inform sellers about their obligations under lead-paint disclosure requirements is when a firm offer is received. T F
6. Brokers and salespeople must keep copies of the form acknowledging the disclosure of possible lead paint hazards for three years from the time the sale is closed. T F
7. The federal regulations impose lead-based paint disclosure duties primarily on sellers and lessors. The real estate salesperson is only required to advise and assist them in fulfilling these obligations. T F
8. The federal lead-based paint disclosure regulations require specific provisions to be included in sales contracts and leases of residential property covered by the laws. T F

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## SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

### Component 11: Answers to Get the Lead Out Quiz

1. False. The Act covers virtually all residential property units built before 1978, when lead paint was banned in the United States. Exemptions from the "target housing" covered by the Regulations include a foreclosure, rental property found to be lead-free, zero-bedroom units where the living and sleeping areas are not separate and housing for the elderly and disabled where children under the age of six are not expected to reside.
2. False. Real estate practitioners are required to give a copy of the federally approved lead-based paint hazard information pamphlet to every buyer or tenant of a residential unit covered by the Act and to disclose any knowledge that the seller or lessor has about the presence of lead-based paint hazards. All disclosures must be made prior to the seller's acceptance of the purchaser's offer.
3. True (generally). The law provides for a ten-day period in which to inspect. However, buyers may negotiate for a longer period or agree to a shorter period if they wish. Sales contracts and leases should include specific language addressing lead-based paint testing, as negotiated by the parties and the salesperson should obtain a signed acknowledgement from the purchaser either waiving or reserving the right to have an inspection.
4. False. Federal law does not require an inspection for lead paint. However, if an inspection was done, buyers must receive copies of any resulting reports.
5. False. Real estate salespeople should determine if the property is covered by the act at the time the listing is taken. The salesperson should advise the seller or lessor about disclosure obligations under the Act and get the seller or lessor to sign the appropriate portion of the Information Disclosure and Acknowledgement form.
6. True. The Disclosure of Information and Acknowledge Form signed by the purchaser or lessee must be kept for three years from the date of closing or the date the lease begins. This acknowledgement should indicated that the purchaser had received copies of the federal lead pamphlet, *Protect Your Family From Lead in Your Home*, any information that the seller or lessor knows about lead hazards in the property, as well as any other reports on lead-based paint inspections or other pertinent information.
7. False. The duties established by the regulations are imposed on sellers and lessors, but a real estate agent of the seller or lessor is required to inform the seller or lessor of those duties and insure that the regulations are followed.
8. True. The law contains specific lead-based paint "warning language," which must be included as an attachment to every contract for sale or lease of residential housing covered by the law. This language is generally incorporated in the Disclosure of Information and Acknowledgement Form.

## **SALES MEETING TOOL KIT: PROPERTY DISCLOSURE**

### **Component 12: Handout 4, Summary of State Disclosure Requirements under Megan's Law**

Megan's Law" refers to laws adopted in the various states by which the state, or local communities within the state, requires convicted sex offenders to register with state or local law enforcement agencies. The laws also require that information about these offenders be made available to the public.

Some state laws specifically address whether real estate professionals are required to provide such information to prospective purchasers; some expressly exempt real estate professionals from the need to make such disclosure. However, these provisions vary from state to state, so you should check both your state's Megan Law, and in some cases state agency laws, to be sure you understand the requirements imposed by your state. In the absence of specific state disclosure requirements, you may wish to adopt a policy of telling buyers where they can obtain information under your state's Megan's Law.

## SALES MEETING TOOL KIT: PROPERTY DISCLOSURE

### Component 13: Other Resources

For a more complete discussion on disclosure and other major legal issues affecting real estate brokerage, purchase:

"Don't Risk It!: A Broker's Guide to Risk Management," 2nd edition. This publication, on which the material in this tool kit is based, is available from the NATIONAL ASSOCIATION OF REALTORS® by calling 800/874-6500 and asking for item number 126-358.

[Lead-Based Paint Reference Guide](#)

[Property Disclosures Pocket Guide](#)

Search under "Disclosure" on [REALTOR.org](#) and on the [Legal Super Search](#) at the Law and Policy Information Center.

Look for the following articles at *Realtormag.com*:

"Don't Get Sued!," Walt Albro, *Today's REALTOR®*, September 1997.

"Four Easy Steps That Can Cut Legal Claims Against You," John Foltz, *Today's REALTOR®*, June 1996.

"14 Things You Should Know About New Lead Paint Rules," Walt Albro, *Today's REALTOR®*, May 1996.

"Lead Disclosure: Eight Reasons Why You Should Care," Anne Guthrie Wengrovitz, *Today's REALTOR®*, November 1996.

"Murder at Your Listing...What Do You Need to Disclose?," Richard Westlund, *Today's REALTOR®*, February 1997.

"Where Can I Find a Qualified Lead Inspector?," Anne Guthrie Wengrovitz, *Today's REALTOR®*, March 1997.

"How Disclosure Forms Reduce Risk," Laurie Janik, *REALTOR® Magazine*, January 2001.

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