



Disclosure

- facilitated meeting notes

Facilitator's notes

Allow

2
hours

This is an estimate only.
You may wish to cover this
topic in two or more sessions.

What you'll need

- Laptop or other device with Internet access and a screen.
- Ability to play videos with sound.
- Marker pens and large sheets of paper and whiteboards for a group activity.
- Your agency's disclosure policy and any checklist or supporting documentation.
- REA Disclosure - guidance and resources for licensees (flyer supplied).
- A copy of the Code of Conduct (supplied).

Introduction to **your meeting (5 mins)**

Advise attendees that:

- Today, we'll discuss disclosure because it's integral to the real estate transaction process.
- Disclosure is a big issue:
 - REA research shows that 36% of the most serious issues experienced by home buyers had disclosure as part of the problem.
 - 22% of all complaints that go to CACs are related to disclosure.
- REA research has identified three types of vendor behaviour in relation to disclosure:
 - One group discloses everything to licensees.
 - The second group have a mixed approach, with some only revealing things when asked directly and others not aware that something was a problem.
 - The third group deliberately doesn't disclose defects.
- There can be serious consequences for all parties when disclosure is not well managed.

- Today's session(s) can be counted as 2 hours towards **non-verifiable training** (if all sessions are attended).

In today's session, we're going to:

- show the REA video about principles of disclosure (REA produced this video because it was the most asked-for video topic by licensees)
- discuss the importance of disclosure
- consider disclosure-related impacts from the perspective of the buyer, the vendor and the licensee
- facilitate group discussion about our experiences with disclosure
- run some activities
- discuss where to go for further resources and support.

The aims of today's session are to:

- outline why managing disclosure well is so important
- learn from each other's experiences about dealing with disclosure
- know where to go for more information and support about handling disclosure issues.

STEP

1

Watch and discuss the video

25
mins



Principles of disclosure - REA educational video (5 mins)

REA has developed an educational video to help licensees better understand their obligations when it comes to disclosing information to potential buyers.

The disclosure video is 5 minutes long. You may wish to pause the video to point out something important if you think it will be useful to staff.

Below are some suggested times to pause and discuss the video:

- **1:27** What are the two main rules that outline your disclosure obligations?
- **2:36** What types of defects are you required to know about and disclose?
- **3:25** In what cases might you consider walking away from a listing?

Find the Principles of disclosure video at: rea.govt.nz/principles

Discuss the video (20 mins)

Suggested questions to generate discussion:

- What do you think about what you saw and heard in the video?
- How can we encourage vendors to be open and honest?
- What is the difference between disclosure under Rule 10.7 and Rule 6.4?
- What types of building materials and methods need to be disclosed?



STEP
2

Activity – discuss experiences participants have had in relation to disclosing issues with a property



25
mins

The purpose of this activity is to:

- share experiences and, more importantly, **learnings**
- help everyone feel more comfortable about discussing disclosure issues
- make participants aware that they will continue to face disclosure challenges throughout their career and it's okay to reach out for support, both within and outside the agency.

Facilitate a discussion about disclosure issues or challenges you may have faced in the past, either as individuals or as an agency. (You'll need some examples up your sleeve.)

We suggest larger groups could break into groups of four to seven people for this exercise, so everyone gets a chance to share examples. After 15 minutes, ask each group to share one key example or learning with the wider group.

Invite everyone to share their experiences. Be sure to cover off **how they might handle it differently** if they were to face the situation again.

Examples of questions that may help to generate discussion

You might like to think about some of these in advance:

- Describe a situation where you could have handled a disclosure situation better. What happened, what went wrong and what were the learnings? How were you supported through it?
- Have you ever had a vendor who didn't want you to disclose an issue? What steps did you take? What support did you seek? What was the outcome? How would you have handled it differently?
- Have you or someone you've worked with ever walked away from a listing? What were the reasons for making that decision?
- Describe a situation where a buyer found an issue with the property. How did you handle it? What was the issue? What was the buyer's viewpoint? What steps did you and the vendor take?
- Have you ever had to consider a sensitive disclosure issue such as a suicide or a violent death on a property? How did you manage it?
- Describe a situation where you weren't sure whether to disclose an issue or not. What steps did you take?
- Describe a situation where you weren't sure whether a defect or issue existed or not. How did you confirm there was an issue? What steps did you take next?
- Describe a difficult conversation you've had to have with a vendor or buyer about disclosure. How did you manage the conversation? What was the outcome? How would you approach the conversation differently next time?

STEP 3

Activity – highlight the consequences of failing to disclose

15 mins

Advise participants that the purpose of this activity is to get licensees to think about the potential consequences for all parties within a property transaction when disclosure isn't managed well.

This activity involves dividing participants into three groups (if possible). Pose a question and give each group time to think about possible answers. Each group will write down their answers and present them to the wider group.

Tip: Everyone should think about the activity by putting themselves in the shoes of the identified party in order to thoroughly consider all consequences related to the question.

1

Q What are the consequences for the licensee and agency if defects aren't disclosed?

A Possible consequences for the licensee and agency:

The licensee may have complaints and other actions taken (e.g. under the Fair Trading Act 1986) against them, which could lead to fines and convictions for them and their agency. They may also have their licence suspended depending on the seriousness of offending. There are also significant personal consequences including stress and emotional upheaval as well as the impact of reputational damage.

2

Q What are the consequences for the buyer if information about defects is not disclosed to them?

A Possible consequences for the buyer: The buyer may experience high levels of stress and anxiety. They may face remediation expenses, which could have significant and long-lasting financial impacts for them and their family. If they choose to take legal action, there is cost, time and stress associated with this.

3

Q What are the consequences for the vendor if they do not disclose information about defects to their licensee?

A Possible consequences for the vendor: The vendor may face legal action from a buyer if they have failed to disclose issues with the property. They may have to deal with an angry buyer and incur legal costs trying to resolve the issue with the buyer. The vendor may be taken to court and may also suffer reputational damage, which may affect them in other aspects of their life.



STEP
4

Discuss the case study

20
mins

Case 1: C24102 **McLean vs REAA 2019**

Facts

The complainants purchase of a residential property was conditional on a building inspection report. The complainants commissioned a building report from a building inspection company that had been suggested by the licensee. The complainants were satisfied with the report that was commissioned as it only recommended that some minor repairs be undertaken. The complainants completed the sale.

The licensee stated that they told all potential buyers that the property had monolithic cladding and that, if they had any concerns, they would need to get their own building report.

Following the Kaikōura earthquake in November 2016, the complainants observed some damage resulting

in weathertightness issues. An Earthquake Commission (EQC) assessment stated that internal water damage was not earthquake related. The complainants then commissioned a second building inspection with another company, which identified a variety of serious weathertightness issues and ultimately stated that the property should be demolished. They also learned that a neighbouring property built with the same construction methods was demolished due to the same issues.

The complainants lodged a complaint with REA highlighting that the licensee at no point explained the risks associated with monolithic cladding and the potential weathertightness risks.

Suggested questions to ask

- Do you think the licensee fulfilled their disclosure obligations?
- Do you think the purchasers had grounds for a complaint?
- What do you think the outcome was?



The Complaints Assessment Committee reasoning

The CAC concluded that the licensee engaged in unsatisfactory conduct under section 89(2)(b) of the Real Estate Agents Act 2008 and was in breach of Rules 5.1, 6.2, 6.3, 6.4 and 10.7 by failing to disclose the risks associated with monolithic cladding to the complainants.

Under rule 10.7, the licensee had an obligation to disclose the risks associated with the monolithic cladding system and the weathertightness issues. Instead of disclosing to the complainants that the use of monolithic cladding increases the risk of weathertightness problems, the licensee relied on the complainants' building inspection to identify any weathertightness issues.

When licensees can see, from their own knowledge and experience,

that a property may be subject to hidden or underlying defects (such as a leaky home), it is not enough for licensees to rely on representations from a vendor or to simply recommend that potential buyers obtain their own building report. This does not satisfy their disclosure obligations. The licensee should have seen red flags when they first inspected the property because the use of the monolithic cladding system was not hidden. The licensee should have been more alert to the potential problem with the monolithic cladding system and mindful of their obligation to disclose the same to prospective purchasers.

Penalty

The licensee was censured, fined \$5,000, ordered to undertake additional training and was made to pay costs of \$1,832.81 to the complainants.

Discussion questions

- Do you agree with the findings? Why/why not?
- How could the licensee have handled the situation better?
- What could the licensee have done differently to avoid a complaint?
- What red flags have you seen in your listings that made you suspect a hidden defect?
- What are the risks when licensees pass on contact details, or recommend particular building inspectors to potential buyers?



STEP 5

Activity – complete the **REA** disclosure quiz

10
mins

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- 1** **Q** When should you investigate an issue further with the vendor?
- A** When you suspect there may be a risk of an unknown, hidden or underlying defect. There is no one-size-fits-all approach about what will alert a reasonably competent licensee to the possibility of a risk of a defect in a property. It will always depend on the circumstances.
-
- 2** **Q** At what point should all disclosures be made?
- A** All disclosures must be made before a buyer submits an offer, but any defects discovered later need to also be disclosed during the real estate transaction process.
-
- 3** **Q** True or false: It is perfectly okay for vendors not to disclose information about defects with their property.
- A** **False:** Vendors can be held to account for their non-disclosure by purchasers.
-
- 4** **Q** Can you rely solely on a vendor's representations of their property?
- A** No. A 'reasonably competent licensee' will ask for supporting evidence and make inquiries about the information a vendor tells them. A licensee must disclose the limitations of their research of the property.
-
- 5** **Q** Name **three potential issues** beyond the boundary that a licensee should be aware of and potentially disclose to a buyer. (Any of the following are correct.)
- A**
- Any potential or planned roading changes.
 - Any proposed or planned changes to neighbouring or nearby properties.
 - Changes to the district plan.
 - School zoning and proposed changes.
 - Adjacent building permits if these are known to the licensee.
 - A gang house next door if known by the licensee.
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- 6** **Q** A licensee believes there is a potential defect with a property, but the vendor disagrees. What should the licensee do?
- A**
- Ask the vendor to provide evidence to back up their view. The licensee could also discuss the situation with their supervising agent or branch manager, check their agency's disclosure policy, possibly seek legal advice and/or check out the REA website.
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- 7** **Q** Name **one critical step** a licensee can take to protect themselves when it comes to disclosure.
- A**
- Put everything in writing.
 - Don't make false representations. Don't interpret information a vendor gives to you – pass it on and confirm it is from the vendor.
 - Discuss what information will be shared and how. It's important to document the decision and to have obtained the vendor's consent.
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8 **Q** True or false: 'As is, where is' means the purchaser is accepting all present faults, and a licensee is negated from their disclosure obligations.

A False. A licensee should be aware of anything that may be material to a prospective purchaser. That information needs to be fully disclosed before the buyer submits an offer.

9 **Q** Give **two examples** of issues a 'reasonably competent licensee' should be able to identify.

- A**
- Ceilings, roofing and other materials that may contain asbestos.
 - Leaky buildings that fit the monolithic cladding stereotype.
 - Dux Quest piping used in houses built in the late 1970s to early 1980s.

10 **Q** The licensee believes there is a defect with the property and that it should be disclosed. However, the vendor disputes there is a problem and does not consent to disclosure. The vendor can't provide proof otherwise. What does the licensee need to consider doing?

A Walking away from the transaction.

STEP 6

Where to go for more resources and information

2
mins

For discussion: You might like to bring up the rea.govt.nz website if you have a large screen available.

The rea.govt.nz website has important information and supporting resources to help guide licensees through the process of disclosing information.

Resources on the rea.govt.nz website

(visit rea.govt.nz/disclosures)

- Principles of disclosure
- REA – Principles of disclosure educational video
- Natural disaster damage
- Sensitive issues
- Weathertightness issues
- Methamphetamine disclosure

Reminder: It's important that licensees know they should discuss any disclosure issues with

their supervising agent or branch manager.

For further support, call REA on 0800 367 732 or send an email to info@rea.govt.nz.

Hand out the disclosure flyer

The flyer includes information about where to go for guidance and support so licensees can manage disclosure issues with confidence.