

## What should I disclose when selling a house?

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Homebuyers should apply the “buyer beware” principle when purchasing a house. In Manitoba, sellers complete a Property Disclosure Statement as part of an Offer to Purchase. However, currently they are not legally required to disclose every detail or issue with their home. This means that buyers are responsible to do their own due diligence and home inspections as part of the home buying process.

Even though the onus is largely placed on a buyer to inspect the property, it is important as a seller to be aware of which information and/or defects on the property must be disclosed. There is an important distinction between “patent” or “latent” property defects.

A patent defect is one that is plainly visible and can easily be spotted during a home inspection. Examples of patent defects are broken windows, drywall cracks, sagging gutters, or rotten woodwork. As these defects are easily identified during a property inspection, the buyer will have no legal remedy for dealing with these defects after the deal is closed.

Latent defects, on the other hand, are hidden and cannot be spotted during a normal viewing. If the seller is aware of a latent defect that could make the home dangerous or uninhabitable, the seller has a legal requirement to disclose the defect to the buyer. Sellers are also not allowed to intentionally hide a defect that would normally be visible for all to see. Examples of latent defects are foundational problems, basement flooding, or a leaky roof.

The standard Offer to Purchase form used by the Manitoba Real Estate Association contains a clause which requires all sellers to complete a “Property Disclosure Statement”. The seller cannot give a false answer or information about the property. A Property Disclosure Statement provides buyers with notice of any material issues to the home.

When completing the Property Disclosure Statement, the seller will be asked questions such as “Are you aware of any roof leakage, structural issues, or any rodent or insect infestation?” If the seller answers “yes” to any of these questions, they are required to provide an explanation and details of the issue. It is important that the seller fills out the Property Disclosure Statement truthfully and thoroughly as the buyers are relying on it as part of their due diligence. If a seller has not disclosed a known issue in the Property Disclosure Statement or is dishonest, that may be grounds for a legal claim against them in the future.

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