

# SEMINAR NOTES

## **Clear all disclosure practices with company policy and with a qualified attorney.**

---

If using the AVID, consider not writing any disclosures (from the agent's visual inspection) on the TDS in sections 3 or 4 – instead (if consistent with office policy) check off the "See attached Agent Visual Inspection Disclosure Form" box. (Please note that the latest revision to the TDS form is 12/21.)

---

Check with office policy regarding the issue of being sure to always attach the AVID to the TDS (assuming that you are utilizing the AVID as part of your disclosure responsibilities.)

---

When the agent does not find anything of concern in a room, consider writing "nothing noted" (rather than "OK" or "nothing wrong") in the appropriate AVID section.

---

The first week after a buyer complains post-close about a property condition issue is a critical time for risk management efforts. Respond immediately, provide the client with very specific time-frames for follow-up efforts, and consider arranging a rapid and appropriate compromise solution to bring the matter to an early conclusion. The objectives here are to remedy the issue, and also prevent the litigation process from starting.

---

Regarding the issue of an increasing presence of the homeless community into a residential neighborhood, the following steps are suggested: (1) If representing the seller, point out the question in the TDS form's Section 2, item C11 ("Neighborhood noise problems or other nuisances"). If the sellers consider the homeless issue to be a nuisance, then they should disclose it. (2) Consider making a verbal and written suggestion to the client such as "Contact XYZ Police Department regarding law enforcement issues in this community." (3) Verbally suggest to the client (and document) something like "I encourage you to drive around the community at different times to see if you are comfortable with the area." (4) Consider disclosing "There is a homeless community in this area." when you believe the local situation calls for it.

---

---

Great caution should be used regarding content on social media websites (Facebook, Instagram, Twitter, TikTok, YouTube, etc.), as well as in blogging and podcasts. Keep in mind that any comments you post on social media regarding a property, a client, another agent, area crime statistics, opinion on pricing, etc., may fall under the concept of “no reasonable expectation of privacy.” A good “test” before posting on social media is to ask “How would this comment look on display in a court room?”

---

When representing investors who are flipping multiple properties, consider advising them (in writing) to obtain a listing-side professional home inspection to supplement their limited knowledge of the property’s condition. Also, follow your company’s policy regarding the issue of checking (or not) for building permits.

---

The Seller Property Questionnaire (C.A.R. form SPQ) form is mentioned in the RPA item 11.A(4) – “...Seller shall...complete and provide Buyer with a Seller Property Questionnaire...” Note that the sellers should complete this form, not the agent. The agent’s disclosures should be in the TDS (section 3 or 4), and (if in line with office policy) on the AVID – not on the SPQ.

---

Consider disclosing property issues that may seem overly obvious – such as a shopping center next to the property, or a nearby freeway. Instead of mentioning what might bother the client about a nearby train, shopping center, freeway, etc., consider only disclosing that it is nearby, without creating a list of possible nuisances – (your list will never be long enough!). Example: “This property is located near a school.”

---

Document text messages to clients with a printed email or other method of correspondence that will remain in the file and/or in cyberspace storage. It may be best to not use texting for messages in transactions that are of a sensitive or complex nature.

(12/21):

7. B(1) Properties are sold in their "present physical condition" - which is synonymous with the term "as is."

11. A(4) The Seller Property Questionnaire (SPQ) is mandatory.  
(See specific details in this section of the RPA.)

11. H Megan's Law Database Disclosure - "Neither seller nor brokers are required to check this [Department of Justice] website."

15. Unless otherwise specified, sellers may personally perform repairs or have the repairs accomplished "through others." [If buyers expect that the repair person will have a specific qualification – example: a Licensed Plumbing Contractor - that qualification should be clearly stated in the request for repair.]

---

Two fundamental principles of disclosure:

"The only buyers who sue are surprised buyers." During their limited visual inspection, agents should ask "Will the buyers be negatively surprised about this property condition?" If the answer is yes, then they should disclose it.

"Point it out, do not figure it out." Agents should bring a property condition of concern to the client's attention but should not diagnose the issue. So, "stain noted at ceiling due to roof leak" becomes simply "stain noted at ceiling."

---

Depending on the location of the property, and unless regional disclosure advisories are provided regarding potentially dangerous local wildlife, consider disclosing:

"Buyer is advised that there are indigenous/invasive wildlife that may be of concern in this area. Check with the local municipality for further information."

---

Consider replacing numbers with the optional word "some." Example: rather than "12 cracks noted at home's exterior walls" disclose "Some cracks noted at home's exterior walls."

---

When a room is extremely cluttered, consider disclosing: "Extensive personal belongings prohibited a visual inspection of this area." This disclosure strategy can also include obstructions of the house's exterior due to vegetation or debris.

---

When noticing a strong odor in the home, consider disclosing "Obvious odor noted." Do not diagnose the issue.

---

Check with company management regarding policies concerning the disclosure of neighbor hearsay, and the disclosure of nearby "half-way houses." Opinions and procedures vary in these two areas.

---

Remember that all disclosure requirements remain the same for all parties for so-called "As Is" transactions. (See the Residential Purchase Agreement's section 7(B) – "Condition of Property On Closing.")

---

When completing a disclosure form (TDS or AVID, etc.), agents should refrain from using adjectives. So, "3 large setting cracks noted above fireplace" becomes "Cracks noted above fireplace."

---

Note that conversations between agents and prospective buyers may be recorded (audio and/or visual) in and around "Smart" homes. Agents might want to caution prospective buyers about this before visiting a property.

---

For "trashed out" homes, consider including this disclosure: "Deferred maintenance noted throughout the property. Extensive personal belongings prohibited a visual inspection of several areas." For "unlivable" homes, consider including this disclosure: "Extensive disrepair noted throughout the property."

---

Do not use superlative words (such as totally, completely, thoroughly, etc.) in either disclosure or real estate advertising. In advertising, substitute them with "generic" words (such as beautiful, wonderful, amazing, etc.).

---

Keep in mind that the word "visual" in the TDS ("visual inspection") might be interpreted as "any sensory perception."

---

An excellent question to ask sellers when they are completing their portion of the Transfer Disclosure Statement is "What do you think the neighbors will tell your buyers about this property?"

---

The most recent "edition" of the Transfer Disclosure Statement is dated 12/21.

---

Sample wording for building permit concerns:

"Buyer is strongly encouraged to check with the local municipality regarding building permit issues."

---

Regarding page 3 of the AVID, the "Other Observed or Known Conditions Not Specified Above:" - this line is not a "catch-all" for items the agent has noticed that are outside the limited visual inspection standard of care of the AVID. For example, do not list square footage discrepancies, neighbor hearsay, etc.

---

Agents may encounter additional liabilities by signing up for, looking at, etc., "neighborhood info" websites, such as [www.nextdoor.com](http://www.nextdoor.com).

---

**Clear all disclosure practices with company policy  
and with a qualified attorney.**