

Yes, You Have To – Disclosing Prior Reports and Repairs

While almost everyone is familiar with the standard rule of “when in doubt, disclose” there are still circumstances that can trip up an otherwise diligent agent. Sellers and agents each have an independent duty to disclose all material facts that affect the value and desirability of the property. While this rule may seem simple, mistakes are still made. Here are some things to watch out for concerning disclosing prior reports and repairs.

Do previous defects have to be disclosed if they have already been repaired?

Yes. Even if a problem or defect that existed in the past has since been repaired, this is still a material fact that must be disclosed. Problems can reoccur, and buyers should know what to look out for in the future. Furthermore, the Seller Property Questionnaire (C.A.R. Form SPQ) asks questions specifically about repairs and alterations made to the property. Paragraph 7 of the SPQ asks the seller to disclose “any alterations, modification, replacements, improvements, remodeling or material repairs on the Property” as well as any ongoing maintenance or if any portion of the property was painted within the past 12 months.

Do sellers and/or agents have to provide copies of inspection reports or other documents in their possession relating to the condition of the property?

Yes, These documents are filled with material facts that must be disclosed to a buyer. Trying to parse the document and pick out the facts to be disclosed is much too risky, so the document itself should be provided to the buyer. Also, Paragraph 5 of the SPQ specifically asks sellers about any “reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys, or other documents ... pertaining to the condition or repair of the property” and instructs the seller to provide copies these documents in their possession to the buyer.

Does a disclosure have to be made no matter how long ago the repair took place or how old the document is?

Yes. Sellers and agents should not try to determine whether something is too old or happened too long ago to still be considered material. If the seller has knowledge of the repair or still has a copy of a report, those things should be disclosed no matter how far back they go. Of course, the older a report or document is, the less useful it will be to a buyer. Buyer’s agents should note the dates of reports or other documents being provided and point out to the buyer if they are significantly out of date.

Do real estate licensees have to keep documents relating to the property? What about property owners?

Yes. And no. Real estate licensees are required by the Department of Real Estate to maintain records pertaining to transactions for at least 3 years after a transaction closes. Therefore, if an agent helped a client buy a property and now is listing that property within a 3-year period, all documents relating to the property from the time of purchase would be expected to be in the possession of, and therefore disclosed by, that agent. Note that since the record retention requirement applies to the broker, even if a different agent in the same office is listing the property and the office has the file in their records, the relevant documents will still need to be disclosed. However, while many sellers may have held on to property reports, they have no legal obligation to do so

Is a listing agent or seller who is in possession of an inspection report that was paid for and obtained by a previous buyer required to disclose it even if the report and contains language saying that the report may only be used by the person for whom the report was prepared?

Yes. Many inspection reports contain language limiting their use to the person who paid for the inspection or describing the report as non-transferable. This language is there to protect the inspector and let third parties know they should not expect to have claims against the inspector for any reason. Such disclaimers do not make the report confidential, and once it is in the possession of a seller or listing agent it still must be disclosed to any subsequent buyers of the property.