



NATIONAL
ASSOCIATION *of*
REALTORS®

State Flood Hazard Disclosures Survey

February 2019

The following survey covers mandated property disclosures related to flood hazards. This material was prepared for the National Association of REALTORS® by Legal Research Center, Inc., in February 2019. The survey covers all 50 states, plus the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction indicates whether a mandatory or Association-developed disclosure form exists, and if so, what flood-related disclosures are included on that form. If non-specific disclosure requirements might extend to flood-related issues, that possibility is noted. Each state or territory with a form includes a conclusion as to whether the required form exceeds the requirements of the law with regard to flood disclosures. For jurisdictions with no statutory or regulatory authority, relevant case law, if any, imposing a general or specific disclosure requirement regarding flooding is included. Finally, required forms and underlying primary law are cited and linked in the right column.

NOTE: THIS REPORT DOES NOT CONSTITUTE LEGAL ADVICE. IT IS INTENDED TO PROVIDE GENERAL INFORMATION AND MAY NOT BE RELIED UPON AS SPECIFIC LEGAL GUIDANCE. LEGAL COUNSEL SHOULD BE CONSULTED BEFORE ACTING IN RELIANCE ON THIS INFORMATION. THIS RESEARCH WAS PERFORMED IN FEBRUARY 2019 AND THE LAWS AND OTHER INFORMATION PROVIDED HERE MAY HAVE CHANGED AT ANY SUBSEQUENT TIME.

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
Alabama	Y	<p>The Alabama Real Estate Commission may discipline a licensee for “[m]aking a material misrepresentation, or failing to disclose to a potential purchaser or lessee any latent structural defect or any other defect known to the licensee. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent person in making a decision to purchase or lease.” See Fennell Realty Co. v. Martin, 529 So. 2d 1003 (Ala. 1988) (“[I]f [an] agent (whether of the buyer or of the seller) has knowledge of a material defect or condition that affects health or safety and the defect is not known to or readily observable by the buyer, the agent is under a duty to disclose the defect and is liable for damages caused by nondisclosure. This duty is also placed on the seller.”).</p> <p>Arguably, flood-hazard disclosures would be required. See Cooper & Co. v. Lester, 832 So. 2d 628 (Ala. 2000) (seller’s agent liable for fraudulent suppression of existing flood hazard which was not disclosed to buyers).</p> <p>While not mandated by state law, “Most Alabama real estate agents attach a completed disclosure form, created by the Alabama Association of Realtors...” The voluntary disclosure statement includes:</p> <p style="padding-left: 40px;">6. LAND/DRAINAGE (b) Has the property ever had drainage, flooding or grading problems? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don’t Know <input type="checkbox"/> NA (c) Is the property in a flood plain zone? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don’t Know <input type="checkbox"/> NA</p> <p>Source: http://www.nolo.com/legal-encyclopedia/alabama-homesellers-your-disclosure-obligations.html</p> <p>The Association’s voluntary form thus goes beyond disclosures mandated by statute.</p>	<p>Alabama real estate seller's disclosure form</p> <p>Ala. Code § 34-27-36(a)(3) (2018)</p> <p>Cooper & Co. v. Lester, 832 So. 2d 628 (Ala. 2000)</p> <p>Fennell Realty Co. v. Martin, 529 So. 2d 1003 (Ala. 1988)</p>

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Alaska	Y	<p>The Alaska disclosure law directs the state Real Estate Commission to create a seller disclosure statement. The mandatory form created by the Commission pursuant to its regulatory powers includes the following flood-related items:</p> <p>19. Are you aware if the property has flooded? Flood zone designation: _____</p> <p>21. Are you aware of any damage to the property or any of the structures from flood, landslide, avalanche, high winds, fire, earthquake, or other natural causes?</p>	<p>Alaska real estate seller's disclosure form</p> <p>Alaska Stat. § 34.70.010 (2018)</p>
Arizona	Y	<p>While Arizona laws and regulations do not establish a mandatory seller's disclosure form, Arizona statutes do address the following flood-related disclosures:</p> <ul style="list-style-type: none"> • an affidavit of disclosure required by § 33-422, which must be provided by a seller of five or fewer parcels of land, other than subdivided land, in an unincorporated area of a county and any subsequent seller of such a parcel, <i>must</i> include a statement regarding whether part or all of the property is located in a FEMA-designated regulatory floodplain, and if the property is in a floodplain, a statement that it may be subject to floodplain regulation; and • a disclosure report addressed by § 33-423, which <i>may</i> be provided by an authorized third party and must be based on officially adopted and electronically posted or otherwise readily available governmental maps or information, may disclose whether the real property is in a special flood hazard area designated by FEMA, among other topics. <p>Arizona case law imposes a disclosure duty on sellers and their agents that would include flood-hazard disclosures. "The buyer and seller, of course, have legal duties to each other arising out of their contractual relationship. This includes the covenant of good faith and fair dealing. Buyers and sellers must deal fairly with each other. And, the buyer and the seller have duties to each other to disclose facts that are material to the</p>	<p>Residential Seller Disclosure Advisory: When In Doubt—Disclose!</p> <p>Ariz. Rev. Stat. §§ 33-422, -423 (2018)</p> <p>Lombardo v. ALBU21, 199 Ariz. 97, 14 P.3d 288 (2000)</p> <p>Ariz. Admin. Code R4-28-1101 (2018)</p>

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		<p>transaction. Applying these principles, our court of appeals held some time ago that where a seller knows of facts materially affecting the value of the property and knows that the facts are not known to the buyer, the seller has a legal duty to disclose such facts. Thus, the seller has a duty to disclose to the buyer the existence of termite damage whenever it materially affects the value of the property.” Lombardo v. ALBU21, 199 Ariz. 97, 14 P.3d 288 (2000) (citations omitted).</p> <p>Additionally, “[a] licensee participating in a real estate transaction shall disclose in writing to all other parties any information the licensee possesses that materially or adversely affects the consideration to be paid by any party to the transaction, including . . . [a]ny material defect existing in the property being transferred. Ariz. Admin. Code R4-28-1101 (2018).</p> <p>A recommended disclosure statement form created by the Arizona Association of REALTORS® includes disclosure by the owner of the following flood related items:</p> <p style="padding-left: 40px;">Are you aware of any damage to any structure on the Property by any of the following? (Check all that apply):</p> <p style="padding-left: 40px;"><input type="checkbox"/>Flood <input type="checkbox"/>Fire <input type="checkbox"/>Wind <input type="checkbox"/> Expansive soil(s)</p> <p style="padding-left: 40px;"><input type="checkbox"/> Water <input type="checkbox"/> Hail <input type="checkbox"/> Other</p> <p style="padding-left: 40px;">Explain: _____</p> <p style="padding-left: 40px;">Are you aware if any portion of the Property is in a Flood plain/way? Explain: _____</p> <p style="padding-left: 40px;">Are you aware of any portion of the Property ever having been flooded? Explain: _____</p> <p>The Association’s form thus goes beyond state requirements.</p>	
Arkansas	Y	<p>According to the Arkansas Real Estate Commission, there is no “state law in Arkansas that requires every property owner to disclose all aspects of the condition of his or her property when selling that property.” However, the Commission, by rule, requires “every real estate agent that lists and sells real estate in the state of Arkansas to disclose information about the condition of the property</p>	<p>Arkansas real estate seller's disclosure form</p> <p>Real Estate Reg. 10.6 (2018)</p> <p>Worley v. City of Jonesboro, 2011 Ark.</p>

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		<p>they are listing or selling.” Ark. Real Estate Comm’n, <i>Is Property Condition Required by Law?</i> (last visited Feb. 21, 2019)</p> <p>Pursuant to Real Estate Commission rule, “[a] licensee shall exert reasonable efforts to ascertain those facts which are material to the value or desirability of every property for which the licensee accepts the agency, so that in offering the property the licensee will be informed about its condition and thus able to avoid intentional or negligent misrepresentation to the public concerning such property.” Real Estate Reg. 10.6 (2018). Flood-hazard related information arguably would be material to the value or desirability of a property and arguably subject to disclosure.</p> <p>See generally Worley v. City of Jonesboro, 2011 Ark. App. 594, 385 S.W.2d 908 (2011) (general discussion of seller and agent disclosure obligations in context of drainage problems)</p> <p>AREC suggests that agents must use their common sense and investigate the property that they intend to sell.” The Arkansas Association of REALTORS® voluntary disclosure statement includes:</p> <p>11. To your knowledge, has there been any flooding, drainage, grading problems, or has water ever stood on the Property or under any improvement constructed thereon? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not Applicable</p> <p>12. To your knowledge, has there been any damage to the Property or any of the structures from fire, earthquake, storms, floods or landslides prior to or during your ownership? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not Applicable</p> <p>20. To your knowledge, is any of the Property in the floodplain or floodway? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not Applicable</p> <p>21. To your knowledge, has any lender required you to purchase flood insurance on the Property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> Not Applicable</p> <p>Source: http://www.nolo.com/legal-encyclopedia/selling-</p>	<p>App. 594, 385 S.W.2d 908 (2011)</p>

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		<p>arkansashome-what-are-my-disclosure-obligations.html</p> <p>The Association's voluntary form thus goes beyond what is specifically mandated by statute.</p>	
California	Y	<p>The following mandatory disclosures must be made on the statutorily created Natural Hazard Disclosure Statement:</p> <p>If a transfer is of residential property located within a special flood hazard area (any type Zone "A" or "V") designated by F.E.M.A., the seller or his or her agent must disclose that fact if either:</p> <ul style="list-style-type: none"> • the seller or agent actually knows that the property is within a special flood hazard area; or • the local jurisdiction has compiled a list of parcels that are within the special flood hazard area, and a notice identifying the location of the parcel list has been posted at certain county offices. <p>If a transfer is of real property located within an area of potential flooding designated pursuant to Cal. Gov't Code § 8589.5, the seller or his or her agent must disclose that fact if either:</p> <ul style="list-style-type: none"> • the seller or his or her agent has actual knowledge that the property is within an "inundation area"; or • the local jurisdiction has compiled a list, by parcel, of properties that are within the inundation area, and a notice identifying the location of the parcel list has been posted at specified county offices. <p>The seller must disclose:</p> <ul style="list-style-type: none"> • whether the property lies within a special flood hazard area (any type Zone "A" or "V"), as designated by F.E.M.A.; and • whether the property is within an area of "potential flooding shown on a dam failure inundation map." 	<p>California real estate seller's disclosure form</p> <p>Cal. Civ. Code § 1102.6; Cal. Civ. Code §§ 1103, 1103.2; Cal. Gov't Code § 8589.5 (2018)</p>

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		<p>Cal. Civ. Code §§ 1103, 1103.2</p> <p>Additionally, the mandatory, statutorily created Real Estate Transfer Disclosure Statement form includes disclosure by the owner of the following flood related items:</p> <p style="padding-left: 40px;">8. Flooding, drainage or grading problems <input type="checkbox"/> Yes <input type="checkbox"/> No 9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Cal. Civ. Code 1102.6 (Real Estate Transfer Disclosure Statement form is displayed in 2014 Cal. Stat. ch. 71, at 18-22)</p>	
Colorado	Y	<p>Real estate brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable. The Colorado Real Estate Commission’s mandatory Seller’s Property Disclosure (Residential) form includes disclosure by the owner of the following flood related items:</p> <p style="padding-left: 40px;">A. If you know of any problems EVER EXISTING with the following on the Property check the “Yes” column: Damage due to hail, wind, fire, flood or other casualty J. If you know of any problems EVER EXISTING with the following on the Property check the “Yes” column: Flooding or drainage N-11. If you know of any of the following EVER EXISTING on any part of the Property check the “Yes” column: Within governmentally designated flood plain or wetland area</p> <p>The Commission’s mandatory Seller’s Property Disclosure (Commercial) form contains identical flood-related disclosures.</p>	Colorado real estate seller’s disclosure form
Connecticut	Y	Connecticut’s disclosure statute directs the Department of Consumer Protection to promulgate a seller’s property disclosure form which must include “information concerning environmental matters such as	Connecticut real estate seller’s disclosure form

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		<p>... flood hazards ... and such other topics as the Commissioner of Consumer Protection may determine would be of interest to a buyer.”. The form so promulgated includes disclosure by the owner of the following flood-related items:</p> <p style="text-align: center;">7. Is the property in a flood hazard area or an inland wetlands area? If yes, explain: _____ <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p>Completion of the form does not relieve a licensee “of his or her obligation under the provisions of section 20-328-5a of the Regulations of Connecticut State Agencies to disclose any material facts. Failure to do so could result in punitive action taken against the broker, such as fines, suspension or revocation of license.” A material fact would arguably include information regarding whether the property ever sustained damage from flooding.</p> <p>Conn. Gen. Stat. Ann. § 20-327b (2018); Connecticut Residential Property Condition Disclosure Report</p>	<p>Conn. Gen. Stat. Ann. § 20-327b (2018)</p> <p>Conn. Agencies Regs. § 20-328-5a (2019)</p>
Delaware	Y	<p>Pursuant to statute, the Delaware Real Estate Commission is charged with developing “a standard form or forms to be used as the Seller's Disclosure of Real Property Condition Report, for the disclosure of the condition of residential real property.” The standard form so developed by the Commission includes disclosure by the owner of the following flood related items:</p> <p style="text-align: center;">51. Is any part of the property located in (____ a flood zone) and / or (____ a wetlands area)? Yes No Unknown/NA</p> <p style="text-align: center;">52. Are there any drainage or flood problems affecting the property? If Yes, describe in XVI. Yes No Unknown/NA</p> <p style="text-align: center;">53. Do you carry flood insurance? Agent: ____ Policy # ____ Yes No Unknown/NA</p> <p style="text-align: center;">54. If # 53 is Yes, what is the annual cost of this policy?</p> <p style="text-align: center;">65. Have the property or improvements thereon, ever been</p>	<p>Delaware seller's real property disclosure form</p> <p>Del. Code tit. 6, § 2572 (2018)</p>

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		<p>damaged by (___fire), (___smoke), (___wind), or (___flood)? If Yes, describe in XVI.</p> <p>Del. Code tit. 6, § 2572 (2018); Del. Real Estate Comm’n, Seller’s Disclosure of Real Property Condition Report (eff. Oct. 1, 2017) <input type="checkbox"/></p> <p>Note too that seller’s agents have the general duty to respond accurately and honestly to a potential purchaser’s questions and to disclose material facts about properties. 2900-24 Del. Code Regs. § 9.5.2 (2019).</p>	
District of Columbia	Y	<p>Section 42-1302 directs the creation of “a real property disclosure statement on a form to be approved by the Mayor.” The mandatory Seller’s Property Condition Statement so promulgated includes disclosure by the owner of the following flood-related items:</p> <p>D.1. Exterior Drainage Does the seller have actual knowledge of any problem with drainage on the property? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D.2. Damage to the property Does the seller have actual knowledge whether the property has previously been damaged by: Flooding <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>D.C. Code § 42-1302 (2019); D.C. Mun. Regs. tit. 17, § 2708.13 (2019)</p> <p>Note too that generally “[a] licensee engaged by a seller shall disclose to prospective buyers all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee.” However, if the required seller’s disclosure statement is provided as required by law, the licensee is deemed to have complied with this disclosure duty. D.C. Code § 42-1307, -1703(2019)</p>	<p>District of Columbia seller disclosure form</p> <p>D.C. Code § 42-1302; D.C. Mun. Regs. tit. 17, § 2708.13</p>
Florida	Y	<p>No Florida statutes or regulations generally requiring a real estate seller to disclose information about property to a prospective buyer on a specified form were located. No statutes or regulations address flood-related disclosures.</p>	<p>Florida seller disclosure form</p> <p>Fla. Stat. § 475.278 (2018)</p>

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		<p>However, a licensee generally must disclose “all known facts that materially affect the value of residential real property and are not readily observable.” Fla. Stat. § 475.278 (2018). Also, in Johnson v. Davis, 480 So. 2d 625 (Fla. 1985), the Florida Supreme Court held that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer." This duty of disclosure extends to latent flooding problems. Young v. Johnson, 538 So. 2d 1387 (Fla. 2d Dist. Ct. App. 1989).</p> <p>While not mandated by state law, the Florida Association of REALTORS® provides a standard form. The voluntary disclosure statement includes:</p> <p style="padding-left: 40px;">3. Water Intrusion; Drainage; Flooding:</p> <p style="padding-left: 40px;">(a) Has past or present water intrusion affected the Property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(b) Have past or present drainage or flooding problems affected the Property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(c) Is any of the Property located in a special flood Hazard area? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(d) Is any of the Property located seaward of the coastal construction control line? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(e) Does your lender require flood insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(f) Do you have an elevation certificate? If yes, please attach a copy. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p style="padding-left: 40px;">(g) If any answer to questions 3(a) - 3(d) is yes, please Explain: _____</p> <p>The Association’s voluntary form thus goes beyond what is specifically mandated by statute.</p>	<p>Johnson v. Davis, 480 So. 2d 625 (Fla. 1985)</p> <p>Young v. Johnson, 538 So. 2d 1387 (Fla. 2d Dist. Ct. App. 1989)</p>
Georgia	Y	Research located no Georgia statutes or regulations requiring a real estate seller to disclose general information about real property to a prospective buyer or to specifically make any flood-related	<p>Georgia seller disclosure form</p> <p>Shaw v. Robertson, 705 S.E 2d 210 (Ga.</p>

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		<p>disclosures.</p> <p>“Georgia law does not require a seller to fill out a specific disclosure form, the law does require a seller to inform a buyer about any known material (important) defects in the condition of the home.” The Georgia Association of REALTORS® voluntary disclosure statement includes:</p> <p>8. FLOODING, DRAINAGE, MOISTURE AND SPRINGS:</p> <p>(a) Is there now or has there been any water intrusion in the basement, crawl space or other parts of any dwelling or garage? Yes No Do Not Know</p> <p>(b) Have any repairs been made to control water Intrusion in the basement, crawl space, or other parts of any dwelling or garage? Yes No Do Not Know</p> <p>(c) Is any part of the Property or any improvements thereon presently located in a 100 year Special Flood Hazard Area where there is at least a 1% chance of a Flood in any given year? Yes No Do Not Know</p> <p>(d) Has there ever been any flooding? Yes No Do Not Know</p> <p>(e) Are there any streams that do not flow year round or underground springs? Yes No Do Not Know</p> <p>(f) Are there any dams, retention ponds, storm water detention basins, or other similar facilities? Yes No Do Not Know</p> <p>Source: http://www.nolo.com/legal-encyclopedia/home-sellers-georgia-disclosures-required-under-state-law.html</p> <p>The Association’s voluntary form thus goes beyond what is mandated by law. The listed items arguably do fall within the scope of material defects which require disclosure, however.</p>	<p>Ct. App. 2010)</p>

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		<p>Nonetheless, sellers and agents can have a disclosure obligation. <i>See Shaw v. Robertson, 705 S.E 2d 210 (Ga. Ct. App. 2010)</i> (affirming summary judgment for seller and seller's agent on claim for fraud based on failure to disclose flood-hazard information; buyer did not exercise due diligence; discussing disclosure obligations when passive concealment exception to the general rule of caveat emptor is involved).</p>	
Guam	N/A	<p>N/A</p> <p><i>See generally Mendiola v. Bell, 2009 Guam 15 (2009)</i> (applying Guam Consumer Protection Act to claims against property seller for damages caused by post-sale flooding).</p>	N/A
Hawaii	Y	<p>Chapter 508D of the Hawaii Revised Statutes, which requires certain disclosures, applies to any sale of residential real property. Generally, the seller's "Disclosure Statement" is a written statement prepared by the seller or at the seller's direction, that "purports to fully and accurately disclose" material facts relating to the residential real property being offered that:</p> <ul style="list-style-type: none"> • are within the seller's knowledge or control; • can be observed from visible and accessible areas; or • must be disclosed under §§ 508D-15 and 508D-4.5. <p>Section 508D-15 provides that if residential real property lies within the boundaries of a special flood hazard area (as officially designated on Flood Insurance Administration maps promulgated by H.U.D. to determine eligibility for emergency flood insurance programs), or within the anticipated inundation areas designated on the Department of Defense's emergency management tsunami inundation maps, the seller must include that "material fact information in the disclosure statement provided to the buyer."</p> <p>Generally, a "material fact" is a fact, defect, or condition that would reasonably be expected to "measurably affect" the value of the</p>	<p>Hawaii seller disclosure form</p> <p>Haw. Rev. Stat. §§ 508D-1, -4.5, -7, -15 (2018)</p>

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		<p>property. “If the seller's agent is or becomes aware of any material facts inconsistent with or contradictory to the disclosure statement or the inspection report of a third party provided by the seller, the seller's agent shall disclose these facts to the seller, the buyer, and the buyer's agent.”</p> <p>Haw. Rev. Stat. §§ 508D-1, -4.5, -7, -15 (2018)</p> <p>The Hawaii Association of Realtors provides a standard form, which is available online to members. That form includes disclosure by the owner of the following flood related items:</p> <p>10. Has there ever been any drainage, water infiltration, seepage, flooding, or grading problems? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NTMK <input type="checkbox"/> NA</p> <p>19. Is the Property located in a Special Flood Hazard Area based on FEMA's Flood Insurance Rate Maps? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NTMK <input type="checkbox"/> NA</p> <p>21. Is there any existing or past damage to the Property or any of the structures (interior or exterior) from earthquake, fire, smoke, flooding, leaks, landslides, falling rocks, tsunamis, volcanic activity, or wind? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NTMK <input type="checkbox"/> NA</p> <p>Because the Association’s form complies with the § 508D-15 and addresses flood-related information that arguably would be deemed “material” facts it probably cannot be characterized as going beyond the disclosure law.</p>	
Idaho	Y	<p>Idaho’s disclosure law states that the required information must be disclosed on the form set forth in § 55-2508, although the seller may substitute alternative forms provided they include the disclosure information required by § 55-2506 and the mandatory disclosure statements set forth in § 55-2507. No specific flood-related information is required, although the statutory form requires the seller to disclose any "other problems, including legal, physical or other" not listed on the mandatory disclosure form. Idaho Code § 55-2508.</p>	<p>Idaho seller disclosure form</p> <p>Idaho Code § 55-2508 (2018)</p> <p>Enright v. Jonassen, 129 Idaho 694, 931 P.2d 1212 (1997)</p>

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		<p>(2018).</p> <p>The catch-all “other problems” disclosure requirement would encompass flood-hazard defects or problems. See Enright v. Jonassen, 129 Idaho 694, 931 P.2d 1212 (1997) (licensee who was both listing and selling agency liable to purchasers for failing to disclose property was located in a floodplain management district).</p> <p>While not mandated by state law, “the intent of the [Idaho] statute is ‘to promote the public health, safety and welfare and to protect consumers [by requiring] sellers of residential real property... to disclose certain defects in the residential real property to a prospective buyer.’” The Idaho Association of REALTORS® voluntary disclosure statement includes:</p> <p style="text-align: center;">MOISTURE & DRAINAGE CONDITIONS SECTION</p> <p>Is the property located in a floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do Not Know Remarks _____</p> <p>Has there been any water intrusion or moisture related damage to any portion of the property, including, but not limited to, the crawlspace, floors, walls, ceilings, siding, or basement, based on flooding; moisture seepage, moisture condensation, sewer overflow/ backup, or leaking pipes, plumbing fixtures, appliances, or moisture related damage from other causes? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do Not Know Remarks _____</p> <p>Have you ever had any water intrusion, moisture related damage, mold or mold-related problems on the property remediated, repaired, fixed or replaced? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do Not Know Remarks _____</p> <p style="text-align: center;">HAZARDOUS CONDITIONS SECTION</p> <p>Is there any damage due to wind, fire, or flood? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do Not Know Remarks _____</p> <p>Source: http://www.nolo.com/legal-encyclopedia/selling-idaho-home-what-are-my-disclosure-obligations.html</p>	

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>The Association’s voluntary form thus goes beyond what is specifically mandated by statute. The listed items probably do fall within the scope of “other problems” which require disclosure, however.</p>	
Illinois	Y	<p>A residential real property seller must complete all applicable items in the Residential Real Property Disclosure Report set forth at 765 Ill. Comp. Stat. 77/35. The disclosure must be made on the required form. The standard form includes disclosure by the owner of the following flood-related items:</p> <p style="padding-left: 40px;">2. I am aware of flooding or recurring leakage problems in the crawl space or basement. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA</p> <p style="padding-left: 40px;">3. I am aware that the property is located in a flood plain or that I currently have flood hazard insurance on the property. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA</p> <p>765 Ill Comp. Stat. 77/20, /35 (2018)</p> <p>Note too that the real estate licensing statutes generally require a licensee engaged by a seller to disclose to prospective buyers all latent material adverse facts pertaining to the property's physical condition that the licensee actually knows and that could not be discovered by a customer’s reasonably diligent inspection.</p> <p>225 Ill. Comp. Stat. 454/15-25 (2018)</p>	<p>Illinois seller disclosure form</p> <p>765 Ill. Comp. Stat. 77/35 (2018)</p> <p>225 Ill. Comp. Stat. 454/15-25 (2018)</p>
Indiana	Y	<p>The statutorily mandated disclosure form created by the Indiana Real Estate Commission pursuant to Ind. Code § 32-2-5-7 includes disclosure by the owner of the following flood related items:</p> <p style="padding-left: 40px;">4. OTHER DISCLOSURES Is there any damage due to wind, flood, termites, or rodents? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DO NOT KNOW Is the property in a flood plain? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DO NOT KNOW</p>	<p>Indiana seller disclosure form</p> <p>Ind. Code Ann. § 32-2-5-7 (2018)</p> <p>Ind. Code Ann. § 25-34.1-10-10 (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>Do you currently pay flood insurance? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DO NOT KNOW</p> <p>Seller's Residential Real Estate Sales Disclosure (June 2014)</p> <p>Note too that Indiana licensing statutes provide that a licensee representing a seller must disclose to a prospective buyer: (a) known adverse material facts concerning the property's physical condition; and (b) facts required by statute or regulation to be disclosed that the buyer could not discover by a reasonable and timely inspection. Ind. Code Ann. § 25-34.1-10-10 (2018). Flood-hazard related information arguably falls within this general disclosure requirement.</p>	
Iowa	Y	<p>Pursuant to statute, all property disclosure statements must contain at least the information required by the sample Residential Property Seller Disclosure Statement set forth in Iowa Admin. Code r. 193E-14.1.</p> <p>Although the Iowa Real Estate Commission recommends the use of the form set forth in the regulation, no particular language is required provided all mandatory items are included. The Commission sample form includes disclosure by the owner of the following flood related items:</p> <p>14. Flood Plain: Do you know if the property is located in a flood plain? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the flood plain designation? _____</p> <p>18. Physical Problems: Any known settling, flooding, drainage or grading problems? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Note too that in providing brokerage services to all parties to a transaction, a licensee must disclose to each party all material adverse facts that the licensee knows except for: (a) material adverse facts known by the party; (b) material adverse facts the party could discover through a reasonably diligent inspection, and which would be discovered by a reasonably prudent person under like or similar circumstances; (c) material adverse facts the disclosure of which is prohibited by law; and (d) material adverse facts that are known to a</p>	<p>Iowa seller disclosure form</p> <p>Iowa Admin. Code r. 193E-14.1 (2019)</p> <p>Iowa Code § 543B.56(1)(c) (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>person who conducts an inspection on the party’s behalf. This duty could require disclosure of other flood-related facts not addressed in the form.</p> <p>Iowa Code § 543B.56(1)(c) (2018)</p>	
Kansas	Y	<p>While there is no general seller disclosure requirement, nor specific flood disclosure requirement mandated by state law, the law states that a licensee must disclose to the “customer” (i.e. buyer, seller, landlord or tenant not in agency with the licensee), among other things: (a) any environmental hazards affecting the property which are required to be disclosed by law; (b) the physical condition of the property; and (c) any material defects in the property. Kan. Stat. § 58- 30,106(d) (2018). Kansas case law also forms a basis for imposing a duty to disclose defects on both sellers and their real estate agents. <i>See Steckschulte v. Jennings, 298 P.3d 1083 (Kan. 2013)</i>.</p> <p>Therefore, arguably, flood-hazard related facts and defects should be disclosed.</p> <p>The Kansas Association of Realtors® voluntary disclosure statement includes:</p> <p>Section 4. - LAND (SOILS, DRAINAGE AND BOUNDARIES): ARE YOU AWARE OF:</p> <p>c. The Property or any portion thereof being located in a flood zone, wetlands area or proposed to be located in such as designated by FEMA which requires flood insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>d. Any drainage or flood problems on the Property or adjacent properties? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>e. Any flood insurance premiums that you pay? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>f. Any need for flood insurance on the Property? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>7. Has there been any damage to the real property or any of the improvements due to the following occurrences, including, but</p>	<p>Kansas seller disclosure form</p> <p>Kan. Stat. § 58-30,106(d) (2018)</p> <p>Steckschulte v. Jennings, 298 P.3d 1083 (Kan. 2013)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>not limited to, wind, fire, flood? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, explain Section D - Other Disclosures: For property and improvements thereon: 7. Are there any flooding, drainage, or grading problems? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the property in a flood plain? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>The Association's form thus arguably goes beyond the statutory requirements. See Seller's Disclosure and Condition of Property Addendum (rev. Sept. 2017).</p>	
Kentucky	Y	<p>A seller must disclose the condition of single-family residential real estate if a licensee receives compensation for the transaction on a form promulgated by administrative regulation, as provided in Ky. Rev. Stat. § 324.360(1), (2), (7) (2019). Accordingly, the seller must complete the Seller's Disclosure of Property Condition (rev. 2016) form available at the Board of Real Estate Professionals website. That mandatory form includes disclosure by the owner of the following flood-related items:</p> <p>4. LAND/DRAINAGE (b) Has the property ever had a drainage, flooding, or grading problem? <input type="checkbox"/> N/A <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN (c) Is the residence located within a Special Flood Hazard Area (SFHA) mandating the purchase of flood insurance for federally backed mortgages? <input type="checkbox"/> N/A <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN If yes, what is the flood zone? _____</p> <p>Note too that the Real Estate Commission may impose sanctions against a licensee who fails to disclose "known defects which substantially affect the value of the property." Ky. Rev. Stat. § 324.160(4)(b) (2019)</p>	<p>Kentucky real estate seller's disclosure form</p> <p>Ky. Rev. Stat. § 324.360(1), (2), (7) (2019)</p> <p>Ky. Rev. Stat. § 324.160(4)(b) (2019)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
Louisiana	Y	<p>A residential real property seller must complete a property disclosure document in the form prescribed by the Louisiana Real Estate Commission regulations, as provided by La. Rev. Stat. § 9:3198 (2018). The form includes disclosure by the owner of the following flood-related items:</p> <p>SECTION 1: LAND</p> <p>(6) Has any flooding, water intrusion, accumulation, or drainage problem been experienced with respect to the land?</p> <p>(a) during the time the SELLER owned the property? <input type="checkbox"/> Y <input type="checkbox"/> NK If yes, indicate the nature and frequency of the defect at the end of this section.</p> <p>(b) prior to the time the SELLER owned the property? <input type="checkbox"/> Y <input type="checkbox"/> NK If yes, indicate the nature and frequency of the defect at the end of this section.</p> <p>(7) What is/are the flood zone classification(s) of the property? _____</p> <p>(a) What is the source and date of this information? Check all that apply. <input type="checkbox"/> Survey/Date_ <input type="checkbox"/> Flood Elevation Certificate/Date_ _____ <input type="checkbox"/> Other/Date _____</p> <p>SECTION 3: STRUCTURE</p> <p>(16) Has any structure on the property ever taken water by flooding (rising water or otherwise)? If yes, give the nature and frequency of the defect at the end of this section. <input type="checkbox"/> Y <input type="checkbox"/> NK.</p> <p>(17) Is there flood insurance on the property? <input type="checkbox"/> Y <input type="checkbox"/> NK. If yes, attach a copy of the declarations page.</p> <p>(18) Does SELLER have a flood elevation certificate that will be shared with BUYER? <input type="checkbox"/> Y <input type="checkbox"/> NK</p> <p>Note too that a licensee may be disciplined for failure to “disclose to a buyer a known material defect regarding the condition of real estate of which a broker, salesperson, or timeshare interest salesperson has knowledge.” La. Rev. Stat. § 37:1455(27) (2018).</p>	<p>Louisiana real estate seller's disclosure form</p> <p>La. Rev. Stat. § 9:3198 (2018)</p> <p>La. Rev. Stat. § 37:1455(27) (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
Maine	Y	<p>Maine’s statutes make no mention of flood-related disclosures. No standard form could be found.</p> <p>Note, however, that a seller agent must “treat all prospective buyers honestly and may not give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the seller agent knew or, acting in a reasonable manner, should have known.” The seller agent is not liable for providing false information to a buyer if the information was provided to the agent by his or her client and the agent did not know, or reasonably should not have known, the information was false. The agent need not discover latent property defects. Me. Rev. Stat. tit. 32, § 13273(2)(A) (2018).</p> <p>Accordingly, disclosure of flood-hazard related information would be required in some instances.</p> <p>See Kezer v. Mark Stimson Assocs., 1999 ME 184, 742 A.2d 898 (construing § 13273 and holding that real estate agency not liable to purchaser for failure to disclose environmental hazards in neighborhood).</p>	<p>Me. Rev. Stat. tit. 32, § 13273(2)(A) (2018)</p> <p>Kezer v. Mark Stimson Assocs., 1999 ME 184, 742 A.2d 898</p>
Maryland	Y	<p>A seller of residential real property improved by one to four single-family units must complete and deliver to a purchaser: (i) a written disclosure statement on the <i>Maryland Residential Property Disclosure Statement</i> form provided by the Real Estate Commission; or (ii) a written residential property disclaimer statement on the form provided by the Maryland Real Estate Commission. The model disclosure and disclaimer statements provided by the Commission must be used in all applicable residential real property transactions. The Maryland Residential Property Disclosure and Disclaimer Statement is available online. That form includes disclosure by the owner of the following flood related items:</p> <p>17. Is the property located in a flood zone, conservation area, wetland area, Chesapeake Bay critical area or Designated Historic</p>	<p>Maryland real estate seller's disclosure form</p> <p>Md. Code Ann., Real Prop. § 10-702 (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>District? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown If yes, specify below Comments:</p> <p>Maryland law also requires the seller to disclose in the Statement information about latent defects in the property that the seller has actual knowledge of that a purchaser would not reasonably be expected to ascertain by a careful visual inspection and that would pose a direct threat to the health or safety of the purchaser or an occupant This general disclosure requirement could include additional flood-related facts. Md. Code Ann., Real Prop. § 10-702 (2018)</p>	
Massachusetts	Y	<p>While not mandated by state law, “buyers will often come up with additional questions about the property’s condition. These questions might range from whether or not the basement has ever flooded to the condition of the electrical system. If you fail to do answer truthfully or you mislead the buyer, you could later be sued and held liable for misrepresentation.” The Massachusetts Association of REALTORS® voluntary disclosure statement includes:</p> <p>8. Have you been informed that any part of the property is in a designated floor zone or wetlands? Explain _____</p> <p>VIII. EXPLANATORY MATERIAL</p> <p>A. Flood Hazard Insurance Disclosure Clause (Question #8). The lender may require Flood Hazard Insurance as a condition of the mortgage loan if the lender determines that the property is in a flood hazard zone.</p> <p>Source: http://www.nolo.com/legal-encyclopedia/massachusetts-home-sellers-what-if-anything-you-must-disclose-buyers.html</p> <p>Accordingly, the Association’s form goes beyond state law requirements.</p> <p>Generally, a designated broker or salesperson has "an affirmative obligation to disclose known material defects in real property," which, arguably, could include flood hazard</p>	<p>Massachusetts real estate seller disclosure form</p> <p>254 Mass. Code Regs 3.00(13)(c) (2019)</p> <p>Grossman v. Pouy, 23 Mass. L. Rptr. 623 (Sup. Ct. Essex Cnty. 2008)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>related facts. 254 Mass. Code Regs 3.00(13)(c) (2019)</p> <p>See Grossman v. Pouy, 23 Mass. L. Rptr. 623 (Sup. Ct. Essex Cnty. 2008) (discussing seller’s and seller agents’ liability for fraud and negligent misrepresentation for failure to disclose residential property defects to prospective purchasers; summary judgment for defendants denied).</p>	
Michigan	Y	<p>The transferor of any real property described in § 565.952 (one to four dwelling units) must deliver a written disclosure statement on the form provided in § 565.957. However, a city or county may require additional disclosures or disclosure on a different form. Mich. Comp. Laws §§ 565.954, .957, .959 (2018)</p> <p>The state statutory form includes disclosure by the owner of the following flood related items:</p> <p>Property conditions, improvements & additional information:</p> <p>11. Flood Insurance: Do you have flood insurance on the property? unknown <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/></p> <p>Other Items: Are you aware of any of the following:</p> <p>5. Settling, flooding, drainage, structural, or grading problems? unknown <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/></p> <p>6. Major damage to the property from fire, wind, floods, or landslides? unknown <input type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/></p>	<p>Michigan real estate seller's disclosure form</p> <p>Mich. Comp. Laws §§ 565.954, .957, .959 (2018)</p>
Minnesota	Y	<p>Minnesota law states very generally that the seller must make a written disclosure to the prospective buyer, which disclosure must include all known material facts that could significantly adversely affect: (a) the buyer's use and enjoyment of the property; or (b) any known intended use of the property. Minn. Stat. §§ 513.55 (2018) No mandatory form was located in the state's statutes or regulations.</p> <p>A disclosure form created by the Minnesota State Bar Association includes disclosure by the owner of the following flood related item:</p> <p>Are you aware of any of the following, now or in the past? Explain all of your “YES” answers in the space at the end of this selection</p>	<p>Minnesota real estate seller's disclosure form</p> <p>Minn. Stat. § 513.55 (2018)</p> <p>Minn. Stat. § 82.68, subd. 3 (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p style="text-align: center;">Flooding <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>A form approved by the Minnesota Association of REALTORS®, includes the following flood-related disclosure:</p> <p>A. (8) Flood Insurance: All properties in the state of Minnesota have been assigned a flood zone designation. Some flood zones may require flood insurance.</p> <p>(a) Do you know which zone the property is located in? <input type="checkbox"/> YES <input type="checkbox"/> NO. If “Yes,” which zone?</p> <p>(b) Have you ever had a flood insurance policy? <input type="checkbox"/> YES <input type="checkbox"/> NO. If “Yes,” is the policy in force? <input type="checkbox"/> YES <input type="checkbox"/> NO. If “Yes,” what is the annual premium? \$ _____ If “Yes,” who is the insurance carrier? _____</p> <p>(c) Have you ever had a claim with a flood insurance carrier or FEMA? <input type="checkbox"/> YES <input type="checkbox"/> NO. If “Yes,” please explain: _____</p> <p>B. To your knowledge, have any of the following conditions previously existed or do they currently exist?</p> <p>(1) Has there been any damage by wind, fire, flood, hail or other cause(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No. If “Yes,” give details of what happened and when: _____</p> <p>(7) THE BASEMENT, CRAWLSPACE, SLAB: (c) flooding: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Accordingly, both Associations’ flood-related disclosure items go beyond specific disclosure requirements mandated by law, but do arguably fall within the broad sweep of material facts that could adversely affect the buyer’s use and enjoyment of the property, which must be disclosed.</p> <p>Additionally, “[a] licensee shall disclose to a prospective purchaser all material facts of which the licensee is aware, which could adversely and significantly affect an ordinary purchaser's use or enjoyment of the</p>	

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>property, or any intended use of the property of which the licensee is aware.” Minn. Stat. § 82.68, subd. 3 (2018). A licensee, therefore, would also be required to disclose flood-hazard related facts.</p>	
Mississippi	Y	<p>A seller must deliver to a prospective buyer a written property condition disclosure statement. The seller must make the required disclosures on a form, the "structure and composition of which" must be as determined by the Mississippi Real Estate Commission. Miss. Code §§ 89-1-501, 503, 509 (LexisNexis 2018). A copy of the required Mississippi Property Condition Disclosure Statement is available online.</p> <p>The mandatory form which became effective April 1, 2017, includes disclosure by the owner of the following flood related items:</p> <p>STRUCTURE/FLOOR/WALLS/CEILINGS/WINDOWS / FEATURES:</p> <p>1. During your ownership, has there been DAMAGE to any portion of the physical structure resulting from fire, windstorm, hail, tornados, hurricane or any other natural disaster? Yes No If "YES", please describe, to your best knowledge, the cause of the damage, in detail, and supply the dates of the losses.</p> <p>F. LAND AND SITE DATA:</p> <p>6. Are you aware if any portion of the Property (including a part of the site) is currently located in or near a FEMA Designated Flood Hazard Zone? Yes No Unknown. If "YES", please indicate the source of your information and the current Map Number used to determine the Flood Zone.</p> <p>7. Is Flood Insurance currently required on the Property? Yes No . If "YES", please indicate the amount of the premium currently being paid and when the premium was last adjusted</p> <p>11. FOR ANY REASON, past or present, has any portion of the interior of the Property ever suffered water damage or moisture related damage which was caused by flooding, lot drainage, moisture seepage, condensation, sewer overflow, sewer backup,</p>	<p>Mississippi real estate seller's disclosure form</p> <p>Miss. Code §§ 89-1-501, 503, 509 (LexisNexis 2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>leaking or broken water pipes (during or after construction) pipe fittings, plumbing fixtures, leaking appliances, fixtures or equipment? Yes No . If "YES", please describe, to your knowledge, the nature of the problems and what steps were taken to remedy the problems.</p>	
Missouri	Y	<p>Research located no Missouri statutes or regulations requiring a real estate seller to disclose general information about real property to a prospective buyer. Nor were any required flood-related disclosures located.</p> <p>However, a licensee acting as a seller's agent must disclose to any customer all adverse material facts actually known or that should have been known by the licensee, which facts could, arguably include flood hazard related facts. A seller's agent “owes no duty to conduct an independent inspection or discover any adverse material facts for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.” Mo. Rev. Stat. § 339.730(3) (2018).</p> <p>The Missouri Association of REALTORS® voluntary disclosure statement includes:</p> <p>15. SOIL AND DRAINAGE (b) Are you aware of any soil, earth movement, flood, drainage or grading problems? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>16. MISCELLANEOUS (j) Is any portion of the Property located within the 100 year flood hazard area (flood plain)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Accordingly, the Association’s flood-related disclosures go beyond the disclosures required of seller’s by Missouri law.</p>	<p>Missouri real estate seller's disclosure form</p> <p>Mo. Rev. Stat. § 339.730(3) (2018)</p>
Montana	Y	<p>Montana law does not require home sellers to give a formal disclosure statement to a potential home buyer. However, Mont. Code Ann. § 37-</p>	<p>Montana real estate seller’s disclosure form</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>51-313 (2017) requires a seller agent or dual agent to disclose to a buyer or the buyer’s agent any “adverse material facts” that concern the property and that are known to the seller or dual agent, but he or she need not inspect the property or verify any statements made by the seller. No disclosure to a buyer is required when the seller agent or dual agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property.</p> <p>An “adverse material fact” is “a fact that should be recognized by a broker or salesperson as being of enough significance as to affect a person’s decision to enter into a contract to buy or sell real property.” This may include facts that materially affect the property’s value or structural integrity, presents a health risk to occupants, or affects the buyer’s ability or intent to perform his contractual obligations. Mont. Code Ann. § 37-51-102(2)(a) (2017).</p> <p>Additionally, a licensee must “endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts.”</p> <p>These statutory obligations, arguably, would require disclosure of flood hazard related information. <i>See Rutterud v. Gilbraith, 2015 MT 288</i> (court construes § 37-51-313 in context of failure to disclose mold damage caused by flooding; seller agent not liable).</p> <p>The Montana Association of REALTORS® voluntary disclosure statement includes:</p> <p style="padding-left: 40px;">Please describe any Adverse Material Facts concerning the items listed, or other components, fixtures or matters. If space is inadequate, please attach additional sheets.</p> <p style="padding-left: 40px;">9. BASEMENT: (Leakage, Flooding, Moisture or Evidence of Water, and Fuel Tanks)</p> <p style="padding-left: 40px;">If any of the following items or conditions exist relative to the property, please check the box and provide details</p>	<p>Mont. Code Ann. § 37-51-313 (2017)</p> <p>Mont. Code Ann. § 37-51-102(2)(a) (2017)</p> <p>Rutterud v. Gilbraith, 2015 MT 288</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>below:</p> <p>10. <input type="checkbox"/>-Location in the floodplain, shoreline master plan, wetland or other environmentally sensitive area.</p> <p>12. <input type="checkbox"/>-Flooding, draining, grading problems, or French drains.</p> <p>13. <input type="checkbox"/>-Major damage to the property or any of the structures from fire, earthquakes, floods, slides, etc.</p> <p>Accordingly, the Association’s disclosure form goes beyond any specific Montana disclosure requirements, but the flood-related disclosures arguably are “adverse material facts” that must be disclosed.</p>	
Nebraska	Y	<p>Each seller of residential real property located in Nebraska must provide the purchaser with a written statement disclosing the property's condition. The statement must be executed by the seller and be substantially in the form of the Seller Property Condition Disclosure Statement set forth in the Nebraska regulations promulgated by the Real Estate Commission. Neb. Rev. Stat. Ann. § 76-2,120(2), (6) (2018); 302 Neb. Admin. Code § 1-001 (2019) (form effective Jan. 1, 2017)</p> <p>The mandatory form includes disclosure by the owner of the following flood-related items:</p> <p>Section A - Structural Conditions</p> <p>6. Has there been any damage to the real property or any of the structures thereon due to the following occurrences including, but not limited to, wind, hail, fire, flood, wood-destroying insects, or rodents?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/>No <input type="checkbox"/>Do Not Know</p> <p>Section D - Other Conditions</p> <p>8. a. Is the real property in a flood plain?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/>No <input type="checkbox"/>Do Not Know</p> <p>b. Is the real property in a floodway?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/>No <input type="checkbox"/>Do Not Know</p> <p>14. Are there any flooding, drainage, or grading problems in connection to the real property?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/>No <input type="checkbox"/>Do Not Know</p>	<p>Nebraska real estate seller disclosure form</p> <p>Neb. Rev. Stat. Ann. § 76-2,120(2), (6); 302 (2018)</p> <p>302 Neb. Admin. Code § 1-001 (2019)</p> <p>299 Neb. Admin. Code § 5-003.20 (2019)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>Note too that the Commission may find a licensee to be negligent, incompetent or unworthy if he or she fails to disclose, in writing, to a buyer, at or before the time the buyer signs a purchase offer, a known adverse material fact regarding the real estate's condition. An "adverse material fact" is one that significantly affects the property's desirability or value and that the buyer does not know or cannot reasonably ascertain. 299 Neb. Admin. Code § 5-003.20 (2019). Such a duty arguably would encompass disclosure of flood-hazard related facts not included in the form.</p>	
Nevada	Y	<p>A seller of residential real property must complete the most current form for disclosing the property's condition, as provided by the Real Estate Division of the Department of Business and Industry. The seller may not modify, alter or amend the form in any manner, except with the Division's approval. Seller's Real Property Disclosure Form (July 2017).</p> <p>The mandatory form includes disclosure by the owner of the following flood-related items:</p> <p>Property conditions, improvements and additional information: ...</p> <p>Are you aware of any of the following?</p> <p>2. Land / Foundation:</p> <p>(c) Any drainage, flooding, water seepage, or high water table? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A</p> <p>(d) The property being located in a designated flood plain? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A</p> <p>Note too that generally a licensee must disclose to each party to a real estate transaction as soon as is practicable "[a]ny 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." Nev. Rev. Stat. § 645.252(1)(a) (2017). This broad disclosure requirement would encompass flood-hazard related facts.</p>	<p>Nevada real estate seller's disclosure form</p> <p>Nev. Rev. Stat. §§ 113.130, 113.140 (2017)</p> <p>Nev. Rev. Stat. § 645.252(1)(a) (2017)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
New Hampshire	Y	<p>“Despite the lack of broader legislation on disclosure and the caveat emptor (let the buyer beware) doctrine, New Hampshire does have some relevant regulations around disclosures of property defects.</p> <p>N.H. Rev. Stat. Ann. § 331-A:25-b [2018] provides: ‘The duties of [an agent] acting on behalf of a seller... include... Treating all prospective buyers... honestly [and]... [d]isclosing to a prospective buyer or tenant any material physical, regulatory, mechanical, or on-site environmental condition affecting the subject property of which the licensee has actual knowledge.’”</p> <p>The New Hampshire Association of REALTORS® voluntary disclosure statement includes:</p> <p style="padding-left: 40px;">9. GENERAL INFORMATION</p> <p style="padding-left: 40px;">c. Are you aware of any onsite landfills or any other factors, such as soil, flooding, drainage, etc.?</p> <p style="padding-left: 40px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p style="padding-left: 40px;">If YES, Explain: _____</p> <p style="padding-left: 40px;">g. Is this property located in a Federally Designated Flood Zone? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p>Source: http://www.nolo.com/legal-encyclopedia/selling-new-hampshire-home-what-are-my-disclosure-obligations.html</p> <p>The Associations’ flood-related disclosures are arguably material “on- site environmental condition(s)” affecting the property which must be disclosed pursuant to statute.</p>	<p>New Hampshire real estate seller’s disclosure form</p> <p>N.H. Rev. Stat. Ann. § 331-A:25-b (2018)</p>
New Jersey	Y	<p>The New Jersey Seller's Property Condition Disclosure Statement must be in the form set forth in New Jersey regulations, and must contain, at a minimum, the information required by the form.</p> <p>The mandatory form includes disclosure by the owner of the following flood-related items:</p>	<p>New Jersey real estate seller's disclosure form</p> <p>N.J. Admin. Code §§ 11:5-6.4, 13:45A-29.1 (LexisNexis 2019)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>STRUCTURAL ITEMS</p> <p>23. Are you aware if the property or any of the structures on it have ever been damaged by fire, smoke, wind or flood? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p>LAND (SOILS, DRAINAGE AND BOUNDARIES)</p> <p>69. Is the property located in a flood hazard zone? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>70. Are you aware of any drainage or flood problems affecting the property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p> <p>N.J. Admin. Code § 13:45A-29.1 (LexisNexis 2019)</p> <p>Additionally, every licensee must make reasonable efforts to “ascertain all material information concerning the physical condition of every property for which he or she accepts an agency or which he or she is retained to market as a transaction broker.” Licensees must “disclose all information material to the physical condition of any property which they know or which a reasonable effort to ascertain such information would have revealed to their client or principal and when appropriate to any other party to a transaction.”</p> <p>Information is "material" if a reasonable person would “attach importance to its existence or non-existence in deciding whether or how to proceed in the transaction, or if the licensee knows or has reason to know that the recipient of the information regards, or is likely to regard it as important in deciding whether or how to proceed, although a reasonable person would not so regard it.” N.J. Admin. Code § 11:5-6.4 (LexisNexis 2019). Accordingly, a licensee would be obligated to disclose flood-hazard related facts which are deemed material.</p>	
New Mexico	Y	Real Estate Commission rules mandate that licensees disclose any adverse material facts actually known by the associate broker or qualifying broker about the property or the transaction. N.M. Code R. § 16.61.19.8(A) (2019).	New Mexico real estate seller's disclosure form N.M. Code R. § 16.61.19.8 (2019)

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p><i>See Gouveia v. Citicorp Person-to-Person Fin. Ctr., Inc., 101 N.M. 572, 686 P.2d 262 (Ct. App. 1984)</i> (brokers’ status as listing agent did not relieve them of duty to disclose structural defects to prospective purchasers; direct contact with purchasers not required for liability).</p> <p>The REALTORS® Association of New Mexico voluntary disclosure statement includes:</p> <p>I. ACCESS, PARKING, DRAINAGE & SIGNAGE - Do any of the following conditions currently exist or is Seller aware of them ever existing?</p> <p>8. Flooding or drainage problems: Past <input type="checkbox"/> YES <input type="checkbox"/>NO</p> <p>9. Flooding or drainage problems: Present <input type="checkbox"/> YES <input type="checkbox"/>NO</p> <p>K. ENVIRONMENTAL CONDITIONS – Do any of the following conditions currently exist or is Seller aware of them ever existing?</p> <p>10. Within governmentally designated flood plain or wetland area <input type="checkbox"/> YES <input type="checkbox"/>NO</p> <p>16. Flooding on any portion of the Property <input type="checkbox"/> YES <input type="checkbox"/>NO</p> <p>Source: http://www.nolo.com/legal-encyclopedia/selling-new-mexico-home-what-are-my-disclosure-obligations.html</p> <p>Although New Mexico has no specific property disclosure form or required flood-related disclosures, the above Association disclosures would probably be deemed “adverse material facts” which must be disclosed pursuant to statute.</p>	<p>Gouveia v. Citicorp Person-to-Person Fin. Ctr., Inc., 101 N.M. 572, 686 P.2d 262 (Ct. App. 1984)</p>
New York	Y	<p>Every seller of residential real property must complete and sign a Property Condition Disclosure Statement, which is set forth at N.Y. Real Prop. Law § 462(2) (2018).</p> <p>The mandatory form includes disclosure by the owner of the following flood related items:</p>	<p>New York real estate seller's disclosure form</p> <p>N.Y. Real Prop. Law § 462(2), 465, 467 (2018)</p> <p>Pesce v. Leimsider, 59 Misc. 3d 23</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>ENVIRONMENTAL 10. Is any or all of the property located in a designated floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unkn <input type="checkbox"/> NA If Yes, explain below</p> <p>MECHANICAL SYSTEMS AND SERVICES 30. Are there any flooding, drainage or grading problems that resulted in standing water on any portion of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unkn <input type="checkbox"/> NA If Yes, state locations and explain below The statement also encourages the buyer to check public records, such as wetland and floodplain maps.</p> <p>A seller who fails to timely complete and deliver the disclosure statement, must pay the buyer a \$500 credit toward the purchase price at the closing. In practice, some attorneys are advising sellers to opt-out of completing the disclosure form by paying the \$500, supposedly as a means of avoiding the risk of potential liability for misstatements on the form.</p> <p>However, paying the \$500 statutory credit does not protect a seller from liability under the case law for active concealment of known defects or other common law liability exceptions to <i>caveat emptor</i>. The Property Condition Disclosure Act (PCDA) provides that nothing contained in the Act "shall be construed as limiting any existing legal cause of action or remedy at law, in statute or in equity" See Pesce v. Leimsider, 59 Misc. 3d 23 (N.Y. App. Term 2d Dep't 2018) (Seller's motion for summary judgment denied; "plaintiffs have [stated] a cognizable cause of action against [seller] based upon his alleged concealment of a latent defect, i.e., the water condition, in the home they purchased." "[N]otwithstanding plaintiffs' acceptance of a \$500 credit in lieu of defendants' failure to provide plaintiffs with a Property Condition Disclosure Statement, plaintiffs are not precluded from pursuing a claim for active concealment of a defect.").</p> <p>If a seller does timely deliver a disclosure statement, he or she may still be liable to the buyer for a "willful failure to perform" the requirements of the disclosure law. Generally, New York courts have interpreted "willful</p>	<p>(N.Y. App. Term 2d Dep't 2018)</p> <p>Gabberty v. Pizarz, 10 Misc. 2d 1010 (N.Y. Sup. Ct. 2005)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>failure to perform” under the Property Condition Disclosure Act, so that if a seller makes a misstatement in the disclosure statement, it is likely that the seller will be liable only if a knowing failure to disclose actually prevented the buyer from learning about the defect through usual buyer inspections, or if the defect could not reasonably be discovered by an inspection. <i>See Gabberty v. Pizarz, 10 Misc. 2d 1010 (N.Y. Sup. Ct. 2005)</i> (“willful failure to perform” that creates liability under the PCDA “means (1) a deliberate misstatement or misstatements in a fully completed and timely delivered statement regarding the defective condition complained of (2) that would tend to assure a reasonably prudent buyer that no such condition existed, and (3) which a professional inspector might not discover upon an inspection of the premises that would meet generally accepted standards in the trade”).</p>	
North Carolina	Y	<p>The North Carolina Real Estate Commission requires the standard disclosure statement form set forth at N.C. Admin. Code tit. 21, r. 58A .0114 (2019), which form must bear the North Carolina Real Estate Commission's seal. That mandatory form includes disclosure by the owner of the following flood related items:</p> <p style="padding-left: 40px;">29. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> No Representation</p>	<p>North Carolina real estate seller's disclosure form</p> <p>N.C. Admin. Code tit. 21, r. 58A .0114 (2019)</p>
North Dakota	Y	<p>No North Dakota statutes or regulations requiring a real estate seller to disclose information about property to a prospective buyer.</p> <p>However, according to North Dakota law, if a buyer, a prospective buyer, or a seller is not represented by a real estate brokerage firm in a real property transaction, that buyer or seller is a customer. The brokerage firm and its licensees owe the customer certain legal duties, including, among others, the duty to disclose to the customer any “adverse material facts actually known by the licensee which pertain to the title of the real property, the physical condition of the real property, and defects in the real property.” N.D. Cent. Code §§ 43-23-08.3, -12.1 (2017)</p>	<p>North Dakota real estate seller's disclosure form</p> <p>N.D. Cent. Code §§ 43-23-08.3, -12.1 (2017)</p> <p>Holcomb v. Zinke, 365 N.W.2d 507, 511-12 (N.D. 1985)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>Additionally, the North Dakota Supreme Court has created an exception to the rule of caveat emptor in residential real estate sales:</p> <p>“We conclude therefore that in cases of passive concealment by the seller of defective real property, there is an exception to the rule of caveat emptor, applicable to this case, which imposes a duty on the seller to disclose material facts which are known or should be known to the seller and which would not be discoverable by the buyer’s exercise of ordinary care and diligence.”</p> <p>Holcomb v. Zinke, 365 N.W.2d 507, 511–12 (N.D. 1985).</p> <p>The Fargo-Moorhead Area Association of REALTORS® voluntary disclosure statement includes:</p> <p>FLOOD DISCLOSURE: This region experiences high water elevation flood events including overland and river flooding. This is intended to provide information to prospective buyers concerning the effects of these events on the property. <i>If the property has flooded more than once, please include the dates of each event and explain.</i></p> <p>Is the property in a designated 100 year floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> u=Unknown</p> <p>Do you carry flood insurance? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Have you ever experienced unwanted water on the property? <input type="checkbox"/> Yes <i>explain</i> <input type="checkbox"/> No</p> <p>Has access to the property ever been impeded due to unwanted water? <input type="checkbox"/> Yes <i>explain</i> <input type="checkbox"/> No</p> <p>Have you ever collected a flood insurance claim on the property? <input type="checkbox"/> Yes <i>explain</i> <input type="checkbox"/> No If Yes, were all insured repairs made?</p> <p>Have you ever made ANY non-insured repairs to the property as a result of unwanted water? <input type="checkbox"/> Yes <i>explain</i> <input type="checkbox"/> No</p>	

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p><input type="checkbox"/> Main Floor <input type="checkbox"/> Upper Level</p> <p>Have buildings ever been touched or affected by unwanted water?</p> <p>If Yes, check all that apply: <input type="checkbox"/> Basement <input type="checkbox"/> Lower Level</p> <p><input type="checkbox"/> Second Floor <input type="checkbox"/> Garage <input type="checkbox"/> Outbuildings</p> <p><input type="checkbox"/> Other _____</p> <p>Source(s) of unwanted water (check all that apply): <input type="checkbox"/> River</p> <p><input type="checkbox"/> Overland <input type="checkbox"/> Sewer back-up <input type="checkbox"/> Sump pump failure/Overflow</p> <p><input type="checkbox"/> Seepage (through walls, floor, window wells) <input type="checkbox"/> Other _____</p> <p>Approx. depth: _____</p> <p>Have sandbags, ring dikes or other protective devices been used to protect window wells or buildings from unwanted water? <input type="checkbox"/> No <input type="checkbox"/> Yes explain Location: _____</p> <p>Has the property been located within 2 city blocks (approx. 1,000 feet) of a <input type="checkbox"/> city <input type="checkbox"/> community <input type="checkbox"/> neighbor's dike erected to prevent unwanted water?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes explain Location: _____ Have any permanent dikes been installed to protect the property from unwanted water?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes explain Location: _____ Has unwanted water ever touched any of the sandbags, dikes, or other preventative devices? <input type="checkbox"/> No <input type="checkbox"/> Yes explain</p> <p>Have any other preventative measures been taken to prevent unwanted water? (e.g. plug drain, install sump pump back-up)</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes explain</p> <p>Have you made permanent changes to the property to provide additional flood protection? <input type="checkbox"/> No <input type="checkbox"/> Yes explain</p> <p><i>If "explain" follows your answer, please explain in detail on PAGE 6.</i></p> <p>The Fargo-Moorhead Area Association's form's requirements regarding flood-related disclosures go beyond what is required by state law, and, given the history of catastrophic flooding in the Association's area, probably go far beyond what would be considered adequate for voluntary</p>	

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		disclosure statements in other areas of the state.	
Ohio	Y	<p>A seller must complete all applicable items in the state-mandated property disclosure statement, which is contained in Ohio Admin. Code § 1301:5-6-10 (2019). That Residential Property Disclosure Form requires the following flood-related disclosures:</p> <p>D) WATER INTRUSION: Do you know of any water or moisture related damage to floors, walls or ceilings as a result of flooding; . . . Yes ___ No ___ If “Yes”, please describe and indicate any repairs completed: _____.</p> <p>J) FLOOD PLAIN/LAKE ERIE COASTAL EROSION AREA: Is the property located in a designated flood plain? Yes ___ No ___ Unknown ___ Is the property or any portion of the property included in a Lake Erie Coastal Erosion Area? Yes ___ No ___ Unknown ___</p> <p>K) DRAINAGE/EROSION: Do you know of any previous or current flooding, drainage, settling or grading or erosion problems affecting the property? Yes ___ No ___ If “Yes”, please describe and indicate any repairs, modifications or alterations to the property or other attempts to control any problems (but not longer than the past 5 years): ___</p> <p>Although a licensee must disclose all known material facts regarding a property's physical condition, including material defects, that the purchaser would not discover by a reasonably diligent inspection, the licensee is not required to verify the accuracy or completeness of seller's disclosure statement unless he reasonably questions the statement's accuracy or completeness.</p> <p>Ohio Rev. Code § 4735.67 (2018)</p>	<p>Ohio real estate seller's disclosure form</p> <p>Ohio Admin. Code § 1301:5-6-10 (2019)</p> <p>Ohio Rev. Code § 4735.67 (2018)</p>
Oklahoma	Y	The Oklahoma Real Estate Commission was directed by the Legislature to develop by rule-making the form of Residential	Oklahoma real estate seller's disclosure form

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>Property Condition Disclosure Statement required by law. That mandated form requires the following flood-related disclosures:</p> <ol style="list-style-type: none"> 3. What is the flood zone status of the property? 4. What is the floodway status of the property? 5. Are you aware of any flood insurance requirements concerning the property? Yes___No_ 6. Are you aware of any flood insurance on the property? Yes_No_ 7. Has the property been damaged or affected by flood, storm run-off, sewer backup, drainage or grading problems? Yes_ No_ <p>Additionally, under Oklahoma law a real estate licensee has the duty to disclose to the buyer any defects in the property actually known to the licensee which are not included in any disclosure statement or any amendments. When the licensee actually knows of such an undisclosed defect he or she must complete a Licensee's Disclosure to the Residential Property Condition Disclosure Statement form. Okla. Stat. tit. 60, § 836(C) (2018).</p>	<p>Okla. Stat. tit. 60, §§ 833, 836 (2018)</p>
Oregon	Y	<p>A seller must deliver to each buyer who makes a written purchase offer for real property in Oregon a seller's property disclosure statement substantially in the form set forth in Or. Rev. Stat. § 105.464(2). The statutory form requires the following flood-related disclosures:</p> <ol style="list-style-type: none"> 9. GENERAL <ol style="list-style-type: none"> C. Is there any material damage to the property or any of the structure(s) from fire, wind, floods, beach movements, earthquake, expansive soils or landslides? []Yes []No []Unknown D. Is the property in a designated floodplain? []Yes []No []Unknown 	<p>Oregon real estate seller's disclosure form</p> <p>Or. Rev. Stat. § 105.464(2) (2017)</p> <p>Or. Rev. Stat. §§ 696.805, .810, .815 (2017)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>Note too that a licensee is under a general duty to disclose material facts known by the licensee and not readily ascertainable by a party. Or. Rev. Stat. §§ 696.805, .810, .815 (2017). That duty could encompass flood-hazard related facts not covered in the seller’s disclosure statement.</p>	
Pennsylvania	Y	<p>A seller must disclose to a buyer any known material defects in the property by completing a property disclosure statement that, at a minimum, satisfies the requirements of Pa. Cons. Stat. § 7304.</p> <p>A Seller's Property Disclosure Statement containing the minimum disclosure requirements is available on the Real Estate Commission's website and set forth in 49 Pa. Code § 35.335a.</p> <p>The mandated Real Estate Commission/regulatory form contains the following flood-related disclosures:</p> <p style="padding-left: 40px;">(13) Land (soils, drainage boundaries)</p> <p style="padding-left: 40px;">(iv) To your knowledge, is this property or part of it located in a flood zone or wetlands area?yesno</p> <p style="padding-left: 40px;">(v) Do you know of any past or present drainage or flooding problems affecting the property?yesno</p> <p>Additionally, licensees must disclose to a buyer in writing all known material defects that are not otherwise disclosed, but licensees are not required to conduct an independent investigation to confirm seller's disclosures on the property disclosure statement. 49 Pa. Code § 35.284a (2019). This duty could encompass flood-hazard related defects not disclosed on the Disclosure Statement.</p>	<p>Pennsylvania real estate seller's disclosure form</p> <p>Pa. Cons. Stat. § 7304 (2018)</p> <p>49 Pa. Code §§ 35.284a, .335a (2019)</p>
Puerto Rico	Y	<p>Under Puerto Rico law a vendor of real or personal property is bound to warrant the property sold against hidden defects which the property may have “should they render it unfit for the use to which it was destined, or if they should diminish said use in such manner that had the vendee had knowledge thereof he would not have acquired it or would have given a lower price for it.” A vendor is not liable for “the patent defects or those which may be visible, neither for those which are not visible if the vendee should be an expert and who by reason of his trade or profession should</p>	<p>P.R. Laws Ann. tit. 31, §§ 3801, 3841, 3842, 3843, 3844 (LexisNexis 2019)</p> <p>P.R. Laws Ann. tit. 20, § 3054(17) (LexisNexis 2019)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>easily perceive them.”</p> <p>“The vendor is liable to the vendee for the warranty against faults or hidden defects in the things sold, even when they should be unknown to him,” but not “if the contrary should have been stipulated and the vendor should not have been aware of said faults or hidden defects.”</p> <p>In an action based on this warrant, “the vendee may choose between withdrawing from the contract, the expenses which he may have incurred being returned to him, or demanding a proportional reduction of the price.” If the vendor knew of the faults or hidden defects and did not give notice thereof to the vendee, the vendee may also be indemnified for the losses and damages should he choose rescission. P.R. Laws Ann. tit. 31, §§ 3801, 3841, 3842, 3843, 3844 (LexisNexis 2019).</p> <p>Additionally, a licensee may not “deliberately conceal essential information on the condition of a property, with the purpose of inducing one of the parties to conclude the transaction in certain terms that if he had been aware of them, would not have completed the transaction or [would have] paid a lower price.” P.R. Laws Ann. tit. 20, § 3054(17) (LexisNexis 2019).</p> <p>Accordingly, both the seller and licensee would arguably be under a duty to disclose flood-hazard related information or defects.</p>	
Rhode Island	Y	<p>A real estate seller must deliver a written disclosure to the buyer and each agent. The written disclosure must comply with the requirements set forth in § 5-20.8-2(b) and must state all known deficient conditions. The seller may use the form approved by the Commission or a form substantially conforming to the requirements of § 5-20.8-2.</p> <p>Pursuant to the statute, the disclosure form must include information regarding “Flood Plain – (Flood Insurance).” The Rhode Island Association of RELATORS® has a Real Estate Sales Disclosure Form that conforms to the statutory requirement, requiring the following disclosures:</p>	<p>Rhode Island real estate seller's disclosure form</p> <p>R.I. Gen. Laws § 5-20.8-2 (2018)</p> <p>Stebbins v. Wells, No. 2001-629-Appeal (R.I. Mar. 27, 2003)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>19. Flood Plain Is the property located in a flood plain? Yes _____ No _____ Unknown _____</p> <p>Is there flood insurance on the property? Yes _____ No _____ If yes, \$ _____ per year.</p> <p>The Association form also includes the following disclosure requirements that go beyond the statutory requirement:</p> <p>Previous Flooding: 83 <input type="checkbox"/>Y <input type="checkbox"/>N <input type="checkbox"/>UK <input type="checkbox"/>NA Into the Improvements 84 <input type="checkbox"/>Y <input type="checkbox"/>N <input type="checkbox"/>UK <input type="checkbox"/>NA Onto the Property</p> <p>Additionally, the “passive concealment by the seller” exception to caveat emptor “places upon the seller or agent a duty to disclose in situations where he or she has special knowledge not apparent to the buyer and is aware that the buyer is acting under a misapprehension as to facts which would be important to the buyer and would probably affect its decision.” Accordingly, prior flooding occurrences and property damage caused thereby, would be within the scope of disclosure under appropriate circumstances. <i>See Stebbins v. Wells, No. 2001-629-Appeal (R.I. Mar. 27, 2003)</i> (buyer stated cause of action for negligent omission and negligence based on seller’s and agents’ failure to disclose waterfront property was susceptible severe erosion).</p>	
South Carolina	Y	<p>A property owner must provide a purchaser with a written disclosure statement, which must contain the language and be in the form promulgated by the Commission. S.C. Code § 27-50-40(A) (2018)</p> <p>The South Carolina Residential Property Condition Disclosure Statement promulgated by the Commission requires the disclosure of whether the owner has “any actual knowledge or notice concerning” the following flood-related items:</p> <p>20. Problems caused by fire, smoke, or water to the property during your ownership Yes ___ No ___ No Representation _____</p>	<p>South Carolina real estate seller's disclosure form</p> <p>S.C. Code § 27-50-40(A) (2018)</p> <p>S.C. Code § 40-57-350(L)(2) (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>22. Flood hazards, wetlands, or flood hazard designations affecting the property Yes ___ No ___ No Representation ___</p> <p>23. Flood insurance covering the property Yes ___ No ___ No Representation _____</p> <p>A licensee operating as a transaction broker must disclose material adverse facts that affect the transaction or the value or condition of the property and that are not readily ascertainable, which facts arguably would include flood-hazard related facts. S.C. Code § 40-57-350(L)(2) (2018).</p>	
South Dakota	Y	<p>A residential real property seller must furnish to a buyer a completed copy of the Seller's Property Condition Disclosure Statement in the form set forth in S.D. Codified Laws § 43-4-44 (2018).</p> <p>The mandatory statutory form requires the following flood-related disclosures:</p> <p>I. LOT OR TITLE INFORMATION</p> <p>18. Are you aware if the property has ever had standing water in either the front, rear, or side yard more than forty-eight hours after heavy rain? Yes ___ No ___</p> <p>19. Is the property located in or near a flood plain? Yes ___ No ___ Unknown ___</p> <p>II. STRUCTURAL INFORMATION</p> <p>10. Are you aware of any past or present damage to the property (i.e. fire, smoke, wind, floods, hail, or snow)? Yes ___ No ___ If yes, describe _____</p> <p>Have any insurance claims been made? Yes ___ No ___ Unknown ___ Was an insurance payment received? Yes ___ No ___ Unknown ___ Has the</p>	<p>South Dakota real estate seller's disclosure form</p> <p>S.D. Codified Laws § 43-4-44 (2018)</p> <p>S.D. Codified Laws §§ 36-21A-125, -140, -144 (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>damage been repaired? Yes ____ No ____ If yes, describe in detail:</p> <p>Additionally, a limited agent must disclose any adverse material facts to a client and a transaction broker must make such disclosure to a customer. An “adverse material fact” is “information that negatively affects the value of the property or a party’s ability to perform its obligations in a real estate transaction,” including, among other things, any environmental hazards affecting the property which are required by law to be disclosed and any material defects in the property. S.D. Codified Laws §§ 36-21A-125, -140, -144 (2018)</p>	
Tennessee	Y	<p>A statutorily prescribed form which complies with the seller disclosure law is included in Tenn. Code § 66-5-210 (LexisNexis 2018). That form need not be used, but any such form must include all items contained in the statutory form. That Tennessee Residential Property Condition Disclosure Form requires the following flood-related disclosures:</p> <p>(C) Are You (Seller) Aware of Any of the Following? 10. Flooding, drainage or grading problems? YES ___ NO ___ UNKNOWN ___ 11. Any requirement that flood insurance be maintained on the property? YES ___ NO ___ UNKNOWN ___ 12. Property or structural damage from fire, earthquake, floods or landslides? YES ___ NO ___ UNKNOWN ___ If yes, has such damage been repaired? _</p> <p>Additionally, a real estate licensee is subject to a cause of action for damages or equitable relief for failing to disclose adverse facts of which the licensee has actual knowledge or notice. "Adverse facts" are defined as “conditions or occurrences generally recognized by competent licensees that significantly reduce the structural integrity of improvements to real property, or present a significant health risk to occupants of the property.” Tenn. Code § 66-5-206 (LexisNexis 2018). Flood-hazard would arguably fall within such adverse facts which must</p>	<p>The state's disclosure form is available online as a link from Tenn. Code § 66-5-210 (LexisNexis 2018)</p> <p>Tenn. Code § 66-5-206 (LexisNexis 2018)</p>

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		be disclosed.	
Texas	Y	<p>A seller of residential real property with no more than one dwelling unit must give the buyer: (i) a written notice in the form of the Seller's Disclosure Notice set forth in § 5.008(b); or (ii) a substantially similar written notice that contains at least all of the items prescribed by Tex. Prop. Code § 5.008 (2017). That statutory form requires the following flood-related disclosures:</p> <p style="padding-left: 40px;">4. Are you (Seller) aware of any of the following conditions? Write Yes (Y) if you are aware, write No (N) if you are not aware. If yes, explain.</p> <p style="padding-left: 40px;"><input type="checkbox"/> Previous Flooding <input type="checkbox"/> Located in 100-Year Floodplain <input type="checkbox"/> Present Flood Insurance Coverage</p> <p>Note too that a licensee may be disciplined by the Real Estate Commission fails to disclose to a potential buyer a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property. This duty to disclose arguably would encompass flood-hazard related facts. Tex. Occ. Code § 1101.652(b)(3), (4) (2017).</p>	<p>Texas real estate seller's disclosure form Tex. Prop. Code § 5.008</p>
Utah	Y	<p>Research located no Utah statutes or regulations requiring a real estate seller to disclose information to a prospective buyer on a specified form or requiring specific flood-related disclosures.</p> <p>Note, however, that an individual licensee's duty of confidentiality owed to his or her principal does not extend to any known material fact concerning a defect in the property. Utah Admin Code r. 162-2f-401a(1)(d) (2019). See Hermansen v. Tasulis, 2002 UT 52, 48 P.3d 235 (summary judgment in favor of seller's broker reversed; seller's broker owed independent duty to prospective purchasers "to disclose facts materially affecting the value or desirability of the property that were known to him").</p>	<p>Utah Admin Code r. 162-2f-401a(1)(d) (2019)</p> <p>Hermansen v. Tasulis, 2002 UT 52, 48 P.3d 235</p>

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Vermont	Y	<p>Research located no Vermont statutes or regulations requiring a real estate seller to disclose information to a prospective buyer on a specified form or requiring specific flood-related disclosures.</p> <p>However, a licensee may be disciplined if he or she "fails to fully disclose to a buyer all material facts within the licensee's knowledge concerning the property being sold." A "material fact" is "a fact that might cause a buyer or seller to make a different decision with regards to entering into or remaining in a contract or affect the price paid or received for real property."</p> <p>Pursuant to Real Estate Commission rules "[a] licensee working for a brokerage firm employed by a seller or seller's agent must fully and promptly disclose to a prospective buyer all material facts within the licensee's knowledge concerning the property being sold. This obligation continues until the sale is closed or has been cancelled." The rule gives the following examples of material facts:</p> <ul style="list-style-type: none"> • "a defect that could significantly diminish the value of the land, structures, or structural components such as the roof, wiring, plumbing, heating system, water system, or sewage disposal system;" • "a recognized or generally accepted hazard to the health or safety of a buyer or occupant of the property;" or • "facts a licensee reasonably believes may directly impact the future use or value of the property." <p>"If the client refuses to consent to disclosure after being informed that the licensee considers disclosure to be necessary, then the licensee must withdraw from the agency relationship."</p> <p>Vt. Stat.it. 26, § 2296 (2018); 04 030 290 Vt. Code R. §§ 1.8(p), 4.5 (2019). See also Carter v. Gugliuzzi, 168 Vt. 48, 716 A.2d 17 (1998) (seller's agent liable to buyer for failure to disclose that, among other</p>	<p>Vt. Stat.it. 26, § 2296 (2018)</p> <p>04 030 290 Vt. Code R. §§ 1.8(p), 4.5 (2019)</p> <p>Carter v. Gugliuzzi, 168 Vt. 48, 716 A.2d 17 (1998)</p>

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		<p>defects, property was subject to frequent and severe high winds which had damaged property in the past).</p> <p>This disclosure duty arguably would encompass flood-hazard related facts.</p>	
Virgin Islands	N	No relevant statutes, regulations or case law were located.	
Virginia	Y	<p>A residential real property owner must furnish to a purchaser a residential property disclosure statement on a Real Estate Board- provided form, as provided by Va. Code § 55-519 (2018). The statute and Board form require the following language regarding flood-related disclosures:</p> <p style="padding-left: 40px;">The owner makes no representations with respect to whether the property is located in one or more special flood hazard areas and purchasers are advised to exercise whatever due diligence they deem necessary, including (i) obtaining a flood certification or mortgage lender determination of whether the property is located in one or more special flood hazard areas, (ii) review of any map depicting special flood hazard areas, and (iii) whether flood insurance is required, in accordance with terms and conditions as may be contained in the real estate purchase contract, but in any event, prior to settlement pursuant to such contract.</p> <p>However, this “buyer beware” disclosure does not on its face, or otherwise, relieve a seller of the duty to disclose prior flood-hazard related damage to the property. In the analogous case of Devine v. Buki, 766 S.E.2d 882 (Va. 2015), the buyers were awarded rescission of the contract on a claim that the seller fraudulently concealed prior water and termite damage to the property. “If a party conceals a fact that is material to the transaction, knowing that the other party is acting on the assumption that no such fact exists, the concealment is as much a fraud as if the existence of the fact were expressly denied, or the reverse of it expressly stated.”</p> <p>Note too, that it is an action constituting "misrepresentation or omission" for a licensee representing a seller as a standard agent to fail to disclose in</p>	<p>Residential Property Disclosures Website</p> <p>Va. Code § 55-519 (2018)</p> <p>18 Va. Admin. Code § 135-20-300 (2019)</p> <p>Devine v. Buki, 766 S.E.2d 882 (Va. 2015)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>a timely manner to a prospective purchaser all material adverse facts pertaining to the property's physical condition that the licensee actually knows. 18 Va. Admin. Code § 135-20-300 (2019).</p>	
Washington	Y	<p>A seller of improved or unimproved residential real property must deliver to the buyer a completed seller disclosure statement: (i) in the form set forth in Wash. Rev. Code § 64.06.020 (2018) for improved property; and (ii) in the form set forth in Wash. Rev. Code § 64.06.015 (2018) for unimproved property. The mandatory form for unimproved residential property requires the following flood-related disclosures.</p> <p>5. FLOODING A. Is the property located in a government designated flood zone or floodplain?</p> <p>7. ENVIRONMENTAL A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? Are there any shorelines, wetlands, floodplains, or critical areas on the property?</p> <p>The mandatory disclosure form for improved residential property requires similar disclosures:</p> <p>4. STRUCTURAL B. Has the basement flooded or leaked?</p> <p>7. ENVIRONMENTAL A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property? C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides? Are there any shorelines, wetlands, floodplains, or critical</p>	<p>Washington State real estate seller's disclosure form</p> <p>Wash. Rev. Code § 64.06.020 (2018); see also Wash. Rev. Code § 64.06.015 (2019)</p> <p>Wash. Rev. Code § 18.86.030 (2018)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>areas on the property?</p> <p>Note too that a broker generally owes to all parties to whom the broker renders real estate brokerage services a duty to “disclose all existing material facts known by the broker and not apparent or readily ascertainable to a party; provided that this . . . shall not be construed to imply any duty to investigate matters that the broker has not agreed to investigate.” A broker owes “no duty to conduct an independent inspection of the property . . . , and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the broker to be reliable.” Wash. Rev. Code § 18.86.030(1)(d), (2) (2018).</p>	
West Virginia	Y	<p>Research located no West Virginia statutes or regulations requiring a real estate seller to disclose information to a prospective buyer on a specified form or requiring specific flood-related disclosures.</p> <p>However, West Virginia case law imposes a general duty on vendors and real estate licensees to disclose property defects to potential buyers. “Where a vendor is aware of defects or conditions which substantially affect the value or habitability of the property and the existence of which are unknown to the purchaser and would not be disclosed by a reasonably diligent inspection, then the vendor has a duty to disclose the same to the purchaser.”</p> <p>Similarly, “[a] vendor's real estate broker may be liable to a purchaser if the broker makes material misrepresentations with regard to the fitness or habitability of residential property or fails to disclose defects or conditions in the property that substantially affect its value or habitability, of which the broker is aware or reasonably should be aware, but the purchaser is unaware and would not discover by a reasonably diligent inspection. It also must be shown that the misrepresentation or concealment was a substantial factor in inducing the purchaser to buy the property.”</p> <p>See Darrisaw v. Old Colony Realty Co., 202 W. Va. 23, 501 S.E.2d 187 (1997) (summary judgment for seller and seller’s agent inappropriate</p>	<p>Darrisaw v. Old Colony Realty Co., 202 W. Va. 23, 501 S.E.2d 187 (1997)</p>

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		where genuine issue of material fact existed as to whether failure to disclose prior structural repairs substantially affected property's value).	
Wisconsin	Y	<p>All persons who transfer real property containing one to four inhabited dwelling units located in Wisconsin must furnish to the prospective buyer a completed copy of a disclosure report in substantially the form of the Real Estate Condition Report set forth in Wis. Stat. § 709.03 (2019). A seller of vacant land must prepare a report in substantially the form set forth in Wis. Stat. §709.033.</p> <p>The statutory Real Estate Condition Report form requires the following flood-related disclosure:</p> <p style="padding-left: 40px;">C. 11. I am aware that the property is located in a floodplain, wetland or shoreland zoning area. Yes_ _____No___N/A ____</p> <p>The statutory Vacant Land Disclosure Report form requires the following flood-related disclosures:</p> <p style="padding-left: 40px;">C. 4. I am aware that all or a portion of the property is in a floodplain, wetland, or shoreland zoning area under local, state, or federal regulations. Yes___No___N/A ____</p> <p style="padding-left: 40px;">C. 22. I am aware of flooding, standing water, drainage problems, or other water problems on or affecting the property. Yes___No___N/A ____</p> <p style="padding-left: 40px;">I am aware of material damage from fire, wind, flood, earthquake, expansive soil, erosion, or landslide. Yes_No_N/A ____</p> <p>Also, generally, a licensee, must disclose to each party "all material adverse facts that the licensee knows and that the party does not know or cannot discover through a reasonably vigilant observation, unless the disclosure of the material adverse fact is prohibited by law." An "adverse fact" is "[a] condition or occurrence that is generally</p>	<p>Real Estate Condition Report</p> <p>Wis. Stat. § 709.03 (2019)</p> <p>Wis. Stat. §§ 452.01(1e), (5g); .133(1)(c) (2019)</p>

State	Disclosure Required?	Flood-Related Disclosures	Links to Disclosures/Cites to Primary Law
		<p>recognized by a competent licensee as doing any of the following: (a) significantly and adversely affecting the value of the property; (b) significantly reducing the structural integrity of improvements to real estate; or (c) presenting a significant health risk to occupants of the property.”</p> <p>“Material adverse fact” is defined as “an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction or affects or would affect the party’s decision about the terms of such a contract or agreement.”</p> <p>This duty, arguably, encompasses disclosure of flood-hazard facts not included in the disclosure forms. Wis. Stat. §§ 452.01(1e), (5g); .133(1)(c) (2019).</p>	
Wyoming	Y	<p>Research located no Wyoming statutes or regulations requiring a real estate seller to disclose information to a prospective buyer on a specified form or requiring specific flood-related disclosures.</p> <p>However, a licensee acting as a seller's agent must disclose to any prospective buyer all adverse material facts actually known by the licensee. "The adverse material facts may include adverse material facts pertaining to the title and the physical condition of the property, any material defects in the property and any environmental hazards affecting the property which are required by law to be disclosed." A seller's agent may not "perpetuate a material misrepresentation of the seller which the licensee knows or should know is false."</p> <p>Generally, a licensee may be disciplined for failing to disclose material matters known to the licensee.</p> <p>Wyo. Stat. § 33-28-303(c) (LexisNexis 2018); 9827 Wyo. Code R. ch. 6, § 1 (2019)</p> <p>See Reed v. Cloninger, 2006 WY 37, 131 P.3d 359 (stating general rule</p>	<p>Wyo. Stat. § 33-28-303(c) (LexisNexis 2018)</p> <p>9827 Wyo. Code R. ch. 6, § 1 (2019)</p> <p>Reed v. Cloninger, 2006 WY 37, 131 P.3d 359</p>

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		that “if the seller violates a duty to inform the purchaser of the defect, the purchaser may have a claim against his vendor and/or the seller's realtor for misrepresenting the condition of the property, provided they knew or reasonably should have known of the defect”).	