

What is well disclosure?

Well disclosure is the process by which the seller of property provides information to the buyer and the state about the location and status of all wells on the property. This process is required by state law, a portion of the Ground Water Protection Act (Minnesota Statutes, section 103I.235). The law applies to all types of wells, including wells used for drinking water, irrigation, livestock, commercial or industrial processing, heating or cooling, or monitoring. These wells include drive-point (sand-point) wells, drilled wells, and dug wells.

Why is well disclosure important?

Well disclosure gives valuable information to the property buyer about the location and status of wells – including unused or “abandoned” wells – on property that is sold or transferred. Unused wells provide a pathway through which contaminants at the ground surface may move down to the groundwater and contaminate nearby wells. Groundwater provides drinking water to three out of four residents in Minnesota and must be protected from contamination. Identifying and sealing unused wells is one important way to protect this valuable resource.

Is the seller liable for false disclosure?

Yes. A seller is liable to the buyer for reasonable attorney fees and costs related to sealing of the well if the seller knew or had reason to know, but failed to disclose the existence or known status of a well at the time of sale. The buyer has six years after the purchase of the property to bring action against the seller (Minnesota Statutes, section 103I.235).

When and how do I disclose wells on my property?

Before signing an agreement to sell or transfer real property

The seller must disclose in writing to the buyer information about the status and location of all known wells on the property. This requirement also applies to contract-for-deed sales. Included in the **Well Disclosure Statement** are:

1. The legal description and county;
2. Map showing the location of each well; and
3. Whether each well is in use, not in use, or sealed.

A well is “**in use**” if the well is functioning for some purpose. A well is “**not in use**” if the well is not functioning or is not capable of functioning, such as when the well pump on the well is disconnected, or when the well is no longer connected to a power supply. A well is “**sealed**” if the well has been filled with an approved sealing material by a licensed well contractor or a licensed well sealing contractor and the Minnesota Department of Health (MDH) has received a Well and Boring Sealing Record.

At the time of closing of the sale

The information on the well disclosure statement, the name and mailing address of the buyer, and the quarter, section, township, and range, OR lot, block, and addition name of the property must be provided on a **Well Disclosure Certificate**. This form is also available from many real estate professionals, county recorders, MDH district offices, or online. The seller or person authorized to act on behalf of the seller signs the certificate. In the absence of the seller’s signature, the certificate is prepared and signed by the buyer or person authorized to act on behalf of the buyer.

In the case of a contract-for-deed sale, the certificate is prepared and signed by the seller

(grantor) or person authorized to act on behalf of the seller (grantor), when the contract is recorded at the beginning of the contract. When the contract is recorded at the fulfillment of the contract, the certificate is prepared and signed by the buyer (grantee) or person authorized to act on behalf of the buyer (grantee).

When the deed is recorded with the county recorder or registrar of titles, the buyer must provide the Well Disclosure Certificate along with a \$50 fee. Contact the MDH for proper procedures for the disclosure of well(s) at the time of the sale of condominiums or state-leased land.

Is a well disclosure certificate needed if one was filed for a previous transfer of the property?

A new disclosure certificate is not required if the number and status of the wells has not changed since the last certificate was filed. However, the following statement must be included on the deed to comply with the certification requirement: “***I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.***” This statement must be followed by the signature of the seller or buyer, or person authorized to act on behalf of the seller or buyer.

What if there are no wells on my property?

A well disclosure certificate is not required if there are no wells on the property. Before signing an agreement to sell or transfer real property, the seller must deliver a statement to the buyer that the seller does not know of any wells on the property. The deed must contain the statement: “***The seller certifies that the***

seller does not know of any wells on the described real property.” For a fulfillment of the contract-for-deed sale “grantee” is used instead of “seller” and it is followed by the signature of the grantee. This statement must be followed by the signature of the seller or buyer, or person authorized to act on behalf of the seller or buyer.

How do I know if there is a well on the property?

A well usually appears as a pipe or casing from 1 1/4 to 6 inches in diameter, but may be a ring of concrete or tile up to 3 feet in diameter. The pipe may be sticking out of the ground or in a pit. A well inside a house often can be found by looking in the basement for a pipe that is sticking up from the floor. This pipe may be in a utility room or a small room adjacent to the basement. A glass block in a porch step often indicates the location of a well, which is directly beneath the block. Many older wells were buried. Pipes sticking out of a wall in the basement may lead to a buried well. The previous owner or a neighbor may have knowledge of the location of a well.

In cities and towns, homes constructed prior to the installation of city water services usually have one or more wells, which are often unused and unsealed. Houses that are not connected to a city water system usually have one or more wells on the property. The city hall usually has information about when the house was built, when city water was installed, and may have information about the well itself.

In rural areas, farmsteads may have additional wells located in, or adjacent to, outbuildings or livestock areas. Lake cabins usually have wells as a source of water. A licensed well contractor can provide assistance in locating wells. (A check list on Finding Lost Wells is available from MDH.)

What if a well is not in use?

If a well is not in use, the property owner has three options:

1. The well can be put back into use;
2. The well can be sealed by a licensed well contractor, or a licensed well sealing contractor; or
3. The property owner can apply for a maintenance permit.

If one of these steps has not been taken at the time of property transfer, it will be the responsibility of the buyer to choose an option and follow through with it.

What is well sealing?

Well sealing is the process of permanently and completely filling a well with an approved sealing material, called “grout.” **State law requires that a well must be sealed by a licensed well contractor or a licensed well sealing contractor** (Minnesota Statutes, section 103I.301). The sealing process starts with removal of the pump, the inner pipe to the pump, and any materials or obstructions in the well. A grout “tremie” pipe is then installed to the bottom of the well and the contractor pumps in the grout, usually consisting of a special cement or a slurry of a special clay and water. In certain cases, the contractor may have to remove or perforate the well casing(s) before pumping the grout to assure a proper sealing. After sealing the well, the contractor sends a “Well and Boring Sealing Record” to MDH and well owner.

The owner of a well is not liable for contamination of groundwater from a well that occurs after the well has been sealed by a licensed well contractor or a licensed well sealing contractor. For this reason, many

financial institutions and realty companies are requiring the sealing of wells that are not in use as a condition for loans and mortgages. The sealing of wells helps protect groundwater and the safety of your drinking water.

If a well appears to be sealed, but a sealing record cannot be found, a licensed well contractor or a licensed well sealing contractor needs to inspect the well and verify whether it has been properly sealed. This procedure may involve drilling into the well to verify the integrity of the sealing material and to assure that the well was not simply plugged at the top. If the well was not properly sealed, it must be cleaned out and sealed.

What is a maintenance permit?

A maintenance permit allows an unused well to remain unsealed if it is properly maintained. State law requires that a well that is not in use must be sealed unless the property owner has a maintenance permit for the well (Minnesota Statutes, section 103I.301). The permit is not transferable and requires a yearly fee of \$175. The property owner does not have to apply for a maintenance permit if the well is put back into use or if the well is sealed by a licensed well contractor or a licensed well sealing contractor. A maintenance permit will not be approved by MDH if the well is contaminated; if the well is improperly sealed, or; if the well is located, constructed, or maintained in a manner that is a safety or health hazard. Local governments (usually counties) with state-delegated well programs may have additional requirements for maintenance permits and should be asked about any additional requirements.

Resources

[Well Disclosure Certificate Form](http://www.health.state.mn.us/communities/environment/water/docs/wells/disclosures/certificateform.pdf)
(www.health.state.mn.us/communities/environment/water/docs/wells/disclosures/certificateform.pdf)

[Minnesota Statutes, section 103I.235](http://www.revisor.mn.gov/statutes/cite/103I.235)
(www.revisor.mn.gov/statutes/cite/103I.235)

MDH District Offices

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Fergus Falls, Minnesota 56537
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3333 West Division Street
St. Cloud, Minnesota 56301
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