



OLR RESEARCH REPORT

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DISCLOSURE REQUIREMENTS FOR COMMERCIAL PROPERTY SALES AND LEASES IN OTHER STATES

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You asked if other states require people leasing or selling commercial property to make specific property disclosures.

SUMMARY

We found eight states (California, Maine, Michigan, New Hampshire, Minnesota, Tennessee, Texas, and Washington) with specific disclosure requirements that apply to commercial property. Washington is the only one of these states that has a mandatory commercial disclosure form, similar to a residential disclosure form, which requires sellers to disclose a wide range of information. This includes information on the property title; water rights; building structure, systems and fixtures; and environmental issues.

The other seven states generally require commercial property owners to disclose information on material located on the property that may be considered hazardous to the prospective owner or lessee's health. The most common requirement is for sellers to disclose the existence of an underground storage tank (UST). Other disclosure laws require sellers to state whether the property is in compliance with certain state or local regulations (e.g., fire or electrical code).

Although other states may not have specific commercial disclosure requirements, many, including Connecticut, have requirements prohibiting misrepresenting material facts (Conn. Agency Reg. § [20-328-5a](#)). Additionally, in some states, a seller may voluntarily complete a realtor commercial disclosure form. (For example, the Arizona Association of Realtors has a form to help with commercial disclosures, available at: <http://aaronline.com/wp-content/uploads/2012/11/a150.pdf>.)

CALIFORNIA

California requires the seller of commercial property, or his or her agent, to disclose to the buyer if the property is located in a hazard area, including flood area, fire hazard severity zone, earthquake fault or seismic hazard zone, or wild land area that may contain substantial forest fire risks and hazards (Cal. Civ. Code § 1103).

On July 1, 2013, California also began requiring commercial property owners, who enter or renew a lease or sell or finance a building, to make disclosures on (1) disability access compliance and (2) building energy use and consumption information (Cal. Civ. Code § 1938, Cal. Pub. Res. Code § 25402.10). In the latter case, the information required includes (1) energy usage data from the prior 12 months and (2) the ENERGY STAR performance score. Currently, the energy consumption law is applicable only to commercial buildings over 50,000 square feet, with an implementation schedule that will require these disclosures for commercial buildings over 5,000 square feet by July 1, 2014 (Cal. Code Regs. tit. 20 § 1682).

MAINE

Maine requires property owners with an UST used to store hazardous substances to provide written notice to prospective purchasers or tenants of the presence of the USTs and other related information before transferring title or possession of the property (Me. Rev. Stat. Ann. tit. 38, § 563(6)).

MICHIGAN

Michigan requires anyone with actual or constructive knowledge of a hazardous substance release on a property that he or she is transferring to provide written notice to the transferee before the transaction (Mich. Comp. Laws § 324.20116). The notice must include the general nature and extent of the release.

NEW HAMPSHIRE

New Hampshire requires the seller of real property, or his or her agent, to provide the buyer with information on (1) radon and lead paint and (2) compliance with UST requirements (N.H. Rev. Stat. Ann. §§ 146-C:6, 477:4-a).

MINNESOTA

Minnesota requires sellers of commercial property to disclose (1) the status and location of all known wells on the property, (2) how sewage generated by the property is managed, and (3) any knowledge of past methamphetamine production on the property (Minn. Stat. §§ 103I.235, 115.55, 152.0275).

TENNESSEE

Tennessee requires the owners of (1) commercial property with less than 1,500 square feet and (2) industrial property with less than 5,000 square feet, to furnish, at the prospective tenant's request, a signed disclosure statement detailing the property's compliance with local and state fire, plumbing, and electrical codes (Tenn. Code Ann. § 66-7-108).

TEXAS

Texas requires sellers of commercial property to provide the buyer with a copy of each Certificate of Mold Damage Remediation issued for the property during the previous five years (Tex. Occ. Code Ann. § 1958.154(b)). Also, sellers of property containing underground or aboveground storage tanks must provide written notice to the buyer of the tank owner's obligations to register and comply with self-certification and certain construction and notification requirements (30 Tex. Admin. Code § 334.9).

WASHINGTON

Washington requires sellers to disclose a wide range of concerns to prospective commercial buyers, including information on the property title; water rights; property structure, systems and fixtures; and environmental issues (Wash. Rev. Code § 64.06.013). (See Attachment 1 for the statutory form.) These disclosures are required, unless the buyer waives the right to receive it, before a commercial property closing.

The disclosure statement must be provided within five business days, or, as otherwise agreed to, after mutual acceptance of a written purchase agreement. Within three business days of receiving the disclosure statement, the buyer has the right to approve and accept it or rescind the purchase agreement. If the seller fails to provide the statement, the buyer has until the transfer has closed to rescind the transaction. If the disclosure statement is delivered late, the buyer's right to rescind expires three days after receipt of the statement.

DC:ro

Attachment 1: Washington Commercial Disclosure Form (Wash. Rev. Code § 64.06.013)

(1) In a transaction for the sale of commercial real estate, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT ## ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND

PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS, OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE AND LEGAL

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | A. Do you have legal authority to sell the property? If no, please explain. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any encroachments, boundary agreements, or boundary disputes? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *D. Is there any leased parking? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *E. Is there a private road or easement agreement for access to the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *F. Are there any rights-of-way, easements, shared use agreements, or access limitations? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *G. Are there any written agreements for joint maintenance of an easement or right-of-way? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *H. Are there any zoning violations or nonconforming uses? |

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *I. Is there a survey for the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *J. Are there any legal actions pending or threatened that affect the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *K. Is the property in compliance with the Americans with Disabilities Act? |

2. WATER

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *Are there any water rights for the property, such as a water right permit, certificate, or claim? |
|------------------------------|-----------------------------|-------------------------------------|--|

3. SEWER/ON-SITE SEWAGE SYSTEM

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|---|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service? |
|------------------------------|-----------------------------|-------------------------------------|---|

4. STRUCTURAL

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *A. Has the roof leaked within the last five years? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *B. Has any occupied subsurface flooded or leaked within the last five years? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Have there been any conversions, additions, or remodeling? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *(1) If yes, were all building permits obtained? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *(2) If yes, were all final inspections obtained? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *D. Has there been any settling, slippage, or sliding of the property or its improvements? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *E. Are there any defects with the following: (If yes, please check applicable items and explain.) |

Slab Floors
Doors

Outbuildings
Exterior Walls

Ceilings
Sidewalks
Other
Interior Walls
Windows

Siding

5. SYSTEMS AND FIXTURES

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *Are there any defects in the following systems? If yes, please explain. |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | (1) Electrical system |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | (2) Plumbing system |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | (3) Heating and cooling systems |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | (4) Fire and security system |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | (5) Carbon monoxide alarms |

6. ENVIRONMENTAL

- | | | | |
|------------------------------|-----------------------------|-------------------------------------|--|
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *B. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *C. Are there any shorelines, wetlands, floodplains, or critical areas on the property? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *D. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *E. Is there any soil or groundwater contamination? |
| <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Don't know | *F. Has the property been used as a legal or illegal dumping site? |

Yes No Don't know

*G. Has the property been used as an illegal drug manufacturing site?

7. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

Yes No Don't know

*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE
..... SELLER SELLER

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE

BUYER

BUYER

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.