



Dealing with Deficient Disclosures: Incomplete Seller's Real Property Disclosure

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With changes happening to the Seller's Real Property Disclosure (SRPD) in response to this past legislative session, members have been reaching out to the Legal Information Line for guidance. A frequently asked question includes:

I'm the listing agent, and my seller just returned the SRPD but it wasn't complete. Boxes weren't checked, etc. What should I do?

Members are caught in the middle of a tug-of-war trying to comply with the new law (AB398) of not filling out the SRPD on behalf of the seller, and not creating the appearance thereof, when they follow-up with their seller and say "hey, this isn't filled out all the way." So what's a listing agent to do?

The best practice is to send the incomplete SRPD back to the seller, and let them know by law the agent cannot pass along an incomplete disclosure and then point to the law!

Conveniently located on Page 4 of the SRPD Revised 11/9/2021, the law provides:

NRS 113.130 Specifically see 1.(a)(2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.

In furtherance of advancing the client's best interest, listing agents also need to remind their seller's of their contractual deadlines and statutory SRPD deadlines (whatever the contract provides for or 10 days before closing NRS 113.130(1)(a)). If the seller is going to blow an SRPD deadline because they refuse to complete the disclosure, real estate agents need to ensure their written documentation is up to snuff in the event the agent needs to defend themselves against challenges to reasonable care and skill.

Which brings up yet another question: ***Is the agent responsible to disclose the partial information provided in the incomplete SRPD to the buyer?*** You bet. Reading the law, we can see how closely tied the SRPD is to the agent's duty to disclose material and relevant facts to each party.



NRS 645.252 Duties of licensee acting as agent in real estate transaction.

1. *Shall disclose to each party to the real estate transaction as soon as is practicable:*

(a) *Any material and relevant facts, data or information which the licensee knows*, or which by the exercise of reasonable care and diligence should have known, relating to the property which is the subject of the transaction.

And that's exactly how real estate agents can lead seller's to water. A candid discussion with the seller that the reality is this information is coming out anyway because *the real estate agent has a duty to disclose such now known material and relevant information*, and seller's refusal to provide a completed disclosure which, again the agent is precluded from filling out on the seller's behalf, opens up the very real possibility of seller getting sued for non-disclosure.

And then to drive home the point to the seller, the listing agent can point to the scary part of the law - the damages....

Conveniently located on Page 5 of the SRPD Revised 11/9/2021, the law provides:

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of [NRS 113.130](#)... , the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees.

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