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**Property Condition Disclosure Forms:  
How REATORS® Eased the Transition from  
*Caveat Emptor* to “Seller Tell All”  
(Forthcoming in REAL PROPERTY, PROBATE  
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**George Lefcoe**

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University of Southern California Law School  
Los Angeles, CA 90089-0071

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## ABSTRACT

Home sellers in the 1950s had no obligation to mention property defects to their buyers as long as they resisted the temptation to conceal latent defects or to lie about the condition of the property. By the mid-1960s the consumer-protective norms applicable to the sale of goods were being applied to protect home buyers. This paper recounts the common law evolution from *caveat emptor* to ‘seller tell all’, and how, incident to the transition away from *caveat emptor*, some courts began holding brokers liable for seller errors and omissions that courts believed brokers, as licensed professionals, should have detected and disclosed to prospective buyers. Amorphous, court-imposed disclosure requirements invited fact-laden trials with unpredictable outcomes, as litigators wrestled over what information was “material”, “latent”, “known to the seller”, and inaccessible to the buyer. Eventually, to reduce their own exposure to legal liability, brokers warmed to the idea of insisting upon sellers filling out detailed property condition disclosure forms which brokers would then transmit to prospective buyers.

To cut back on their own expanding liability, assist buyers to become fully informed about the property before committing to a purchase, and clarify for sellers exactly what they need to disclose, REALTORS® developed a protocol now in place throughout the country. Home sellers are given no practical choice but to fill out a detailed property condition disclosure form for the benefit of prospective buyers. In all but a rapidly-dwindling number of states home sellers nowadays are expected to provide buyers with a detailed account of known material defects—a statutory norm in about two-thirds of the states, and an accepted practice implemented by real estate sales agents nationwide. As the REALTORS® anticipated, buyers who receive these reports are less likely to be disappointed with their home purchases afterward and, thus, are also less likely to file insurance claims and lawsuits against sellers or brokers for undisclosed defects. As the use of property condition disclosure forms has become commonplace, more buyers than ever are yielding to the repeated entreaties of REALTORS® and hiring home inspectors to check out the items signaled for attention in the disclosures presented to them.

In the course of establishing full seller disclosure as the norm, brokers needed to answer some key questions, addressed in this paper. (1) Should property condition disclosure forms be embedded in state statutes, promulgated by state regulatory agencies, or issued by local associations of REALTORS® ? (2) Should seller compliance be mandated by statute or implemented voluntarily through language in broker-drafted listing and residential purchase agreements obligating sellers to make full disclosure? (3) What topics should disclosure forms cover? (4) Should forms be extensive or abbreviated?(5) Should sellers who pay for professional physical inspections of their properties be excused from having to complete disclosure forms? (6) Should sellers be able to avoid disclosure through disclaimers and waivers? (7) Should sellers be required to disclose the existence of area-wide natural and man-made hazards, even if they had to pay firms to gather this information for the benefit of prospective buyers?