

SELLING A FLORIDA HOME

What Are My Disclosure Obligations?

The following provides guidance on what residential real estate sellers must tell prospective home buyers when selling a house in Florida. Florida, like many other states, requires sellers of homes and other residential properties to make certain disclosures to buyers about the property's condition and history.

Selling Your House

This is a shift from the traditional legal principle of “let the buyer beware,” which basically made it the buyer’s responsibility to inspect the home and discover whether there are any unacceptable conditions or defects before closing the deal. However, in an ever-increasing number of states, courts and lawmakers have held that sellers are in the best position to know all material facts relating to their properties, especially those that are not visible to the naked eye, and should disclose these to the buyer—or face legal liability.

How Florida Sellers Must Make Disclosures to Prospective Home Buyers

Florida law provides that, with some exceptions, you (as a home seller) must disclose any facts or conditions about your property that have a substantial impact on its value or desirability and that others cannot easily see for themselves.

To assist sellers in making all relevant disclosures, the Florida Association of Realtors provides a standard “Seller’s Disclosure” form, covering many common property characteristics that buyers want, and need, to know about. (This is separate agreement from the standard contract that is used in most residential real estate



transactions to bring about the purchase and sale of the home.)

The categories covered on the standard Florida disclosure form include, for example, whether:

- Any actual or potential claims, complaints or court proceedings affect the property
- The property is subject to the rules of a condominium or condominium association
- Any disputes have arisen regarding the property’s boundaries
- The property contains any past or present sinkholes (a frequent hazard in Florida)
- The property contains any environmental hazards such as asbestos, lead, mold, Chinese drywall (another hot-button problem in Florida), and others
- Any infestations or damage have occurred from wood-destroying organisms such as termites and carpenter ants, and
- There are any problems with essential components of the

home, such as the roof, plumbing, electrical wiring, major appliances, HVAC, and more.

Some sources claim that, as a seller, you may make disclosures either verbally or in writing. Florida law does not definitively direct sellers either way. However, if you make oral disclosures without any written confirmation, you may have a difficult time proving later that you made them, which is especially problematic if the buyer purchases the property and later finds problems with the home. As a common sense and good business practice measure, it is best to make your property disclosures in writing.

Florida statutory law also requires that you present the buyer with a property tax disclosure summary. This summary may be included within the standard disclosure form described above or as a separate document, as long as it contains the language required by the law. The language essentially states that a buyer cannot assume that the amount of property taxes currently paid by the seller will remain the same after the sale.

Florida Home Sellers Need Disclose Only What They Know About

Don’t worry that you will be expected to know or learn about and disclose every minute detail of your home’s condition. As the seller of a home in Florida,

The information provided in this document is not legal advice.

Reader should seek the advice of a real estate attorney to address any questions you may have.

you have the benefit of laws declaring that you will not be held responsible for property defects of which you have no actual knowledge.

If you sell a Florida property, and the buyer later claims in court to have discovered a defect that you did not properly disclose, that buyer must be able to demonstrate that:

- You knew about the property defect
- The defect has a substantial impact on the value of the property
- The buyer did not, upon purchase, know about the defect
- The defect would not have been easy for the buyer to detect, and
- You did not tell the buyer about the defect.

Florida Home Sellers Are Not Responsible for Defects They “Should Have Known” About

Florida homeowners are required to disclose only those property defects of which they have actual knowledge.

For example, in case law used for this article, the sellers had stated in their written disclosures that no additions or alterations to the property violated building codes. After the purchasers moved in, however, they discovered that several alterations made to the master bath, kitchen, and bedroom did not comply with building codes. The buyers sued. The court ruled for the sellers, finding that they didn’t apparently know about the violations, having (like many homeowners) left compliance matters to their contractors.

Florida courts have attempted to protect home sellers from fear of being sued every time they sell their properties. Sellers in Florida are not expected to guarantee to

buyers that their properties are defect-free, which would be an impossible promise to make in most cases.

Facts About a Property That Sellers Need Not Disclose

There are a number of property conditions that Florida sellers (and their agents) are not required to disclose, no matter how unappealing these may be to some buyers. As a Florida seller you are not required to disclose:

- That the property has been inhabited by a person infected with HIV or AIDS, or
- That a murder or suicide has occurred or is suspected to have occurred on the property.

You are fortunate to have the benefit of this law, as these conditions might very well be a deal breaker for some buyers, or a basis for them to demand a drastic reduction in your asking price.

But what if the buyer asks about these issues? Florida law merely states that you are not required to disclose these conditions, and does not indicate how you should answer if asked. As a practical matter, silence (for example, “The law does not require me to disclose such information”) is probably the best policy; or honesty if it won’t impact the privacy of previous inhabitants. If a buyer asks and you make a misleading or false statement, the buyer might seek legal relief against you on such grounds as misrepresentation.

How Federal Guidelines Affect Florida Real Estate Transactions

A few federal regulations also govern real estate disclosures in every state. For example, if your home was built prior to 1978, you

must disclose any known existence of lead-based paint.

According to the Environmental Protection Agency (EPA) website, you must also provide an EPA-approved pamphlet addressing lead-based paint hazards. Further, you must include language in the real estate contract entitled “Lead Warning Statement” declaring that you have met all notification requirements.

If Selling Your House “As-Is,” You Still Need to Disclose

If the buyer agrees, you also have the option of selling your home “as-is.” That means that the buyer agrees to take the property in its existing condition without your having to make any further repairs or improvements to it.

However, a so-called “as-is” clause does not relieve you from your disclosure duties under Florida law. You will still need to advise buyers of all material defects that you know about concerning the property.

When In Doubt, Consult a Professional

