



SELLER DISCLOSURE
Michigan Public Act 92 OF 1993

July 12, 1993 Governor Engler signed into law the Seller Disclosure Act. The Act became effective January 10, 1994. It requires sellers of 1-4 family residential property to fill out, sign and provide to potential purchasers, a "Seller's Disclosure Statement" regarding the condition of property.

Note:

1. Only the seller is responsible for filling out and signing the Statement, not real estate licensees.
2. Disclosure is mandatory for every transfer of interest in real property regardless of whether the services of a broker are used. However, some transfers are exempt.
3. The "Seller's Disclosure Statement" form must be used in the format outlined in the Act.

QUESTIONS & ANSWERS

Q. Does the Act apply only to real estate brokers and salespersons?

A. No. It applies to any transfer of real property regardless of whether the parties engage the services of a real estate broker.

Q. Does this mean that "FSBO's" (for sale by owner) are covered too?

A. Yes. Unless the transaction is exempted, the Act applies whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, a transfer of stock or an interest in a residential cooperative or a ground lease coupled with proposed improvements by the purchaser or tenant.

Q. I am an individual specializing in commercial real estate sales or an individual/entity selling commercial property. How does mandatory seller disclosure affect me?

A. It doesn't. PA 92 of 1993 only applies to the transfer of any interest in real estate consisting of 1 to 4 residential dwelling units.

Q. Are any transactions exempted?

- A. Yes. Transactions are exempt if the transfer of interest results from any of the following:
1. a court order, i.e., foreclosure, estate administration, by eminent domain, resulting from a decree for specific performance
 2. default to a mortgage company
 3. a power of sale or any foreclosure sale under a decree of foreclosure due to the failure to comply with the mortgage document or any other instrument containing a power of sale
 4. a transfer by a non-occupant fiduciary, in the course of the administration of an estate, guardianship conservatorship or trust
 5. a transfer from one co-tenant to one or more other co-tenants
 6. a transfer made to a spouse, parent, grandparent, child, or grandchild
 7. a divorce settlement or judgment
 8. an exchange to or from a government entity
 9. a builder selling his/her own newly constructed residential property that has not been inhabited



Q. Do I have to use a specific form?

A. Yes, the Act prescribes a form entitled “Seller’s Disclosure Statement”. Language on the statement may not be altered or deleted. However, there are provisions that allow additional disclosure requirements if required by local units of government. Also, the required disclosures do not limit or diminish any disclosures created by other laws that relate to fraud, misrepresentation or deceit in transfer transactions. Any disclosures must be made in good faith, meaning “honesty in fact” in the conduct of the transaction.

Q. Where do I get the form.

A. The law specifies that it shall be made available to the public by all real estate brokers and salespersons. It is anticipated the licensees will publish and maintain supplies for their use and public distribution. (There is a copy of the Disclosure Statement in the kit.)

Q. When is the statement to be given to a potential purchaser?

A. In the case of a sale, it is given before the seller accepts the offer to purchase. If not a sale, it must be provided before the lessor signs an installment sales contract; a lease together with an option to purchase; or a ground lease coupled with improvements by the tenant.

Q. What if the offer to purchase has been signed by the seller before the disclosure statement is given to the purchaser?

A. The purchaser can terminate the purchase agreement by delivering in writing, a notice of termination to the Seller or the seller’s agent. The time limits for a buyer’s ability to terminate under this cause would be if the Seller’s Disclosure Statement was delivered in person to the purchaser, the limit is 72 hours. If it was delivered by register mail, it is 120 hours. Once a transaction has closed, however, the purchaser’s or lessee’s right to terminate the purchase agreement or installment sales contract expires.

Q. What happens if the condition of the property changes from the original statement that was filled out and given to the seller’s agent or to the prospective purchaser?

A. The Statement must be amended, in writing, if the condition of the property changes. The Statement says “if any changes occur in the structural/mechanical/appliance systems of this property from the date of this form to the date of closing, seller will immediately disclose the changes to buyer.” However, any amendment must be provided prior to the seller’s acceptance of the offer to purchase. If it is provided after the seller has accepted the purchaser’s offer, the contract can be terminated as described in a question above.

Q. If there is a lawsuit, what proof must be provided that a Seller’s Disclosure Statement was given to the purchaser?

A. The seller may sign a separate document or the purchase agreement (copy of which is given to the purchaser) indicating the Statement was provided. In the case of a land contract or lease, the transferor must indicate compliance by providing notice on a separate document, the installment contract, the lease or any other addendum. However, any addendum must be attached to the purchase agreement, contract or lease.



Q. If a defect exists, about which the seller has no knowledge and is subsequently discovered, will the seller and/or the seller's agent be liable for this error?

A. If the seller exercises ordinary care in filling out the Statement, neither the seller nor his/her agent will be held liable for any error, inaccuracy or omission which is not within the personal knowledge of the seller. In addition, the seller and/or the agent will not be liable if the information was provided entirely by public agencies or by other professionals who have sufficient knowledge and experience to assess the extent of material defects of the property. (Professionals are defined as engineers, surveyors, geologists, structural pest control operators, contractor, etc.)

Further, it is not a violation of the Act if the seller fails to disclose information that can only be obtained through inspection or observation of inaccessible portions of the property or which could be discovered only by the use of a professional, (as defined above).

If a public entity or a professional provided the disclosure, the requirements of the Act are deemed to have been met. However, if the seller has knowledge of a known defect or condition that contradicts the information provided by the experts, he/she must disclose it.

If a professional is hired by the prospective purchaser to conduct an inspection of the property and a report or opinion is prepared, delivery of this report is considered sufficient compliance for disclosure. Again, if the seller has knowledge of the property that contradicts the report, he/she must disclose it.

The professional's or public entity's report or opinion must indicate to which sections on the Disclosure Statement the information pertains. The expert is not responsible for any items of information other than what is in his/her report or opinion.

Q. What happens if the furnace worked when the house was put on the market and the Seller's Disclosure Statement was filled out, but when the purchasers moved in, it was no longer working properly?

A. After the transaction has been closed, the buyer has no right to terminate the transaction because of a discrepancy or error on the Seller's Disclosure Statement. Purchasers have recourse of a civil suit even though the seller and/or agent are not in violation of the Act.

Q. What if the Seller says there is no problem with the basement, and it is apparent that the basement leaks. Should a seller's agent disclose this to any prospective purchaser?

A. Yes, if you have personal knowledge that there is a problem. There is a rule regulating a licensee's disclosure of known material facts – quote: "A licensee's full disclosure to a buyer of material facts within his or her knowledge about the condition of the real estate offered shall not be grounds for disciplinary action, despite a claim by the seller that such disclosure constituted disloyalty to the seller in violation of an agency relationship".

Q. What if the house is a rental unit and the seller doesn't know if a defect exists?

A. The seller may check "unknown" on the statement. The information given by the seller must be based upon the best information available and known to him/her. It would be prudent to discover the property's condition since an entire statement of "unknowns" could raise a red flag to a potential buyer.



Q. What if the seller does not speak or write English?

A. The seller should obtain the services of a translator who can assist him/her in filling out the form. The seller then signs the form.

Q. The seller is out of town and does not anticipate returning. He/she wants to handle the Statement by phone and have his/her real estate agent sign for him/her. Should this be done as a service to the seller?

A. The Statement indicates that only the seller should complete the form. Statement disclosures are “representations made solely by the seller and are not the representations of the seller’s agent(s), if any”. Mail or fax the form to the seller for completion and signatures, then have it returned.

Q. Is delivery to the buyer’s agent (if they have one) adequate? Or should the Statement be delivered directly to the buyer?

A. If the seller gives it to his/her agent, a copy must be given to either the buyer or the buyer’s agent. If it was delivered to the buyer’s agent, it shall be considered to have been provided to the buyer.

Q. Is the seller’s agent (if there is one) held responsible for everything that is not on the seller disclosure statement?

A. As long as the agent does not knowingly act with the seller to violate any section of the act, the agent is not held liable for the seller’s disclosure.

***RESOURCE:** Real Estate Bulletin – Special Edition – Fall, 1993 – Vol. 2, No. 2 – issued by the Michigan Department of Commerce Bureau of Occupational & Professional Regulation.*