

**Yes, You Have To  
-  
Disclosing Prior  
Reports and  
Repairs**

Legal Tools April 2024



# Disclosure Basics

- Sellers and agents must disclose knowledge of all material facts that affect the value and desirability of the property
- “When in doubt, disclose”
- Mistakes are still made

DISCLOSURE

FULL

A photograph of wooden blocks arranged on a dark wood-grain surface. The blocks spell out the word 'DISCLOSURE' in a single row. Above the 'L' and 'O' of 'DISCLOSURE', there are four more blocks that spell out the word 'FULL'. The blocks are light-colored wood with black letters.

# Disclosing Prior Repairs

7. REPAIRS AND ALTERATIONS:	ARE YOU (SELLER) AWARE OF...
A. Any alterations, modifications, replacements, improvements, remodeling or material repairs on the Property (including those resulting from Home Warranty claims) .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. Any alterations, modifications, replacements, improvements, remodeling, or material repairs to the Property done for the purpose of energy or water efficiency improvement or renewable energy? .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Ongoing or recurring maintenance on the Property (for example, drain or sewer clean-out, tree or pest control service) .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. Any part of the Property being painted within the past 12 months .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
E. Whether the Property was built before 1978 (if No, leave (a) and (b) blank).....	<input type="checkbox"/> Yes <input type="checkbox"/> No
(a) If yes, were any renovations (i.e., sanding, cutting, demolition) of lead-based paint surfaces started or completed (if No, leave (b) blank) .....	<input type="checkbox"/> Yes <input type="checkbox"/> No
(b) If yes to (a), were such renovations done in compliance with the Environmental Protection Agency Lead-Based Paint Renovation Rule .....	<input type="checkbox"/> Yes <input type="checkbox"/> No

Explanation:

Even if a prior defect has been repaired, still must be disclosed Problems can reoccur, buyer should know what to look out for Seller Property Questionnaire (C.A.R. Form SPQ) Paragraph 7

# Disclosing Prior Reports

5. DOCUMENTS:

ARE YOU (SELLER) AWARE OF...

Reports, inspections, disclosures, warranties, maintenance recommendations, estimates, studies, surveys or other documents (whether prepared in the past or present, including any previous transaction, and whether or not Seller acted upon the item), pertaining to (i) the condition or repair of the Property or any improvement on this Property in the past, now or proposed; or (ii) easements, encroachments or boundary disputes affecting the Property whether oral or in writing and whether or not provided to the Seller .....  Yes  No

Note: If yes, provide any such documents in your possession to Buyer.

Explanation:

- Any inspection report or other document pertaining to the condition of the property is filled with material facts
- Trying to pick out information to disclose is much too risky, document in full should be provided
- SPQ Paragraph 5

# Age of Reports and Repairs

- Don't try to determine whether something is too old or happened too long ago to still be considered material
- If someone still 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
- Older documents and information will be less helpful to buyers
- 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

# Obligation to Keep Old Reports

- Many sellers hold on to reports although no specific legal obligation to do so
- Real estate licensees must keep all documents received in connection with a transaction for at least three years after a transaction closes



# Obligation to Keep Old Reports

- 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

Record retention requirement applies to the broker, so even if a different agent in the same office lists the property and the office has the file in their records, the relevant documents will still need to be disclosed.



# Inspection Report Language?

- Many inspection reports contain language limiting their use to the person who paid for the inspection or describing the report as non-transferable
- 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



# Additional Resources

- Quick Guide  
[Quick-Guide---Yes-You-Have-To---Disclosing-Prior-Reports-and-Repairs.pdf \(car.org\)](#)
- CAR Legal Disclosure Resources  
[https://www.car.org/riskmanagement/launchpad/Disclosures](#)
- Disclosure Information Advisory (C.A.R. Form DIA)  
[Transactions - zipForm® Edition \(car.org\)](#)