



Selling your current home

To disclose or not to disclose, that is the question... and the answer is: yes

By David M. Brown

Before purchasing a brand-new home, many folks need to first sell their current home. If that's your situation, we're sure you realize that there's a whole involved process to this, however, experts say that one of the most important things you need to know as a seller is this: Don't hide things and don't lie.

Material factors

Arizona law requires the seller to disclose material factors about the property even if not asked by the buyer or real estate agent, said Michelle Lind, an attorney and CEO for the Arizona Association of REALTORS®. Representing more than 43,000 real estate brokers and agents, it is one of the largest trade associations in Arizona.

"A seller has a duty to disclose known facts materially affecting the value of the property," said Lind, an honors graduate from ASU and its College of Law. She has authored *Arizona Real Estate: A Professional's Guide to Law & Practice*.

Specific disclosures

In addition to what is known as the common law, or traditional duty, to disclose, Arizona law is requiring an increasing number of specific seller disclosures.

These include:

- Lead-based paint disclosure in pre-1978 properties
- Swimming pool barrier disclosure (that is, whether the home has barriers installed following local guidelines)



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- Planned community/condominium disclosure information (such as age restrictions)
- Notice of soil remediation (whether contaminated soil has been removed from or treated on the property)

In addition, Arizona law requires a disclosure affidavit for property in unincorporated areas, unless the property is in a subdivision. Proximity to a public or military airport is also required as is notification as to whether the home has been used as a "clandestine drug laboratory" such as for making methamphetamine.

Seller Property Disclosure Statement

In Arizona, sellers are asked to complete a seven-page Seller Property Disclosure Statement (SPDS), which documents full knowledge about all conditions of the house. The SPDS contains various questions about the utilities, the roof, scorpions, fissures, the sewer, toxic chemicals and myriad other details.

"The Arizona REALTORS® SPDS is

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designed to assist the seller in making the legally required disclosures and avoid inadvertent nondisclosures of material facts," Lind said. "The SPDS also assists the buyer in the inspection and investigation of the property. The proper use of the SPDS results in well-informed buyers and reduces the likelihood of claims against the sellers."

If the buyers are using the Arizona REALTORS® Residential Resale Real Estate Purchase Contract, this requires the seller to deliver a completed SPDS form to the buyer within five days after contract acceptance.

Sellers who lie, misrepresent information and/or do not make legally required disclosures may be subject to civil liability.

Death, disease and sex offenders

What if someone has died in the home for sale?

Arizona Revised Statute 32-2156 states: "No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been: The site of a natural death, suicide or homicide or any other crime classified as a felony." However, Lind said that if asked, the sellers must answer truthfully.

The SPDS also informs sellers that they are not obligated to disclose whether the home is owned by a person exposed to the human immunodeficiency virus (HIV) or diagnosed as having acquired immune deficiency syndrome (AIDS) or any other disease that is not known to be transmitted through common occupancy of real estate.

These conditions are also true if a sex offender lives in the area. "Nonetheless, if a buyer asks a seller about one of these issues, the seller cannot lie. The seller must respond with the truth or refuse to respond based on the statute," Lind said.