
FORM 17 DO'S AND DON'TS

1. Do give the Form 17 to the sellers of residential real property or manufactured homes.

Most sellers of residential real property and manufactured homes are required by law to complete, sign, date and deliver a disclosure statement to the buyers. If the sellers fail to deliver a disclosure statement to the buyers in a covered transaction, then the buyers can rescind their offer any time before closing.

2. Don't participate in the completion of the Form 17.

The disclosures are intended to be those of the sellers – not the licensees. The sellers should complete the disclosure statement on their own with no help from the licensee. It is best for the licensee not even to be present when the sellers complete the disclosure statement, because the sellers are more apt to ask the licensee how to complete the form, if the licensee is present.

3. Do review the Form 17 for accuracy and completeness.

Although licensees should not participate in the completion of the disclosure statement, licensees may be held liable for errors, inaccuracies or omissions in the statement, if the licensee had actual knowledge of the error, inaccuracy or omission. Therefore, the licensee must review the completed form for accuracy to the best of the licensee's knowledge.

4. Do make sure that asterisked questions answered "yes" are explained and the applicable documents are attached.

The sellers are required to explain any asterisked questions answered "yes" and to attach to the disclosure statement any applicable document, such as restrictive covenants, easements, road maintenance agreements, etc. A disclosure statement without the required attachments is incomplete and the buyers may be able to avoid the agreement.

5. Don't make any reference to the Form 17 in the purchase and sale agreement, other than an acknowledgement of receipt or waiver.

Seemingly harmless references in the purchase and sale agreement to the disclosure statement can have serious consequences. For example, if the sellers agree in the purchase and sale agreement to deliver the completed disclosure statement to the buyers within five days after mutual acceptance, but fail to do so, then the sellers could be liable to the buyers for damages and attorney's fees. Under the statute, the buyers' remedy is limited to rescinding the offer.

6. Do ask the sellers to amend the Form 17 to disclose new information or changes.

The sellers are required to amend the disclosure statement, if they discover any new information or a change occurs rendering the original disclosures inaccurate or incomplete, unless the sellers take corrective action to restore the accuracy of the original disclosure before closing (i.e., make repairs).

7. Don't agree to verify or investigate the accuracy or completeness of the sellers' disclosures.

The agency law provides that licensees have no duty to verify or investigate information from the sellers, unless the licensee agrees otherwise. By agreeing to verify information, the licensee negates an important safeguard and substantially increases their potential liability.

8. Do give the completed Form 17 to prospective buyers who express serious interest in the property.

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Because the buyers' three-day right of rescission begins upon their receipt of the seller disclosure statement, the sooner the buyers receive the statement, the better. If the buyers receive the disclosure statement more than three days in advance of making an offer, then they have no right of rescission.

9. Do ask for the Form 17 when representing the buyers.

When representing the buyers, do not wait for the sellers or listing agent to volunteer the disclosure statement – ask for it as soon as possible, so the buyers do not incur unnecessary time and fees before reviewing the statement.

10. Don't encourage the buyers to waive their right to receive a completed Form 17.

The right to receive a completed disclosure statement is a valuable right and should not be waived lightly. In a sellers' market, the buyers may have to waive the right to revoke their offer to compete with other buyers, but should still insist on receiving the disclosure statement.

11. Do encourage the buyers to make further investigation and inquiry.

If the buyers are concerned or do not understand any of the information in the disclosure statement, encourage the buyers to ask the sellers for additional information or clarification. The buyers are deemed to know everything a reasonably careful inspection, investigation and inquiry would have revealed, so they should exercise diligence.

12. Do encourage the buyers to obtain a professional home inspection.

The sellers' disclosures are no substitute for a professional inspection. Often a competent inspector discovers defects the sellers themselves were not aware of. Since the sellers' disclosure obligation is limited to their actual knowledge, the buyers should not rely on the disclosure statement as their sole source of information.

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