



West's General Laws of Rhode Island Annotated [Currentness](#)

Title 5. Businesses and Professions

[Chapter 20.8](#). Real Estate Sales Disclosures

→ **§ 5-20.8-2. Disclosure requirements**

(a) As soon as practicable, but in any event no later than prior to signing any agreement to transfer real estate, the seller of the real estate shall deliver a written disclosure to the buyer and to each agent with whom the seller knows he or she or the buyer has dealt in connection with the real estate. The written disclosure shall comply with the requirements set forth in subsection (b) of this section and shall state all deficient conditions of which the seller has actual knowledge. The agent shall not communicate the offer of the buyer until the buyer has received a copy of the written disclosure and signed a written receipt of the disclosure. If the buyer refuses to sign a receipt pursuant to this section, the seller or agent shall immediately sign and date a written account of the refusal. The agent is not liable for the accuracy or thoroughness of representations made by the seller in the written disclosure or for deficient conditions not disclosed to the agent by the seller.

(b)(1) The Rhode Island real estate commission may approve a form of written disclosure as required under this chapter or the seller may use a disclosure form substantially conforming to the requirements of this section. The following provisions shall appear conspicuously at the top of any written disclosure form: "Prior to the signing of an agreement to transfer real estate (vacant land or real property and improvements consisting of a house or building containing one to four (4) dwelling units), the seller is providing the buyer with this written disclosure of all deficient conditions of which the seller has knowledge. This is not a warranty by the seller that no other defective conditions exist, which there may or may not be. The buyer should estimate the cost of repair or replacement of deficient conditions prior to submitting an offer on this real estate. The buyer is advised not to rely solely upon the representation of the seller made in this disclosure, but to conduct any inspections or investigations which the buyer deems to be necessary to protect his or her best interest." Nothing contained in this section shall be construed to impose an affirmative duty on the seller to conduct inspections as to the condition of this real estate.

(2) The disclosure form shall include the following information:

(i) Seller Occupancy--(Length of Occupancy)

(ii) Year Built

(iii) Basement--(Seepage, Leaks, Cracks, etc. Defects)

- (iv) Sump Pump--(Operational, Location, and Defects)
- (v) Roof (Layers, Age and Defects)
- (vi) Fireplaces--(Number, Working and Maintenance, Defects)
- (vii) Chimney--(Maintenance History, Defects)
- (viii) Woodburning Stove--(Installation Date, Permit Received, Defects)
- (ix) Structural Conditions--(Defects)
- (x) Insulation--(Wall, Ceiling, Floor, UFFI)
- (xi) Termites or other Pests--(Treatment Company)
- (xii) Radon--(Test, Company) “Radon has been determined to exist in the State of Rhode Island. Testing for the presence of radon in residential real estate prior to purchase is advisable.”
- (xiii) Electrical Service--(Imp. & Repairs, Electrical Service, Amps, Defects)
- (xiv) Heating System--(Type, Imp. & Repairs, Underground Tanks, Zones, Supplemental Heating, Defects)
- (xv) Air Conditioning--(Imp. & Repairs, Type, Defects)
- (xvi) Plumbing--(Imp. & Repairs, Defects)
- (xvii) Sewage System--(Assessment, Annual Fees, Type, Cesspool/Septic Location, Last Pumped, Maintenance History, Defects)

“Potential purchasers of real estate in the state of Rhode Island are hereby notified that many properties in the state are still serviced by cesspools as defined in Rhode Island general law chapter 23-19.15 (The Rhode Island Cesspool Phase-Out Act of 2007). Cesspools are a substandard and inadequate means of sewage treatment and disposal, and cesspools often contribute to groundwater and surface water contamination. Requirements for abandonment and replacement of high-risk cesspools as established in Rhode Island general law Chapter 23-19.15 are primarily based upon a cesspool's non-treatment of wastewater and the inherent risks to public

health and the environment due to a cesspool's distance from a tidal water area, or a public drinking water resource. Purchasers should consult Rhode Island general law chapter 23-19.15 for specific cesspool abandonment or replacement requirements. An inspection of property served by an on-site sewage system by a qualified professional is recommended prior to purchase. Pursuant to [Rhode Island general law § 5-20.8-13](#), potential purchasers shall be permitted a ten (10) day period to conduct an inspection of a property's sewage system to determine if a cesspool exists, and if so, whether it will be subject to the phase-out requirements as established in Rhode Island general law chapter 23-19.15.

(xviii) Water System--(Imp. & Repairs, Type, Defects) Private water supply (well).

“The buyer understands that this property is, or will be served, by a private water supply (well) which may be susceptible to contamination and potentially harmful to health. If a public water supply is not available, the private water supply must be tested in accordance with regulations established by the Rhode Island department of health pursuant to [§ 23-1-5.3](#). The seller of that property is required to provide the buyer with a copy of any previous private water supply (well) testing results in the seller's possession and notify the buyer of any known problems with the private water supply (well).”

(xix) Domestic Hot Water--(Imp. & Repairs, Type, Defects, Capacity of Tank)

(xx) Property Tax

(xxi) Easements and Encroachments--The seller of that real estate is required to provide the buyer with a copy of any previous surveys of the real estate that are in the seller's possession and notify the buyer of any known easements, encroachments, covenants or restrictions of the seller's real estate. A buyer may wish to have a boundary or other survey independently performed at his or her own expense.

(xxii) Deed--(Type, Number of Parcels)

(xxiii) Zoning--(Permitted use, Classification) “Buyers of real estate in the state of Rhode Island are legally obligated to comply with all local real estate ordinances; including, but not limited to, ordinances on the number of unrelated persons who may legally reside in a dwelling, as well as ordinances on the number of dwelling units permitted under the local zoning ordinances.” If the subject property is located in a historic district, that fact must be disclosed to the buyer, together with the notification that “property located in a historic district may be subject to construction, expansion or renovation limitations. Contact the local building inspection official for details.”

(xxiv) Restrictions--(Plat or Other)

(xxv) Building Permits

(xxvi) Minimum Housing--(Violations)

(xxvii) Flood Plain--(Flood Insurance)

(xxviii) Wetlands--The location of coastal wetlands, bay, fresh water wetlands, pond, marsh, river bank or swamp, as those terms are defined in chapter 1 of title 2 and the associated buffer areas may impact future property development. The seller must disclose to the buyer any such determination on all or part of the land made by the department of environmental management.

(xxix) Multi-family or other Rental Property--(Rental Income)

(xxx) Pools & Equipment--(Type, Defects)

(xxxi) Lead Paint--(Inspection) Every buyer of residential real estate built prior to 1978 is hereby notified that those properties may have lead exposures that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced IQ behavioral problems, and impaired memory. The seller of that property is required to provide the buyer with a copy of any lead inspection report in the seller's possession and notify the buyer of any known lead poisoning problem. Environmental lead inspection is recommended prior to purchase.

(xxxii) Fire

(xxxiii) Hazardous Waste--(Asbestos and Other Contaminants)

(xxxiv) Miscellaneous

(xxxv) Farms--The disclosure shall inform the buyer that any farm(s) that may be in the municipality are protected by the right to farm law.

(c) Any agreement to transfer real estate shall contain an acknowledgement that a completed real estate disclosure form has been provided to the buyer by the seller in accordance with the provisions of this section.

(d) The Rhode Island real estate commission has the right to amend the seller disclosure requirements by adding or deleting requirements when there is a determination that health, safety, or legal needs require a change. Any change to requirements shall be a rule change, subject to the Administrative Procedures Act, chapter 35 of title

42. The power of the commission to amend the written disclosure requirements shall be liberally construed so as to allow additional information to be provided as to the structural components, housing systems, and other property information as required by this chapter.

#### CREDIT(S)

P.L. 1992, ch. 425, § 1; P.L. 1993, ch. 397, § 4; P.L. 1999, ch. 419, § 1; P.L. 2002, ch. 161, § 2; P.L. 2002, ch. 162, § 2; P.L. 2004, ch. 313, § 1; P.L. 2004, ch. 600, § 1; P.L. 2007, ch. 136, § 2, eff. June 1, 2008; P.L. 2007, ch. 233, § 2, eff. June 1, 2008; P.L. 2008, ch. 58, § 1, eff. Jan. 1, 2009; P.L. 2008, ch. 252, § 1, eff. Jan. 1, 2009.

#### LIBRARY REFERENCES

[Antitrust and Trade Regulation](#)  198, 199.

Westlaw Key Number Searches: 29Tk198; 29Tk199.

#### RESEARCH REFERENCES

##### Treatises and Practice Aids

[Corp. Compl. Series: Environmental § 4:8](#), Real Estate Transfers Triggering State Cleanup or Disclosure Requirements.

#### NOTES OF DECISIONS

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[1/2](#). In general

Purchaser of lot did not have, under statute requiring disclosure of deficient conditions, an independent cause of action against vendor who failed to disclose neighbors might have obtained through adverse possession vendor's easement to use lane extending along lot boundary, though statute imposed a duty on sellers and their agents to

disclose known defects and evidence that statute was violated could support other claims purchaser had against vendor, as statute did not create a private cause of action. [Bitting v. Gray, 897 A.2d 25 \(2006\)](#). [Action](#) 3; [Vendor And Purchaser](#) 343(3)

#### 3/4. Construction and application

Seller's failure to disclose that the property was located within the historic zoning district constituted failure to disclose a "materially deficient condition" of which it had knowledge under the Rhode Island Real Estate Sales Disclosure Act (REDA), and, as such, entitled purchasers to terminate the sale and demand a return of their deposit. [American Capital Corp. v. Blixseth, 563 F.Supp.2d 316 \(2008\)](#), withdrawn from bound volume , amended and superseded [575 F.Supp.2d 379](#). [Antitrust And Trade Regulation](#) 198

Location of property in historic zoning district was a "land restriction," which, for purposes of Rhode Island Real Estate Sales Disclosure Act (REDA), was a "deficient condition" that seller was required to disclose if it had knowledge of condition. [American Capital Corp. v. Blixseth, 563 F.Supp.2d 316 \(2008\)](#), withdrawn from bound volume , amended and superseded [575 F.Supp.2d 379](#). [Antitrust And Trade Regulation](#) 198

Location of property in historic zoning district was not a "defect, malfunction, breakage, or unsound condition" within portion of definition of deficient conditions that seller was required to disclose under Rhode Island Real Estate Sales Disclosure Act (REDA). [American Capital Corp. v. Blixseth, 563 F.Supp.2d 316 \(2008\)](#), withdrawn from bound volume , amended and superseded [575 F.Supp.2d 379](#). [Antitrust And Trade Regulation](#) 198

#### 1. Police power

The "police power" of a state must be exercised in such a way as to bear real and substantial relation to public health, safety, morals or general welfare in connection with the subject being dealt with, and is properly exercised where the interests of the public generally, as distinguished from those of a particular class, require such interference and where the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. [Haigh v. State Bd. of Hairdressing, 76 R.I. 512, 72 A.2d 674 \(1950\)](#). [States](#) 21(2)

The Fourteenth Amendment to the United States Constitution does not destroy power of states to enact police regulations concerning trades and occupations likely to be injurious to inhabitants, irrespective of wisdom of such regulations if not unreasonable or arbitrary. [U.S.C.A.Const.Amend. 14](#). [State v. Conragan, 58 R.I. 313, 192 A. 752 \(1937\)](#). [Constitutional Law](#) 2502(1)

Whether a given exercise of police power by Legislature transcends proper constitutional limits must be determined in each case as it arises. [Prata Undertaking Co. v. State Bd. of Embalming & Funeral Directing, 55 R.I. 454, 182 A. 808, 104 A.L.R. 389 \(1936\)](#). [States](#) 21(2)

## 2. Freedom to pursue trade, business, or profession

A citizen may pursue any lawful trade or business free from unreasonable and arbitrary restrictions, but subject to such reasonable conditions as state may deem essential for safety, health, and comfort of community. [State v. Conragan, 58 R.I. 313, 192 A. 752 \(1937\). Constitutional Law](#) 🔑 1115

Where public interest is involved in a business, reasonable and necessary restrictions may be imposed upon methods which proprietor may employ in conducting such business. [Prata Undertaking Co. v. State Bd. of Embalming & Funeral Directing, 55 R.I. 454, 182 A. 808, 104 A.L.R. 389 \(1936\). States](#) 🔑 21(2)

## 3. Delegation of legislative power to agency

The Legislature may vest board or department with reasonable discretion to license an occupation, even though exercise of such discretion, in making determinations of fact necessary to administration of statute, is quasi judicial in character. [State v. Conragan, 58 R.I. 313, 192 A. 752 \(1937\). Administrative Law And Procedure](#) 🔑 324; [Constitutional Law](#) 🔑 2425(3)

The power to enact laws regulating trades, businesses, or professions for common good is legislative power, which cannot be delegated. [State v. Conragan, 58 R.I. 313, 192 A. 752 \(1937\). Constitutional Law](#) 🔑 2400

### 3.5. Material information

Property's location within a historic district is material information that must be communicated to a potential purchaser under Rhode Island Real Estate Sales Disclosure Act (REDA). [American Capital Corp. v. Blixseth, 563 F.Supp.2d 316 \(2008\), withdrawn from bound volume , amended and superseded 575 F.Supp.2d 379. Anti-trust And Trade Regulation](#) 🔑 198

## 4. Persons to whom disclosure is owed

Rhode Island statutes requiring sellers to give notice of possibility of lead-based paint to all potential buyers did not create any direct obligations between real estate agent administering sale of Department of Housing and Urban Development (HUD) home and subsequent lessee of home, and thus lessee could not maintain negligence claim against agent, stemming from purported failure to warn of paint's presence. [R.I.Gen.Laws 1956, §§ 5-20.8-2\(b\)\(2\)\(xxxi\), 23-24.6-2. Wallace v. U.S., 335 F.Supp.2d 252 \(2004\). Brokers](#) 🔑 101

Owner of property which incurred costs of cleanup of contamination could not recover from remote prior owner for failure to disclose condition of land as any such duty ran only to the prior owner's vendee. [Hydro-Manufacturing, Inc. v. Kayser-Roth Corp., 640 A.2d 950 \(1994\). Fraud](#) 🔑 17

Former owner of property owed no duty to remote purchaser with respect to contamination of groundwater on

the property and could not be held liable for cleanup costs incurred by the remote purchaser. [Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.](#), 640 A.2d 950 (1994). [Waters And Water Courses](#) 🔑 104

#### 5. Misrepresentation or fraud

Real estate agents have duty to disclose to potential buyers of real property any material defects, as defined in the Real Estate Sales Disclosures Act, when such disclosable defects are within the agent's personal knowledge, and the agents know or should know that the buyer is acting under a misapprehension concerning facts which would be important to the buyer and could probably affect its decision. Gen.Laws 1956, §§ 5-20.6, 5-20.8. [Stebbins v. Wells](#), 818 A.2d 711 (2003). [Brokers](#) 🔑 102

An alleged breach of duty to disclose material defects to potential buyers of real property can be the basis for a negligence claim or a negligent omission claim, and, in the case of the buyer's own agent, a breach of fiduciary duty claim. [Stebbins v. Wells](#), 818 A.2d 711 (2003). [Brokers](#) 🔑 34; [Brokers](#) 🔑 102

Vendor who does not truthfully answer inquiries into possible defects in property is liable in action for misrepresentation. [Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.](#), 640 A.2d 950 (1994). [Fraud](#) 🔑 28

#### 6. Nuisance

At common law, current owner cannot assert private nuisance claim against prior owner for contamination that occurred before the sale. [Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.](#), 640 A.2d 950 (1994). [Nuisance](#) 🔑 1

Special damage suffered by landowner in having to cleanup contamination was the loss of use or value of the land and it thus did not suffer any special damage in the exercise of a right common to the general public and could not maintain public nuisance action against former owner to recover cleanup costs. [Hydro-Manufacturing, Inc. v. Kayser-Roth Corp.](#), 640 A.2d 950 (1994). [Nuisance](#) 🔑 72

##### 6.1. Defect

Location of property in historic zoning district was a “land restriction,” which, for purposes of Rhode Island Real Estate Sales Disclosure Act (REDA), was a “deficient condition” that vendor was required to disclose if it had knowledge of condition. [American Capital Corp. v. Blixseth](#), 575 F.Supp.2d 379 (2008). [Antitrust And Trade Regulation](#) 🔑 199

Location of property in historic zoning district was not a “defect, malfunction, breakage, or unsound condition” within portion of definition of deficient conditions that vendor was required to disclose under Rhode Island Real Estate Sales Disclosure Act (REDA). [American Capital Corp. v. Blixseth](#), 575 F.Supp.2d 379 (2008). [Antitrust And Trade Regulation](#) 🔑 199

## 6.2. Materially deficient condition

Vendor's failure to disclose that property was located within historic zoning district constituted failure to disclose a "materially deficient condition" of which it had knowledge under the Rhode Island Real Estate Sales Disclosure Act (REDA), and, as such, entitled purchasers to terminate the sale and demand a return of their deposit. [American Capital Corp. v. Blixseth, 575 F.Supp.2d 379 \(2008\)](#). [Antitrust And Trade Regulation](#) 199

## 7. Summary judgment

Genuine questions of material fact, regarding whether duties to disclose possibility of lead paint were applicable under Residential Lead-Based Paint Hazard Reduction Act (RLPHRA) and Rhode Island law at time of home purchase, precluded summary judgment on purchaser's negligence claim against real estate agent, stemming from purported failure to warn of paint's presence. Residential Lead-Based Paint Hazard Reduction Act of 1992, § 1018, 42 U.S.C.A. § 4852d; R.I.Gen.Laws 1956, § 5-20.8-1. [Wallace v. U.S., 335 F.Supp.2d 252 \(2004\)](#). [Federal Civil Procedure](#) 2490

Genuine issue of material fact regarding whether severity of waterfront property's erosion amounted to a disclosable defect precluded summary judgment in favor of vendor and purchaser's real estate broker, who was prior owner of property, on purchaser's claim under real estate disclosure statute. [Gen.Laws 1956, § 5-20.8-1 et seq. Stebbins v. Wells, 766 A.2d 369 \(2001\)](#), on remand [2001 WL 1255079](#), on remand [2001 WL 1452789](#). [Judgment](#) 181(18)

## 8. Review

Real estate purchaser waived right to contend on second appeal that claims against vendor and real estate agents, who allegedly failed to disclose material defect in real property, for deceptive trade practices, civil racketeering violations, breach of contract, breach of the implied duty of good-faith and fair-dealing, and breach of warranty remained viable causes of action, where purchaser failed on first appeal to challenge trial court's grant of summary judgment to vendor and real estate agents on such claims. [Stebbins v. Wells, 818 A.2d 711 \(2003\)](#). [Appeal And Error](#) 1096(3)

Real estate purchaser who alleged that vendor and real estate agents failed to disclose material defect in real property preserved for review on appeal contention that claims for negligence and breach of fiduciary duty were viable causes of action, where purchaser raised trial court's grant of summary judgment with respect to such claims as a point of error in his supplemental statement on appeal. [Stebbins v. Wells, 818 A.2d 711 \(2003\)](#). [Appeal And Error](#) 763

Gen. Laws, 1956, § 5-20.8-2, RI ST § 5-20.8-2  
Current with all 2008 legislation.

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