

SELLER AND AGENT LIABILITY FOR PROPERTY DEFECTS

Seller's Disclosure Act MCL 565.951 of 1993

- **All Michigan residential sales are subject to this act.**
- **All sellers of residential property defined as four or fewer dwelling units must deliver to the prospective buyer prior to execution of the sales agreement. The statutory form of SDS**
- **The SDA applies to sales, exchanges, land contracts, options, leases that include options or tenant improvements and co-op sales.**
- **It does not apply to a number of exempt transactions, including sales by licensed builders of "newly constructed residential property".**
- **The form contains specific representations as to water in the basement, roof leaks, septic tanks and drain fields, city water and sewer systems, well and pump, settling, flooding, drainage, sanitary and grade problems, infestation by wood destroying insects underground storage tanks, specified on -premises environmental hazards, and neighborhood environmental issues.**
- **Each disclosure must be made in good faith**
- **The sole and exclusive buyer remedy under the SDA is to terminate the purchase agreement**
- **There are no post-closing SDA remedies only lawsuits for fraud, deceit and misrepresentation at common law and possibly breach of contract when the purchase agreement includes warranties as to conditions that prove to be inaccurate.**
- **The form requires disclosure of any "structural/mechanical/appliance system" changes.**
- **Sellers are not liable for errors or omissions "not within their personal knowledge" and there is no duty to disclose information "that could be obtained only through inspection or observation of in accessible portions of real estate, or could be discovered only by a person with expertise in a science or trade be on the knowledge of the transferor."**

- **Generally, buyers bear the risk of loss under an “as is” contract unless the sellers failed to disclose concealed defects known to them.**
- **Sellers have a duty to disclose to the buyers any concealed conditions known to them that involve an unreasonable danger.**
- **Where evidence demonstrates a competent inspector should reasonably have been expected to have discovered the defective conditions, the conditions are not concealed, and there can be no recovery for fraudulent concealment in connection with the sale of real estate.**
- **Buyers should be aware that they are subject to sanctions if their claims are determined to be frivolous if they are devoid of legal merit.**
- **Buyers are not obligated to conduct destructive home investigations. For example, sellers that have hidden cracked foundation walls with insulation panels or covered cracked floors with carpeting.**
- **Fraud claims require a higher standard of proof than a mere preponderance of the evidence. All six of the required elements must be established.**
- **A buyer’s broker is in privity of contract with the buyer, and therefore can be liable for negligent misrepresentation.**
- **Since releases are enforceable- The seller will desire them and the buyer will ask that they be deleted. They are not enforceable if they are signed under duress or fraudulent or oppressive conduct was used to obtain the release.**
- **A seller’s agent owes no fiduciary duty to potential purchasers. A seller’s broker is not liable for negligent misrepresentation to a buyer because the required element of privity of contract is missing. However, the seller’s broker may be liable to a buyer if they acted openly with the seller in concealing information on the SDS.**
- **Sellers are liable for the statements of their agents.**
- **An agent assisting a buyer can be either a buyer agent, a subagent of the seller, a dual agent, or a transaction coordinator. Buyer’s agents obviously owe fiduciary duties to the buyers. A dual agent can obtain a contractual waiver as to fiduciary duties, which is understandable, given the potential conflicts.**

- **Home inspectors limit their liability to the amount paid for the inspection fee. Such limitations have been upheld**
- **Caveat emptor and as is clauses and home inspections and the sellers disclosure statement protects sellers from most potential buyer claims.**
- **However, false or misleading statements by sellers or their agents or concealed defects can still provide recourse for aggrieved buyers**

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