

Seller Disclosure Law

Outline by Edward A. Tarlov, Esquire

I. Buyer Property Protection Act

A. Application of Act

i. The Buyer Property Protection Act requires the seller to give a disclosure report to buyers of residential real property. Residential real property means property improved by dwelling units for 1-4 families. This applies to transfers by sale, exchanges, installment land sale contract, lease with an option to purchase, or ground lease of a manufactured housing lot or residential lot, improved with dwelling units for 1-4 families. The law covers existing home and new construction. However, a sale and settlement of a lot without a dwelling is not covered. But a sale of a lot with a home to be built is covered by the law because at settlement it is not just the lot but also the dwelling that is conveyed. Commercial and industrial property are exempt. The law also excludes 9 other types of transfers of residential property.

1. Transfers governed by the Delaware Out-of-State Land Sales and Promotions Act.
2. Transfers ordered by a Court.
3. Transfer from a borrower to a lender by a deed in lieu of foreclosure.
4. A Sheriff's sale.
5. Transfer by a Fiduciary in the course of administering an estate, guardianship or trust.
6. Transfers from one co-owner to another co-owner.
7. Transfers made to a spouse or a blood relative of the seller.
8. Transfers made between ex-spouses as part of a property settlement from a divorce.
9. Transfers to or from any government entity.

B. Effective Date

i. The Act applies to any contracts for the sale of residential real estate, improved by dwelling units for 1-4 families that are entered into on or after January 1, 1994.

II. Providing the Form – The Seller’s Obligations

A. The seller’s duty to provide a disclosure form to a buyer and the time frame for doing so that is set forth in the law is fairly clear and simple. The seller must complete the disclosure report form prior to signing the listing agreement. The seller shall also update the report form as necessary for any material changes occurring in the property before final settlement. The form must be signed and dated by the Seller and given to the Buyer prior to the time Buyer makes an offer to purchase. If the completed report form is not given to a prospective Buyer prior to the time Buyer makes an offer to purchase, then the Seller will not have the benefit of the protection of Section 2575 of the law. Section 2575 of the law protects the Seller from law suits after settlement.

B. The law clearly sets the standard of care the Seller must use in completing the form. The Seller must disclose “known” defects. The Seller’s completed disclosure form is a good faith effort by the Seller to make the disclosures required by the law and is not a warranty of any kind by the Seller or any Agents or Sub-Agents representing the Seller or Buyer and is not a substitute for any inspections or warranties that the Seller or Buyer may wish to obtain.

C. When completing the form, the Seller must use good faith. Good faith can be thought of as “honesty in fact in a transaction.” This means the seller may not lie, make misrepresentations, knowingly mislead buyers or fail to disclose information about the true condition of the property. The written disclosure form, signed by Buyer and Seller, shall become a part of the purchase agreement.

III. The Buyer’s Duties

- A. Under the law, the buyer of residential real estate is required to sign and date the disclosure form the seller provides and must include it as part of the Purchase Agreement.
- IV. Seller's Disclosure of Real Property Condition Report.
- A. The law requires the Delaware Real Estate Commission to develop the disclosure form or forms sellers must use. The forms approved by the Real Estate Commission are attached to this outline. There are two forms: one for resale and one for new construction. The law does permit the Real Estate Commission to approve more than one form.
- V. Realtors Responsibilities and Liabilities
- A. The obligation and directives regarding seller disclosure contained in the law are ones imposed upon sellers and buyers only. Nowhere in the language of the legislation does it specifically require any conduct by real estate agents or brokers involved in a transaction. However, the agent, subagent or seller, shall give the Seller Disclosure of Real Property Condition Report to the prospective buyer or buyer's agent prior to buyer making an offer to purchase.
 - B. Additionally, a realtor's fiduciary duties to the seller or the buyer may impose certain obligation and liabilities.