

# DISCLOSURE

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Disclosure is an essential part of being a seller or a real estate licensee in Minnesota. It is important to understand what information is required to be disclosed as part of a real estate transaction, when and how disclosures must be given, whether they can be waived, and more. The most cumbersome and largest disclosure requirement on sellers of property intended for single family residential use and licensees in Minnesota is disclosure of material facts related to a property. However, there are other state and federal disclosure requirements that must also be made for both residential and commercial properties. Below is a summary of the disclosures required to be given by Minnesota sellers and/or licensees, with statutory references, all of which modify the common law duties with respect to disclosure:

- Material Fact Disclosure:
  - Required for seller of property intended to be used for single family residential use (**Minn. Stat. § 513.55**<sup>1</sup>)
  - Required for licensee (**Minn. Stat. § 82.68**<sup>2</sup>)
- Other Specific Disclosures:
  - Subsurface Sewage Treatment (**Minn. Stat. § 115.55**<sup>3</sup>)
  - Private Well (**Minn. Stat. § 103I.235**<sup>4</sup>)
  - Methamphetamine (**Minn. Stat. § 152.0275**<sup>5</sup>)
  - Radon (**Minn. Stat. § 144.496**<sup>6</sup>)
  - Airport Zoning (**Minn. Stat. § 82.68**<sup>7</sup>; **513.56**<sup>8</sup>)
  - Predatory Offenders (**Minn. Stat. § 82.68**<sup>9</sup>; **513.56**<sup>10</sup>)
  - Lead Paint (**42 U.S.C. § 4852d**<sup>11</sup>)

## SELLER DISCLOSURES

Sellers of residential real property generally have duties to disclose material facts regarding properties they sell in Minnesota. There are also several other specific disclosure requirements under Minnesota law and federal law. They are outlined below, along with the specific rules, exceptions, waiver options, and more.

### Material facts and how to disclose.

Prior to entering into a purchase agreement to sell or transfer property intended for use as single family residential real property (including that which is being purchased for investment purposes, such as rental, if single family), a seller must disclose all known material facts to a prospective buyer that may affect an ordinary buyer's use or enjoyment of the property or any intended use of the property of which the seller is aware.

The disclosure must be made in writing, to the best of the seller's knowledge, before entering into a purchase agreement and must be made in good faith. The seller may tell the licensee representing the buyer, who can pass it on to the buyer, rather than giving it to the buyer directly. See **Minn. Stat. § 513.55**<sup>12</sup>. The seller must also amend, as soon as possible, his or her disclosure in writing if a former disclosure was or becomes inaccurate, or if a new material fact emerges before closing. See **Minn. Stat. § 513.58**<sup>13</sup>.

Alternatively, the seller may opt to have qualified third-party inspector, who the seller believes has the expertise necessary to conduct such an inspection, conduct an inspection and turn that inspection report over to the buyer. However, the seller is still liable to disclose any additional facts the seller is aware that

1 <https://www.revisor.mn.gov/statutes/cite/513.55>

2 <https://www.revisor.mn.gov/statutes/cite/82.68>

3 <https://www.revisor.mn.gov/statutes/cite/115.55>

4 <https://www.revisor.mn.gov/statutes/cite/103I.235>

5 <https://www.revisor.mn.gov/statutes/cite/152.0275>

6 <https://www.revisor.mn.gov/statutes/cite/144.496>

7 <https://www.revisor.mn.gov/statutes/cite/82.68>

8 <https://www.revisor.mn.gov/statutes/cite/513.56>

9 <https://www.revisor.mn.gov/statutes/cite/82.68>

10 <https://www.revisor.mn.gov/statutes/cite/513.56>

11 <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap63A-subchapl-sec4852d.pdf>

12 <https://www.revisor.mn.gov/statutes/cite/513.55>

13 <https://www.revisor.mn.gov/statutes/cite/513.58>

were not included in the written report, or make any changes the seller knows were inaccurate, with respect to the inspection report. See [Minn. Stat. § 513.56](#)<sup>14</sup>.

The MNR has developed the **Disclosure Statement: Seller’s Property Disclosure Statement**, **Disclosure Statement: Vacant Land**, and **Disclosure Statement: Seller’s Disclosure Alternatives** forms to assist the seller in making their material fact and other legally required disclosures. **The Disclosure Statement: Seller’s Property Disclosure Statement and the Disclosure Statement: Vacant Land** are designed as a comprehensive disclosure to be filled out to the best of the seller’s knowledge; however, if the seller knows of a material fact that is not already asked on either form, the seller is still legally obligated to disclose the material fact. Conversely, if the seller doesn’t know the answers to the questions, there is no need to seek out the information because the standard is the best of the seller’s knowledge. Note that when the seller answers “No” to questions on these disclosure forms, it may mean that the seller is unaware. It does not necessarily mean that the issue does not exist, did not occur, or does not apply.

The **Disclosure Statement: Seller’s Disclosure Alternatives** form has two options: the option to obtain a third-party inspection and supplement with additional material facts and changes, or the waiver. The first option — the inspection — carries the exact same burden as material fact disclosure, because the seller is required to supplement with additional or contrary knowledge. The second option allows for a waiver of material fact disclosure. However, the form still contains all other disclosure required by law that are not waivable.

In both cases, these forms are to be filled out and signed by the seller, not the Realtor<sup>®</sup>. If the Realtor<sup>®</sup> has any material fact disclosures to make, those should be done in a separate writing.

### **Definition of Material Fact for Purposes of Residential Property.**

A material fact is defined as one that “could adversely or significantly affect:

1. an ordinary buyer’s use and enjoyment of the property; or
2. any intended use of the property of which the seller is aware.” See [Minn. Stat. § 513.55](#)<sup>15</sup>.

By statute, disclosure of material facts does not require disclosure of:

- Predatory offenders within proximity to the property, so long as a general disclosure states that a buyer may contact local law enforcement and governmental agencies to discover this information.
- Whether the property was the site of a suicide, accidental death, natural death, or paranormal activity.
- Whether the property was occupied by someone who may be infected with HIV or diagnosed with AIDS.
- Whether the property is located near any adult family home, community-based residential facility, or nursing home.
- Airport zoning regulations, so long as the seller provides a written notice stating that information may be obtained with the county recorder.

See [Minn. Stat. § 513.56](#)<sup>16</sup>.

Determining what kind of fact constitutes a material fact to an ordinary buyer can be a challenge for sellers and their Realtors<sup>®</sup>. Unless the seller is obtaining a waiver of their material fact disclosure obligations, the best policy is to disclose, if there is any doubt that a fact could be material — this method typically leads to less negative

14 <https://www.revisor.mn.gov/statutes/cite/513.56>

15 <https://www.revisor.mn.gov/statutes/cite/513.55>

16 <https://www.revisor.mn.gov/statutes/cite/513.56>

effects than if a material fact is not disclosed, as the latter can lead to a lawsuit or an arbitration. However, if the seller and Realtor<sup>®</sup> are unsure, they should ask themselves questions like:

- If I were the buyer, would I want to know about this issue?
- Will this issue cost the buyer money?
- Is this issue related to the reason I'm moving from the property?
- Do I know of a specific reason that this buyer wants my property? Does this issue change that?
- Will this issue disturb the buyer's use or enjoyment of the property?

### Waiver of Material Fact Disclosure Obligations.

A seller's material fact disclosure obligation may be waived if the prospective buyer agrees in writing. See [Minn. Stat. § 513.56](#)<sup>17</sup>. The **Disclosure Statement: Seller's Disclosure Alternatives**; option 2 is designed for a waiver of seller's material fact disclosure requirements.

### Selling "as is".

The Minnesota Realtors<sup>®</sup> (MNR) **Addendum to Purchase Agreement: Buyer Purchasing "As Is" and Limitation of Seller Liability** seeks to eliminate all claims from a buyer against a seller and should be used only in conjunction with the waiver of material fact option discussed above. Keep in mind that selling a property "as is" alone (without the **Disclosure Statement: Seller's Disclosure Alternatives** waiver option) does not eliminate the seller's obligation to make required material fact or other disclosures regarding the property and does not follow the intended use of the MNR As Is form.

#### Caution on Waiver Provision:

- There is some legal uncertainty regarding the scenario where the seller clearly knew of a material fact and convinced a buyer to sign a waiver of the seller disclosure requirements for the purpose of not having to disclose that material fact.
- When a seller demands a waiver from the buyer of their statutory seller disclosure obligations, such a demand may have an adverse impact on the marketability of the home. In other words, it may send a "red flag" to prospective buyers that there is something wrong with the home that the seller does not want to disclose.
- There are some circumstances that make a waiver a better option for the seller. Some examples may include an absentee property owner, estates, and the sale of a foreclosed property by a lender. However, even in these circumstances the seller would still only be required to disclose material facts to the best of their knowledge, even if there is relatively little or no knowledge. Thus, a waiver is not required to be used.
- It is also in a licensee's interest to have the seller disclose material facts of which they are aware, because licensees may not obtain a waiver from a prospective buyer; thus, the licensee will have to make material fact disclosures of which he or she is aware anyway.
- If a seller completes the **Disclosure Statement: Seller's Disclosure Alternatives**, using the waiver option, and the buyer agrees, then the seller should not disclose anything. Making a partial disclosure after a waiver creates legal uncertainty, because the buyer may be relying on the seller's representations despite the waiver. Generally, if the seller has questions regarding the effects of these forms, the Realtor<sup>®</sup> should let the seller know that he or she should contact an attorney.

17 <https://www.revisor.mn.gov/statutes/cite/513.56>

## Exceptions to Disclosure Obligations.

According to **Minn. Stat. § 513.54**<sup>18</sup>, the seller disclosure requirements do not apply to any of the following:

- real property that is not single family residential real property or intended for that use;
- a gratuitous transfer;
- a transfer pursuant to a court order;
- a transfer to a government or governmental agency;
- a transfer by foreclosure or deed in lieu of foreclosure;
- a transfer to heirs or devisees of a decedent;
- a transfer from a co-tenant to one or more other co-tenants;
- a transfer made to a spouse, parent, grandparent, child, or grandchild of the seller;
- a transfer between spouses resulting from divorce;
- a transfer of newly constructed residential property that has not been inhabited;
- an option to purchase a unit in a CIC, until exercised;
- a transfer to a person who controls or is controlled by the grantor as those terms are defined with respect to a declarant under **Minn. Stat. § 515B.1-103, clause (2)**<sup>19</sup>;
- a transfer to a tenant who is in possession of the residential real property; or
- a transfer of special declarant rights under **Minn. Stat. § 515B.3-104**<sup>20</sup>.

## Liability of Seller.

Because material facts must be to the best of a seller's knowledge, in order for a buyer to successfully prove that a material fact was not disclosed, the buyer would need to prove:

- There is a material fact about the property that wasn't disclosed;
- The seller knew about the material fact at the time of the sale (not after closing); and
- The seller did not disclose it to the buyer OR the licensee representing or assisting the buyer.

It is NOT a violation of the seller disclosure law if the seller fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of the real estate or that could be discovered only by a person with expertise in a science or trade beyond the knowledge of the seller.

If a seller has failed to disclose a material fact, the buyer has two years to bring a civil action and recover damages. See **Minn. Stat. § 513.57**<sup>21</sup>. The buyer may not invalidate the property transfer on the basis of failure to disclose. See **Minn. Stat. § 513.59**<sup>22</sup>. Furthermore, the statutory requirement is disclosure; the disclosures made do not constitute any warranty by the seller and are not part of the purchase agreement. Thus, buyer's should be reminded to ascertain for himself/herself the condition of the property.

Additionally, MNR endorses a voluntary arbitration program administered by the **National Center for Dispute Settlement**<sup>23</sup> (NCDS) for disputes related to material facts. If the Arbitration Agreement is signed by all parties and all licensees involved in the transaction at the time of the purchase agreement, this Agreement is binding upon all parties and licensees and requires arbitration through NCDS instead of a lawsuit to resolve material fact

18 <https://www.revisor.mn.gov/statutes/cite/513.54>

19 <https://www.revisor.mn.gov/statutes/cite/515B.1-103>

20 <https://www.revisor.mn.gov/statutes/cite/515B.3-104>

21 <https://www.revisor.mn.gov/statutes/cite/513.57>

22 <https://www.revisor.mn.gov/statutes/cite/513.59>

23 <https://www.ncdsusa.org/index.php?id=26>

disputes. The instructions for how to handle a dispute, along with the 24-month deadline to file, are outlined in the Arbitration Agreement, and NCDS — not MNR — should be contacted in the event an arbitration is necessary. NCDS has specific **rules and procedures for arbitrations conducted under this endorsed program**<sup>24</sup>, and a **fee schedule**<sup>25</sup> on its website.

## Other Disclosures (not waivable).

Minnesota law requires other specific disclosures that cannot be waived like the seller material fact disclosure. These disclosures must be given as prescribed by their specific corresponding Minnesota Statutes and most apply to both residential and commercial property transactions.

### Subsurface Sewage Treatment.

First, the seller of any real property is required to disclose, prior to entering into an agreement to sell or transfer real property, whether sewage goes to a facility permitted by the Minnesota Pollution Control Agency (MPCA) or to a non-permitted facility, like a private sewage treatment system. If the facility is not permitted, the seller must describe the system in use, including providing a legal description and a map of the location of the system. The seller must disclose the compliance status of the system, and whether there is a straight-pipe system. MNR has prompted this information with questions in the **Disclosure Statement: Seller's Property Disclosure Statement**, **Disclosure Statement: Vacant Land**, and **Disclosure Statement: Seller's Disclosure Alternatives** forms and has created the **Disclosure Statement: Subsurface Sewage Treatment System** and the **Location Map** forms to make these required disclosures. See **Minn. Stat. § 115.55, sub. 6**<sup>26</sup> for more details.

### Private Well.

The seller must disclose any known well on the property, including the status (e.g., in use, not in use, sealed — see “Environmental Issues: Wells” above) and location of the well. This disclosure is required prior to entering into an agreement to sell or transfer the property, but there is also a well disclosure requirement at the time of closing: the well disclosure certificate must be provided. Prior to an agreement to sell or transfer the property, any known wells' location should be described using a map and a legal description. MNR has prompted this information with questions in the **Disclosure Statement: Seller's Property Disclosure Statement**, **Disclosure Statement: Vacant Land**, and **Disclosure Statement: Seller's Disclosure Alternatives** forms and has created the **Disclosure Statement: Well** and the **Location Map** forms to make these disclosures. See **Minn. Stat. § 103I.235**<sup>27</sup> for more details. Note that if the property is part of a condominium as defined in Chapters 515 or 515B, a seller of an individual unit within the condominium is not required to make the well disclosure; however, this exception does not apply to all CICs — just condominiums. See **Minn. Stat. § 103I.235, subd. 1(e)(1)**<sup>28</sup>.

### Methamphetamine.

The seller any real property must disclose if they have knowledge of methamphetamine production (not just use) on the property. If the property has had methamphetamine production on site, then the seller must disclose whether an order was issued and/or vacated with respect to that property, and whether there has been any remediation. MNR has prompted this information with questions in its **Disclosure Statement: Seller's Property Disclosure Statement**, **Disclosure Statement: Vacant Land**, and **Disclosure Statement: Seller's Disclosure**

24 [https://www.ncdsusa.org/documents/Minnesota Residential Fee Schedule\(1\).pdf](https://www.ncdsusa.org/documents/Minnesota%20Residential%20Fee%20Schedule(1).pdf)

25 [https://www.ncdsusa.org/documents/Minnesota Residential Fee Schedule\(1\).pdf](https://www.ncdsusa.org/documents/Minnesota%20Residential%20Fee%20Schedule(1).pdf)

26 <https://www.revisor.mn.gov/statutes/cite/115.55>

27 <https://www.revisor.mn.gov/statutes/cite/103I.235>

28 <https://www.revisor.mn.gov/statutes/cite/103I.235>



**Alternatives forms**, and the supplemental **Disclosure Statement: Methamphetamine Production** form to be used if there is known methamphetamine production on the property. See [Minn. Stat. § 152.0275](#)<sup>29</sup> for more details.

### **Radon.**

The seller of residential property, or property intended for single family residential use, must disclose whether radon testing has occurred on the property, the most current records and reports pertaining to radon concentrations within the dwelling, information regarding the radon mitigation systems, including system description and documentation, if such system has been installed in the dwelling, . The seller is also required to provide the buyer with a copy of the Minnesota Department of Health publication entitled, “[Radon in Real Estate Transactions](#)<sup>30</sup>.” Finally, the seller must also provide the following statement to the buyer:

#### **Radon Warning Statement**

The Minnesota Department of Health strongly recommends that ALL homebuyers have an indoor radon test performed prior to purchase or taking occupancy, and recommends having the radon levels mitigated if elevated radon concentrations are found. Elevated radon concentrations can easily be reduced by a qualified, certified, or licensed, if applicable, radon mitigator.

Every buyer of any interest in residential real property is notified that the property may present exposure to dangerous levels of indoor radon gas that may place the occupants at risk of developing radon-induced lung cancer. Radon, a Class A human carcinogen, is the leading cause of lung cancer in nonsmokers and the second leading cause overall. The seller of any interest in residential real property is required to provide the buyer with any information on radon test results of the dwelling.

[Minn. Stat. § 144.496, subd 4](#)<sup>31</sup>.

MNR has placed this written notice and addressed other radon disclosure requirement in its **Disclosure Statement: Seller’s Property Disclosure Statement** and **Disclosure Statement: Seller’s Disclosure Alternatives** forms. See [Minn. Stat. § 144.496](#)<sup>32</sup> for more details.

### **Airport Zoning.**

A stated earlier, airport zoning regulations do not need to be disclosed if the seller provides a written notice that airport zoning regulations may be obtained from the county recorder’s office. MNR has placed this written notice in its **Disclosure Statement: Seller’s Property Disclosure Statement**, **Disclosure Statement: Vacant Land**, and **Disclosure Statement: Seller’s Disclosure Alternatives** forms. See [Minn. Stat. § 82.68](#)<sup>33</sup>; and [513.56](#)<sup>34</sup> for more details.

### **Predatory Offenders.**

As stated earlier, the material fact disclosure statute specifically states that there is no duty to disclose predatory offenders if a written notice is provided that indicates to prospective buyers that they can obtain information regarding predatory offenders by contacting law enforcement or the Department of Corrections. MNR has placed this written notice in its **Disclosure Statement: Seller’s Property Disclosure Statement**, **Disclosure Statement:**

29 <https://www.revisor.mn.gov/statutes/cite/152.0275>

30 <https://www.health.state.mn.us/divs/eh/indoorair/radon/realestatedis.pdf>

31 <https://www.revisor.mn.gov/statutes/cite/144.496>

32 <https://www.revisor.mn.gov/statutes/cite/144.496>

33 <https://www.revisor.mn.gov/statutes/cite/82.68>

34 <https://www.revisor.mn.gov/statutes/cite/513.56>

**Vacant Land, and Disclosure Statement: Seller’s Disclosure Alternatives** forms. See **Minn. Stat. § 82.68**<sup>35</sup> and **513.56**<sup>36</sup> for more details.

### Lead-Based Paint.

Additionally, there is one disclosure that is required by federal law related to lead-based paint. The lead-based paint disclosure must be a part of the purchase agreement or lease, unlike the other disclosures that are generally required to be disclose before entering into the purchase agreement, and must be given for all housing properties built prior to 1978. The seller must provide a pamphlet, “**Protect Your Family from Lead in Your Home**<sup>37</sup>,” and must disclose known lead-based paint hazards. The seller must give the buyer a chance to conduct an inspection and make the purchase agreement contingent on the inspection results. See **42 U.S.C. § 4852d**<sup>38</sup> for more details. MNR has created the **Addendum to Purchase Agreement: Disclosure of Information on Lead Based Paint and Lead-Based-Paint Hazards** to address this requirement. Additionally, sellers cannot decline to accept an offer, or make an offer acceptance contingent on a waiver of a lead-based paint inspection and contingency; however, the inspection period may be waived, shortened or lengthened by a mutual written agreement. See the Environmental Concerns: Lead-Based Paint section for more information.

### Other.

There may be other local, state, or federal disclosure requirements that apply to the specific property in a transaction. Remember, a waiver of disclosure requirements only waives material fact disclosures — other disclosure requirements may not be waived unless the law provides otherwise.

## Licensee Disclosures

### Licensee material fact disclosure.

Real estate licensees have both a statutory duty (similar to sellers of residential property) to disclose material facts, and a **Realtor® Code of Ethics**<sup>39</sup> duty as well.

#### Statutory Component.

Just as sellers of single-family residential property have a duty to disclose material facts of which they are aware regarding their property, real estate licensees are required to disclose material facts of which they are aware regarding property in which they are assisting with the sale, both as a buyer’s representative and a seller’s representative. The major difference is that real estate licensees must disclose material facts regarding any property — not just residential property. The duty of disclosure for real estate licensees is found in **Minn. Stat. § 82.68, subd. 3**<sup>40</sup>.

The standard is the same: a material fact is defined as one that “could adversely or significantly affect:

1. an ordinary buyer’s use and enjoyment of the property; or

35 <https://www.revisor.mn.gov/statutes/cite/82.68>

36 <https://www.revisor.mn.gov/statutes/cite/513.56>

37 <https://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure>

38 <https://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap63A-subchapl-sec4852d.pdf>

39 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

40 <https://www.revisor.mn.gov/statutes/cite/82.68>



2. any intended use of the property of which the licensee is aware.” See **Minn. Stat. § 82.68, subd. 3**<sup>41</sup>.

The exceptions to the disclosure requirement and other details are also the same. A licensee does not have to disclose:

- Predatory offenders within proximity to the property, so long as a general disclosure states that a buyer may contact local law enforcement and governmental agencies to discover this information.
- Whether the property was the site of a suicide, accidental death, natural death, or paranormal activity.
- Whether the property was occupied by someone who may have been infected with HIV or diagnosed with AIDS.
- Whether the property is located near any adult family home, community-based residential facility, or nursing home.
- Airport zoning regulations, so long as the licensee provides a written notice stating that information may be obtained with the county recorder.

Finally, the alternative of providing a third-party inspection report is also the same: the licensee would be obligated to disclose material facts of which they are aware that are not included in the written report and make corrections to inaccurate information contained in the report, to the best of his or her knowledge.

Although not specifically required by statute to be in writing, licensees should make material fact disclosures in writing. Licensees should not use the **MNR Disclosure Statement forms**, as these were developed for the sellers’ use. Salespersons should consult with their broker regarding disclosures being made by the salesperson independent of the seller’s disclosure.

Licensees should be careful to follow the disclosure requirements, as **Minn. Stat. § 82.83**<sup>42</sup> states that any person who violates any provision of **Chapter 82**<sup>43</sup>, or any rule or order of the commissioner, shall be guilty of a gross misdemeanor and are subject to sanctions of up to \$10,000 per violation.

### **Realtor® Pertinent Fact Disclosure.**

The duty to disclose pertinent facts related to the property or transaction is found in Article 2 of the Realtor® **Code of Ethics**<sup>44</sup>. It states:

Realtors® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law.

- Standard of Practice 2-1 Realtors® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the Realtor® the obligation of expertise in other professional or technical disciplines.
- Standard of Practice 2-4 Realtors® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.
- Standard of Practice 2-5 Factors defined as “non-material” by law or regulation, or which are expressly referenced in law or regulation as not being subject to disclosure are considered not “pertinent” for purposes of Article 2.

41 <https://www.revisor.mn.gov/statutes/cite/82.68>

42 <https://www.revisor.mn.gov/statutes/cite/82.83>

43 <https://www.revisor.mn.gov/statutes/cite/82>

44 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

Thus, Realtors<sup>®</sup> are obligated to discover and disclose adverse factors that are reasonably apparent to someone with their expertise. A Realtor<sup>®</sup> could be found in violation of Article 2 even if the Realtor<sup>®</sup> didn't have actual knowledge of the pertinent fact, if the Realtor<sup>®</sup> should have discovered it, but chose to ignore it. Realtors<sup>®</sup> are not required, though, to discover latent (or hidden) defects. In determining whether a Realtor<sup>®</sup> has violated Article 2, a Hearing Panel will consider whether the disclosure of the fact in question could have had an effect on a reasonable purchaser's decision.

Further, although some might consider certain facts to be material, they are not required to be disclosed if there is an exemption under state law. For instance, specific information regarding a natural death or suicide on the property need not be disclosed, as Minnesota law exempts that information.

Again, these disclosures should be made in writing prior to the buyers/tenants entering into a purchase agreement/lease.

### Disclosure Related to the Results of an Inspection.

Many times, listing agents have a difficult decision to make regarding what to do with potentially negative results of an inspection by a potential buyer who canceled their purchase agreement. Licensees should determine whether the fact is material to the use or enjoyment of the property, and also whether it is truly a fact. This analysis can depend on who is alleging the fact, whether it can be verified, and more. Of course, the safest course of action is to disclose the negative result when in doubt. For more information, see the "Point of Sale Inspections" section.

## Licensee other disclosures.

While licensees do not have the same disclosures that sellers do, licensees also have other disclosures that must be made related to a real estate transaction.

### Agency and other Disclosures to Consumers/Clients.

Agency disclosure is required at the first substantive contact with any customer, buyer or seller. This disclosure is made using a statutory form entitled **Agency Relationships in Real Estate Transactions** found in **Minn. Stat. § 82.67**<sup>45</sup>. (See "Agency Law" section above).

Additionally, licensees must make specific disclosures, as outlined in **Minn. Stat. § 82.66**<sup>46</sup> in their listing and buyer representation contracts, such as the disclosure related to dual agency found in **Minn. Stat. § 82.66, subd. 1 (b)**<sup>47</sup> and protective lists found in **Minn. Stat. § 82.66, subd. 1 (e)**<sup>48</sup> for nonresidential properties.

Realtors<sup>®</sup> are obligated under Article 1 of the **Code of Ethics**<sup>49</sup>, when entering into listing contracts, to advise sellers/landlords of:

1. their company policies regarding cooperation and the amount(s) of any compensation that will be offered to buyer/tenant agents, and/or brokers acting as facilitators;
2. the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and

45 <https://www.revisor.mn.gov/statutes/cite/82.67>

46 <https://www.revisor.mn.gov/statutes/cite/82.66>

47 <https://www.revisor.mn.gov/statutes/cite/82.66>

48 <https://www.revisor.mn.gov/statutes/cite/82.66>

49 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

3. any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents;

When entering Into buyer/tenant agreements, Realtors<sup>®</sup> must advise potential clients of:

1. the REALTOR<sup>®</sup>'s company policies regarding cooperation;
2. the amount of compensation to be paid by the client;
3. the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
4. any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
5. the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties.

### Disclosure of Licensee Status and Related.

In Minnesota, licensees are required by law to be completely upfront regarding their status as licensees. **Minn. Stat. § 82.68, subd.1**<sup>50</sup> sets limitations on how licensees can present themselves to the public and requires a licensee to disclose to consumers the licensed name of the broker to whom they are licensed. It states:

A salesperson shall only conduct business under the licensed name of and on behalf of the broker to whom the salesperson is licensed. An individual broker shall only conduct business under the broker's licensed name. A broker licensed to a business entity shall only conduct business under the licensed business entity name. A licensee shall affirmatively disclose, before the negotiation or consummation of any transaction, the licensed name of the broker under whom the licensee is authorized to conduct business.

Licensees are also required to utilize their full name (not nicknames) as it appears on the license, unless certain paperwork is filed with the Secretary of State (see "Advertising" section above). Licensees should have their brokerage name and their own name on all advertising, although the brokerage name must be clearly and conspicuously displayed. See **Minn. Stat. § 82.69**<sup>51</sup>. Article 12 of the **Code of Ethics**<sup>52</sup> also requires Realtors<sup>®</sup> to disclose the name of that Realtors<sup>®</sup> firm in a reasonable and readily apparent manner in advertisements. Article 12 also requires Realtors<sup>®</sup> disclose on their firm websites both the firm name and the state(s) of licensure in a reasonable and readily apparent manner.

### Disclosure of Realtor<sup>®</sup> Status and Related.

Article 3, Standard of Practice 3-7 of the **Code of Ethics**<sup>53</sup> requires Realtors<sup>®</sup> disclose their Realtor<sup>®</sup> status when they are seeking Information from another Realtor<sup>®</sup> concerning a property under a management or listing agreement. Realtors<sup>®</sup> must also disclose whether the interest is personal or on behalf of a client, and if on behalf of a client, their relationship with the client.

### Real Estate Licensees with a Financial Interest in the Transaction.

According to **Minn. Stat. § 82.68, subd. 2**<sup>54</sup>, licensees must disclose to consumers if they have a financial interest in a real estate transaction or subject property. This should be disclosed in writing, prior to any negotiations and

50 <https://www.revisor.mn.gov/statutes/cite/82.68>

51 <https://www.revisor.mn.gov/statutes/cite/82.69>

52 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

53 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

54 <https://www.revisor.mn.gov/statutes/cite/82.68>

prior to any purchase agreement being signed. The disclosure should state in what capacity licensee is acting (e.g., buyer or agent), and whether the licensee intends to acquire any sort of financial interest in the property.

This is true even if the licensee is purchasing the property through a company in which he or she is the sole member, or only has a partial interest therein. It is also true if the licensee plans to eventually purchase from the buyer in the instant transaction. The licensee must disclose in writing regarding whether the licensee is a relative or business associate of the actual party in the transaction.

This rule is encompassed by many rules in the **Realtor® Code of Ethics**<sup>55</sup> as well. Article 4 states that Realtors® must disclose in writing their status as a buyer of real property prior to entering into a purchase agreement and further prohibits Realtors® from acquiring an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof or any entities in which they have an ownership interest without making their true position known to the owner or the owner's agent or broker. Article 5 states that Realtors® cannot provide professional services related to a property in which they have a financial interest, unless it's disclosed.

Furthermore, disclosure of financial interest is generally required by the **Realtors® Code of Ethics**<sup>56</sup>. Article 6 requires disclosure of any profits received from expenditures made for the client, unless the client has knowledge and has consented. Article 11 requires that Realtors® disclose any conflict of interest in preparing a price opinion.

Finally, Article 12 requires Realtors®, when advertising unlisted real property for sale/lease in which they have an ownership interest, to disclose their status as both owners/landlords and as Realtors® or real estate licensees.

#### **Disclosure Related to Non-Performance of Parties.**

**Minn. Stat. § 82.68, subd. 4**<sup>57</sup> requires that when a licensee has been given notice by any party to a real estate transaction that the person will not perform in accordance with the terms of a purchase agreement, the licensee must immediately disclose that fact to the other party or parties to the transaction.

Whenever reasonably possible, the licensee must inform the party who will not perform of the licensee's obligation to disclose this fact to the other party or parties to the transaction prior to making the disclosure.

## **DISCLOSURES IN COMMERCIAL TRANSACTIONS**

Although many disclosures are not required in typical commercial transactions, such as material fact disclosures from a seller, there are still several disclosures that are required. First, licensees must disclose material facts, regardless of the type of property. Second, many required disclosures discussed above must still be done for all types of transactions and properties. These include:

- Wells
- Subsurface sewage treatment systems
- Predatory offenders
- Airport zoning
- Methamphetamine production

55 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

56 <https://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics>

57 <https://www.revisor.mn.gov/statutes/cite/82.68>

Finally, while agency disclosure may not be required for purchase of commercial property, most of the licensee-specific disclosures must also be given, regardless of transaction type. These include:

- Protective list disclosure
- Disclosure of licensee status, brokerage name, etc.
- Disclosure of financial interests
- Material fact disclosure
- Disclosure of nonperformance of a party

## Commercial purpose versus commercial property.

Licenses must think about both the type of property that is being sold, and the intended use. For instance, many disclosure laws state that a disclosure must be made if a property is “residential property” or “intended for single family residential use” (e.g., radon, material fact, agency, lead-based paint). If a buyer intends to use the property for his or her rental investment portfolio and not for the buyer’s own residential use, some might think that the buyer is actually buying the property for a commercial reason. However, the property is still going to be used as a residence for someone, and thus, those disclosures must still be given.

## No disclosure form.

Commercial transactions tend to be more sophisticated and complex. Even though many disclosures are required, the MNR has not developed a disclosure statement aimed at commercial transactions, both because each transaction can be so unique, a standardized form would not work in many cases. Also, because typically buyers and sellers are more sophisticated, they are likely to take the steps necessary to protect their substantial business investment.

Also, commercial transactions often involve more elaborate and sophisticated inspections than one might not find in a residential purchase. For instance, the buyer or seller might have a Phase I or Phase II environmental study done to determine whether the site is a Superfund and is subject to **Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**<sup>58</sup>, in addition to site inspections and more “due diligence” by the buyer to determine the condition of the property. Many times there is a due diligence/inspection contingency period written into a commercial purchase agreement, affording the buyer ample opportunity to identify facts he or she wants to know about the property.

Finally, commercial properties are quite different from residential properties in their use and intended use. In many residential property sales, the seller is a homeowner who has lived in the home personally, and who has significant first-hand knowledge of the property. It would seem logical that the seller is in the best position to identify the potential problems or past history of the property, and the buyer would want to be armed with the information known to the seller. In commercial property sales, by contrast, the property very well may be strictly an income-producing property, which the seller may not have ever occupied as a tenant. In many instances, the information the buyer might want to know about the property is as readily available to the buyer as it might be to the seller.

58 <https://www.epa.gov/superfund/superfund-cercla-overview>

## RESOURCES ON DISCLOSURE:

### MINNESOTA STATUTES

**Chapter 82: Real Estate Brokers and Salespersons:** [www.revisor.mn.gov/statutes/cite/82](http://www.revisor.mn.gov/statutes/cite/82)

**82.66: Contracts:** [www.revisor.mn.gov/statutes/cite/82.66](http://www.revisor.mn.gov/statutes/cite/82.66)

**82.67: Agency Disclosure Requirements:** [www.revisor.mn.gov/statutes/cite/82.67](http://www.revisor.mn.gov/statutes/cite/82.67)

**82.68: Other Disclosure Requirements:** [www.revisor.mn.gov/statutes/cite/82.68](http://www.revisor.mn.gov/statutes/cite/82.68)

**82.69: Advertising Requirements:** [www.revisor.mn.gov/statutes/cite/82.69](http://www.revisor.mn.gov/statutes/cite/82.69)

**82.83: Penalty:** [www.revisor.mn.gov/statutes/cite/82.83](http://www.revisor.mn.gov/statutes/cite/82.83)

**103I.235: Real Property Sale; Disclosure of Location of Wells:** [www.revisor.mn.gov/statutes/cite/103I.235](http://www.revisor.mn.gov/statutes/cite/103I.235)

**115.55: Subsurface Sewage Treatment Systems:** [www.revisor.mn.gov/statutes/cite/115.55](http://www.revisor.mn.gov/statutes/cite/115.55)

**144.496: Minnesota Radon Awareness Act:** [www.revisor.mn.gov/statutes/cite/144.496](http://www.revisor.mn.gov/statutes/cite/144.496)

**152.0275: Certain Controlled Substance Offenses; Restitution; Prohibitions on Property Use; Notice Provisions:** [www.revisor.mn.gov/statutes/cite/152.0275](http://www.revisor.mn.gov/statutes/cite/152.0275)

**273.11: Valuation of Property:** [www.revisor.mn.gov/statutes/cite/273.11](http://www.revisor.mn.gov/statutes/cite/273.11)

**Chapter 513: Agreements Relating to Property:** [www.revisor.mn.gov/statutes/cite/513](http://www.revisor.mn.gov/statutes/cite/513)

**513.54: Exceptions:** [www.revisor.mn.gov/statutes/cite/513.54](http://www.revisor.mn.gov/statutes/cite/513.54)

**513.55: General Disclosure Requirements:** [www.revisor.mn.gov/statutes/cite/513.55](http://www.revisor.mn.gov/statutes/cite/513.55)

**513.56: Disclosure Not Required:** [www.revisor.mn.gov/statutes/cite/513.56](http://www.revisor.mn.gov/statutes/cite/513.56)

**513.57: Liability for Error, Inaccuracy, or Omission:** [www.revisor.mn.gov/statutes/cite/513.57](http://www.revisor.mn.gov/statutes/cite/513.57)

**513.58: Amendment to Disclosure:** [www.revisor.mn.gov/statutes/cite/513.58](http://www.revisor.mn.gov/statutes/cite/513.58)

**513.59: Transfer not Invalidated:** [www.revisor.mn.gov/statutes/cite/513.59](http://www.revisor.mn.gov/statutes/cite/513.59)

**513.60: Waiver:** [www.revisor.mn.gov/statutes/cite/513.60](http://www.revisor.mn.gov/statutes/cite/513.60)

**515B.1-103: Definitions:** [www.revisor.mn.gov/statutes/cite/515B.1-103](http://www.revisor.mn.gov/statutes/cite/515B.1-103)

**515B.3-104: Transfer of Special Declarant Rights; Special Declarant Rights Transferred Before August 1, 2010:** [www.revisor.mn.gov/statutes/cite/515B.3-104](http://www.revisor.mn.gov/statutes/cite/515B.3-104)

### FEDERAL STATUTES

**42 U.S.C. § 4852d:** [www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap63A-subchapl-sec4852d.pdf](http://www.govinfo.gov/content/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap63A-subchapl-sec4852d.pdf)

### ENVIRONMENTAL PROTECTION AGENCY

**“Protect Your Family from Lead in Your Home” Form:**  
[www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure](http://www.epa.gov/lead/protect-your-family-lead-your-home-real-estate-disclosure)

**Superfund: CERCLA:** [www.epa.gov/superfund/superfund-cercla-overview](http://www.epa.gov/superfund/superfund-cercla-overview)

### NATIONAL ASSOCIATION OF REALTORS®

**Realtor® Code of Ethics:** [www.nar.realtor/about-nar/governing-documents/the-code-of-ethics](http://www.nar.realtor/about-nar/governing-documents/the-code-of-ethics)

### MINNESOTA REALTORS®

**Disclosure Quick Guide:** [www.mnrealtor.com/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=cfef444d-a2bf-1062-6381-0b38d6011776&forceDialog=0](http://www.mnrealtor.com/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=cfef444d-a2bf-1062-6381-0b38d6011776&forceDialog=0)

### NATIONAL CENTER FOR DISPUTE SETTLEMENT

**Real Property Disputes:** [www.ncdsusa.org/index.php?id=26](http://www.ncdsusa.org/index.php?id=26)

**Fee Schedule:** [www.ncdsusa.org/documents/Minnesota%20Residential%20Fee%20Schedule\(1\).pdf](http://www.ncdsusa.org/documents/Minnesota%20Residential%20Fee%20Schedule(1).pdf)

**Rules and Procedures:** [www.ncdsusa.org/documents/MN%20Arbitration%20Rules.pdf](http://www.ncdsusa.org/documents/MN%20Arbitration%20Rules.pdf)