



# UNDERSTANDING REAL ESTATE DISCLOSURES

Florida Law

## Abstract

A basic understanding of Florida Law concerning real estate disclosures and Florida Realtors.  
Protecting yourself and the seller, disclose, disclose, disclose.

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A Real Estate Education Firm

# Foundations for Success Series

## *Skills Training for the Real Estate Professional*



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# Course Objectives

By the end of this course students should be familiar with:

- Seller's Disclosure Obligation for Property Defects in Florida
- What Are Material Defects In Real Property
- What If A Seller Lies On Their Disclosure Form
- Is It Required To Have Seller's Property Condition Disclosure
- What Is The Statute Of Limitations On Real Estate Disclosure In Florida
- Other Lesser Known And Required Disclosures
- For-sale-by-owner disclosures
- Federal real estate disclosure laws
- Avoid Disclosure Disputes
- Disclosures In or Referred To In The FR/BAR AS-IS Contract
- Addenda And Additional Terms
- Additional Terms Paragraph 20 of the contract
- Blank Addendum to Contract



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# Be Productive

Productive: The quality or power of producing; yielding or furnishing results; as, productive enterprises; productive labor, that which increases the number or amount of products.

For the real estate professional, being productive means working with a person or persons who have the desire and ability to sell, buy, rent or lease real estate TODAY!

Each and every day, your goal is to find a person who is ready and able to take action.



***It is not enough to be busy... The question is: what are we busy about?***

***Henry David Thoreau***

# SECTION 1

- Seller's Disclosure Obligation for Property Defects in Florida
- Material facts
- Sellers Disclosure Obligation For Property Defects In Florida They Know About
- Hidden Defects In Real Property?
- What Are Material Defects In Real Property?
- What If A Seller Lies On Their Disclosure Form?
- Is It Required To Have Seller's Property Condition Disclosure?
- Is REO Exempt From Disclosure?
- What Is The Statute Of Limitations On Real Estate Disclosure In Florida?
- Other Important Facts About Florida Disclosures
- Do You Have To Disclose a Haunted House?

# Seller's Disclosure Obligation for Property Defects in Florida

Many buyers of real estate are clueless as to a seller's disclosure obligation for property defects in Florida. This will give you a basic overview on what a seller's obligation for disclosure is on real property. In order to safeguard home buyers from property defects, fraud, and other problems associated with the purchase of real estate, sellers are obligated under virtually all state laws to disclose certain relevant information about the property they are selling.

Transfer disclosures as these requirements are called, provide notification to buyers about current problems associated with the property before making their purchase. Disclosure obligations affect not only the home or building, but also the area surrounding the property. Although states have their own requirements for seller disclosures, certain disclosures are compelled by federal law. In Florida, sellers can use the "Seller's Property Disclosure Form," created by the Florida Association of Realtors, but there is no statutory requirement to do so.

## Material facts

**In *Johnson vs. Davis*, the Florida Supreme Court held that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer."** This obligation extends to licensees and, per Section 475.278, Florida Statutes, all licensees have a legal obligation to disclose all known facts that materially affect the value of residential real property and are not readily observable to the buyer. The disclosure can be made in writing or verbally, although it is highly recommended to make the disclosure in writing in case any issue regarding disclosure pops up later. **Even if a home is being sold "as is," the seller has an obligation to disclose known latent defects. In *Rayner vs. Wise Realty Co. of Tallahassee*, the First District Court of Appeal provided that this same disclosure requirement applies to residential properties that are being sold as is.**

- ***Florida Realtors***

A homicide, suicide, or death that occurred on a property is not a material fact that must be disclosed in a real estate transaction. (Section 689.25(1)(b), Florida Statutes)

- ***Florida Realtors***

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# Sellers Disclosure Obligation for Property Defects in Florida They Know About

Most state disclosure requirements provide that seller must inform buyers of defects that the seller knows about. **While a Seller's Property Disclosure Form is not required under Florida law, Florida law does require seller's and their realtors to disclose any significant property defects that may not be easily visible to the buyer.**

Buyers still have the responsibility to have the property inspected. Buyers should also be aware that a seller is not obligated to retain a home inspector to root out problems that he or she may not be aware of. **Any willful non-disclosure can be treated as concealment and carries severe penalties for all parties involved.**

## Hidden Defects in Real Property?

Defects that are not easily observable are commonly referred to as latent defects. Disclosure laws in most state's carry a requirement that there must be disclosure of defects that would not be clearly obvious to an average buyer who is looking at the home. For obvious reasons, a huge crack easily observable on a wall in the living room would not trigger the duty to disclose by the seller. However, if the property has a leaky roof and is only visible during a heavy rain storm would trigger a seller's duty to disclose.

## What Are Material Defects in Real Property?

The most general way that a seller's disclosure obligation is minimized is the requirement to disclose only material defects. Material defects refers to substantial defects that would likely have an effect on the value of the property or the buyer's readiness to purchase the property. Impact on health and safety are also considerations when determining when a defect is considered material. Material defects are considered significant defects.

Examples of defects that would be considered material include electrical wiring that is faulty or a cracked foundation. In cases where the state's law does not specifically state the term "material," the idea is almost always intertwined with the classification of defects that sellers must disclose.



# What If a Seller Lies on Their Disclosure Form?

A seller is supposed to be truthful when answering the disclosure statement for the buyer. The buyer is entitled to rely on that disclosure statement in buying a home. **And, if a seller lies, the buyer is entitled to go after the seller for damages sustained because of an omission in the disclosure statement given to the buyer.**

# Is It Required to Have Seller's Property Condition Disclosure?

**Sellers are legally required to disclose these issues**, but by fully documenting them on the disclosure statement, sellers are better protected from future legal action (say, if a buyer was to sue the seller post-sale for undisclosed issues).

# Is REO Exempt from Disclosure?

**Yes, it is. The REO seller is also exempt from FHA/VA disclosures** (Handbook 4155.1REV5, Section 3-4):

Again, the REO exemption is a little-known fact, and many lenders will hold up a closing if the disclosure is not provided.



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# Do You Have to Disclose a Haunted House?

In some states a seller is required to disclose the possibility of paranormal activity in their homes, or the fact that a crime was committed in their home. **Florida has no such requirement to disclose paranormal activity of any kind.** All ghosts, and any paranormal activity are included in the purchase price, no negotiation necessary! As we discussed earlier, **in Florida, a Seller does not even have to disclose that their property either was suspected to be, or was, the site of a crime.** Further, a Seller has no obligation to disclose homicides, suicides or deaths that occurred on the property.

This sometimes poses a problem when a Buyer finds out about a death that occurred on the property and wants to cancel their contract or sue the Seller for failure to disclose. Since **Florida law imposes no requirement to disclose, the Seller has not done anything wrong by not disclosing crimes, homicides, suicides or deaths occurring on a property; these events are not in themselves considered to be conditions that substantially impact the value of a home, even if an individual buyer would disagree.**

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# What Is the Statute of Limitations On Real Estate Disclosure In Florida?

The statute of limitations for the Florida Seller's Disclosure Law is five years in Florida. The condition of the real estate property is based on what the seller knows about the property condition. Buyers, sellers and realtors refer to the information when evaluating, marketing, or presenting the seller's property to prospective buyers.

## Other Important Facts About Florida Disclosures

- If you think you could be held liable for any small problem with the house after a buyer moves in, don't panic. Several Florida laws state **If you have no actual knowledge of any material defect, you're are not responsible for those defects.**
- If a buyer claims you knew about a defect and problems arose after moving in, that buyer must prove you knew about the defect. The buyer must also show the defect wasn't easily detected through a visual inspection, and the defect substantially decreased the property's value.
- The only problem in Florida is the law isn't definitive on whether you can disclose defects in writing or verbally. There is no law requiring you to disclose defects in writing.
- However, **if you disclose defects verbally without the presence of an agent or another witness, you'll have no way to prove you disclosed any problems to potential buyers.**
- **So, the best way to protect yourself is to disclose everything in writing.**
- The Florida Association of Realtors provides agents with a form for their use in helping the seller make disclosures.

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# SECTION 2

- Other Lesser Known And Required Disclosures
- Endangered species
- Code enforcement action
- Radon
- Insulation information in a new home
- Coastal Properties Disclosure Statements
- Mandatory Membership In A Homeowner's Association
- Florida Condo Disclosures
- More Less common seller disclosures
- For-sale-by-owner disclosures
- Federal real estate disclosure laws
- Avoid Disclosure Disputes

# Other Lesser Known and Required Disclosures

## Endangered species

In Florida, the gopher tortoise is classified as a threatened species, and the gopher tortoise and its burrow are protected by state law. It's illegal to harm, capture or transport gopher tortoises or damage their burrows, except as authorized by specific Florida Fish and Wildlife Conservation Commission (FWC) permit. Property owners may need to capture and relocate all gopher tortoises before development-related activities can begin. Your buyer can find more information about gopher tortoises and the permit process on the FWC's website. (link to <http://myfwc.com/wildlifehabitats/managed/gopher-tortoise/>)



## Code enforcement action

If a home has a pending code enforcement action against it, the seller has several requirements. The seller must

- disclose, in writing, the existence and the nature of the proceeding to the prospective buyer
- deliver to the prospective buyer a copy of the pleadings, notices and other materials relating to the code enforcement proceeding received by the transferor
- disclose, in writing, to the prospective buyer that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding
- file a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer.

Failure to make the disclosures above before the transfer of property creates a rebuttable presumption of fraud. (Sections 125.69 (4)(d) and 162.06(5), Florida Statutes)

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## Radon

- A specific statutory radon gas disclosure must be provided prior to or at the time of execution of a contract for sale and purchase of any building or execution of a rental agreement for any building. However, it does not apply to residential transient occupancy in a public lodging facility for 45 days or less. (Section 404.056(5), Florida Statutes)
- All Florida Realtors sales contracts contain the required statutory language within the body of the contracts. The Florida Supreme Court–approved leases also contain the required verbiage. As such, there is no separate radon disclosure form.
- The radon gas disclosure is not required for transactions involving unimproved properties (for example, vacant land).

## Insulation information in a new home

Every new home sales contract must include the type, thickness and R-value of the insulation that will be installed in each part of the house. There is one exception: If the buyer signs a sales contract before you know what type of insulation will be installed or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out. (Section 16, CFR 460.16) Both types of Florida Realtors residential sales contracts have an addendum or rider to provide this disclosure.

## Coastal Properties Disclosure Statements

Florida Statute 161.57 deals with **coastal properties disclosure statements**. This law requires the seller to disclose potential for coastal erosion, where the property is subject to state, local and federal law limiting construction on the property and compliance with environmental standards.

## Mandatory Membership In A Homeowner's Association

Florida Statute 720.401 is a law that requires **mandatory membership in a homeowner's association**. This statute states that buyers looking to purchase real property in a community with an existing homeowner's association must be informed of their requirement to become members of the homeowner's association in the event that they buy the property. Additionally, members are required to pay monthly or quarterly fees as well as assessments, and risk a lien being filed on the property for failure to pay the homeowner association fees. As a consequence, if proper disclosures regarding the homeowner association disclosures have not been made, the sale can be voided.

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## Florida Condo Disclosures

**Florida Condo Disclosures** are governed by Florida Statute 718.503 (1), (2), and (3), and pertain to the purchase of a condominium in Florida. These laws make it illegal for sellers and developers to not disclose prior to purchase all of the specificities that go along with condo ownership. These specifics include, right to review association documents and bylaws prior to closing, property management details, property management contracts, time shares, right to evaluate any recreational leases of the condo, proof of improvements, legal ownership of the developer or seller. The Florida Condo Disclosures must be made in writing which includes the statutory language by the seller of the condo.

## More Less common seller disclosures

- Property line or zoning disputes
- Square-footage discrepancies
- Bad neighbors or nearby noise
- Nearby sex offenders
- Nearby toxic materials, like contaminated soil

## For-sale-by-owner disclosures

Disclosures are always required, based on Florida laws, whether you're using a real estate agent or selling your home on your own. With very few exceptions such as an REO property. If you are doing a FSBO listing, the responsibility to research and follow through on disclosures falls on you as well as the seller. **You should consider using the Florida Realtors "Seller Property Disclosure" for that purpose.**

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# Federal real estate disclosure laws

There are very few federal regulations related to real estate disclosure. The only law that's applicable across all 50 states is the requirement to disclose the presence of lead paint. Here's what you need to know:

- Homes built before 1978 require a lead-based paint disclosure, based on the Residential Lead-Based Paint Hazard Reduction Act of 1992 – Title X.
- Sellers or their listing agents should provide buyers with a pamphlet on the hazards of lead paint.
- If you know that there is lead-based paint in the house you're selling, warning language should also be included in your real estate contract.
- If your disclosure statement includes lead paint, make sure the disclosures are signed, and keep copies for at least five years.
- Sellers must give buyers a 10-day period to test for lead paint.
- Sellers who know they have lead paint in their home and fail to disclose it can be held liable for up to a decade, and they can be sued for triple the cost of damages suffered, so always disclose what you know about lead paint in the home.

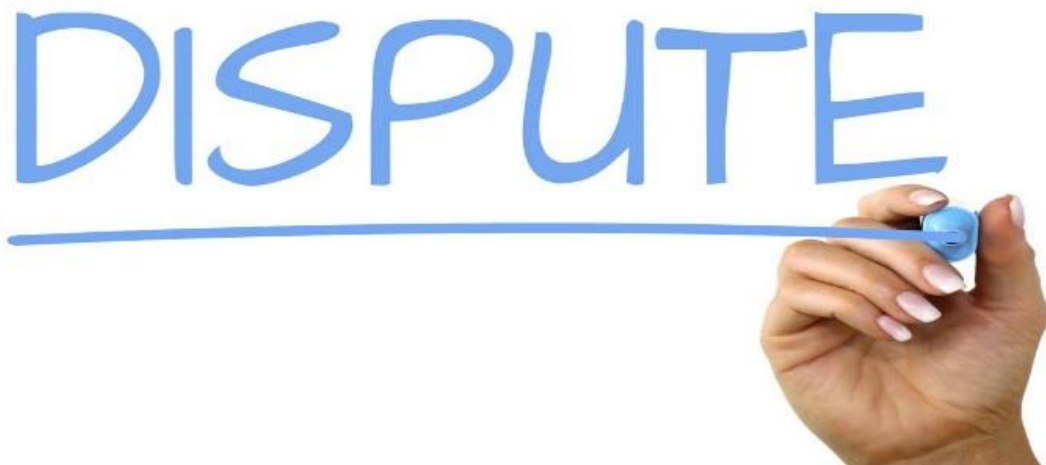
**When buying a home,  
ask about lead.**



# Avoid Disclosure Disputes

- Disclose everything, even if it seems minor. Share anything that could negatively impact the usefulness, value, or enjoyment of the property.
- Keep all signed disclosures for at least five years after closing.
- If you fixed something, provide receipts to the buyer to document how the issue was remedied.
- Talk to an attorney or real estate agent about how to avoid negative outcomes in the disclosure process.
- Do a pre-inspection before listing. Then you'll know what issues are likely to arise, and you can repair them ahead of time. Do note that if you do a pre-inspection, you may discover additional issues that you'll have to disclose to the buyer.

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# SECTION 3

- Disclosures In or Referred To In The FR/BAR AS-IS Contract
- Addenda And Additional Terms
- Additional Terms Paragraph 20 of the contract
- Blank Addendum to Contract

# Disclosures In or Referred To In The FR/BAR AS-IS Contract

## Paragraph 10 of the contract: Sub Paragraphs (a through i)

### Radon Gas

**Permits Disclosure;** Should be disclosed in separate Seller Property Disclosure statement

**Mold:** Would require a separate disclosure from the seller if mold exist

### Flood Zone Elevation Certification

**Energy Brochure:** Must be provided in a separate required disclosure

**Lead-Based Paint:** Would require a separate disclosure from the seller and the required disclosure pamphlet

**Homeowners Association/ Community Disclosure:** Would require a separate disclosure

### Property Tax Disclosure

**Foreign Investment In Real Property Tax Act (FIRPTA):** Would require a separate disclosure from seller if FIRPTA applies

**Seller Disclosure:** Would require a separate seller disclosure if property defects exist



# Addenda And Additional Terms

## Paragraph 19 of the contract: (A through CC)

- |                                     |  |
|-------------------------------------|--|
| A. Condominium Rider                | S. Lease Purchase/ Lease Option                                |
| B. Homeowners' Assn.                | T. Pre-Closing Occupancy                                       |
| C. Seller Financing                 | U. Post-Closing Occupancy                                      |
| D. Mortgage Assumption              | V. Sale of Buyer's Property                                    |
| E. FHA/VA Financing                 | W. Back-up Contract  |
| F. Appraisal Contingency            | X. Kick-out Clause   |
| G. Short Sale                       | Y. Seller's Attorney Approval                                  |
| H. Homeowners/Flood Ins.            | Z. Buyer's Attorney Approval                                   |
| I. RESERVED                         | AA. Licensee Property Interest                                 |
| J. Interest-Bearing Acct.           | BB. Binding Arbitration  |
| K. RESERVED                         | CC. Miami-Dade County<br>Special Taxing District<br>Disclosure |
| L. RESERVED                         | DD. Seasonal vacation  |
| M. Defective Drywall                | EE. PACE Disclosure  |
| N. Coastal Construction Control     | Other: _____   |
| O. Insulation Disclosure            | _____  |
| P. Lead Paint Disclosure (Pre-1978) | _____  |
| Q. Housing for Older Persons        |  |
| R. Rezoning                         |  |

**Must check the box next to the corresponding addendum to make it a part of the contract**

## Additional Terms Paragraph 20 of the contract

Can be used to write in any addition items or agreements between the Seller and Buyer. Example, including patio furniture or not including dining room chandelier

Notes: \_\_\_\_\_  
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# Blank Addendum to Contract

To be used for miscellaneous contract addenda and supplements if necessary

Be sure to fill out contract information at the top of the addendum to make it a part of the contract

Seller and Buyer must sign the addendum

Can be found in your forms program

Notes: \_\_\_\_\_  
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# The Foundations for Success Series

*All Courses are approved for Continuing Education Credit*

- Building and Presenting the Listing Presentation
- Prospecting and Farming for Listings
- Servicing the Listing and Working with Buyers
- Understanding and Writing the FR / BAR AS-IS Contract
- Understanding and Writing the Exclusive Right of Sale Agreement
- Understanding the American with Disabilities Act
- Understanding Florida Disclosure Laws
- The Fair Housing Act Title VIII
- The MLS and You (*a look at the dos and don'ts for the MLS system*)
- Stop Working for Free, Protecting Yourself with Buyers
- Understanding the American with Disabilities Act (ADA ACT)

## Courses for Future Brokers

- Creating an Office Policy Manual
- The Start-Up, Things to Consider Before Opening an Office
- The Broker Series, Day to Day Operations
- Instructor Concepts for Today's Adult Learner (*licensed Real Estate Instructors Only*)



## ABOUT THE AUTHOR



**Rick Burch** is the founder of Burch & Associates International LLC, a real estate education company and Director of The South Florida Real Estate School. He is the past Chairman of the Board for the Miami Association Realtors. Rick was named Realtor of the Year for 2004 and educator of the year in 2010. He is an award-winning real estate professional; with over 31 years of experience in the real estate industry. He is a past member of the Board of Directors for the National Association of Realtors, and Board of Directors for Florida Realtors. Rick has been named to the Florida Realtors Honor Society. In addition,

Rick Burch is a licensed real estate instructor and professional speaker. He has authored numerous real estate education courses and seminars including the Foundations for Success Series and co-authored a new 14 Hour CE and 45 Hour Post Licensing textbook for real estate professionals.

### **Professional Designations**

"**CRB**" Certified Real Estate Brokerage Manager

"**CRS**" Certified Residential Specialist

"**GRI**" Graduate Realtor Institute

"**e-PRO**" Certified Internet Technology Professional

"**TRC**" Transnational Referral Certified

"**AHWD**" At Home with Diversity