



# THE LEGAL DOWNLOAD

June 2020



## JUNE is 'NATIONAL HEALTHY HOMES MONTH'

One of the joys owning a home is having the good health to enjoy it. Unfortunately, many dwellings in Minnesota harbor a host of unhealthy toxins, from the attic to the subsoil below. In observance of **Healthy Homes Month**, we've put together this guide to common household environmental issues your clients might encounter, and insights for dealing with them:

- **Open houses are back.** But are they safe?
- **Radon.** Separating fact from fallacy
- **Septic systems** — defusing an environmental time bomb
- **Carbon Monoxide** — stalking a silent killer
- **Mold** — unmasking the hidden destroyer
- **Getting the lead out** and the disclosure on
- **Vapor intrusion** — something lethal is in the air



# KEEPING YOUR OPEN HOUSE CLEAN & SAFE

## *Guidelines for deep cleaning & disinfecting*

We know it's business as unusual; and the return of open houses includes a list of guidelines, safety measures and precautions as the risk of infection by COVID-19 remains and a very real and present danger. If you choose to hold open houses, you can strive for the safety of your clients by following the cleaning and disinfecting guidelines provided by the Minnesota Department of Health (MDH) and the Centers for Disease Control (CDC). Here are a few things to consider and discuss with your clients when planning an open house.

### **Say it before you spray it**

Before hitting your client's home with a volley of cleaning products, be sure to discuss your plans and let them know which products you want to use. Some people are sensitive to certain chemicals (see "A word about disinfectants" below) and others have strong preferences about the kind of cleaning agents used in their homes. The best course is to recommend that your client thoroughly disinfects the home themselves before and after the open house. The MDH advises that most common household disinfectants are effective against COVID-19. You should consider providing your clients with the Environmental Protection Agency's (EPA) [list of registered cleaning products](#).

### **What and where to clean**

Any surface that people touch a lot should be cleaned and disinfected. See the MDH's Guidelines for [Cleaning and Disinfection for Households](#). This includes:

- Appliances
- Bathrooms\*
- Counters, tables and other surfaces
- Doorknobs
- Doorbells
- Faucets
- Stairway railings
- Light switches
- Telephones, remote controls, and other devices
- Handles

\*To reduce the risk of viral contamination, consider prohibiting visitors use of bathrooms during the open house.

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## Preventing the spread of COVID-19

### 1 Start with soap and water

Prime the surface for the disinfectant to do its work by removing grime, grease and debris with soap and water. With its unique ability to “unstick” the “sticky” COVID-19 virus and disrupt its fatty protective layers (lipids), soap is a highly effective anti-viral agent in its own right.

### 2 Go in for the kill with disinfectant

If soap is highly effective against COVID-19, [EPA-registered disinfectants](#) to the next level by disintegrating its lipid and protein structures. Be sure to follow application instructions because the length of time required for effective cleansing varies from product to product.

*...The best course is to recommend that your client thoroughly disinfects the home themselves before and after the open house.*

### A word about disinfectants

When used correctly, disinfectants greatly reduce the risk of COVID-19 transmission. However, some chemicals in these cleaners can irritate skin, eyes, and lungs. You should consider discussing these concerns with your clients and direct them to these resources for more information:

- [Disinfectants for Use Against SARS-COVID-19](#)
- [Cleaning & Disinfecting for COVID-19](#)

# DO YOU KNOW THE TRUTH ABOUT RADON?

Odorless, colorless, and potentially deadly, radon is a widespread health hazard in Minnesota. The Minnesota Department of Health estimates that 40% of homes in the state have unsafe levels of the radioactive gas. Are you up to speed on the laws and policies related to radon testing and mitigation? Test your knowledge here by taking this fast and informative quiz.

## 1 True or False?

Real estate licensees are obligated to facilitate the transmission of testing agreements on behalf of radon testing companies.

## 2 True or False?

When a seller is under contract during the inspection period, they must sign the radon testing company's non-interference agreement and comply with all its testing protocols, e.g., leaving all windows closed; fans off; not operating a fireplace, etc.

## 3 True or False?

A new law requires all companies performing radon mitigation in Minnesota to be licensed.

## 4 True or False?

The results of radon test are strictly confidential and cannot be shared with anyone other than the buyers who requested the test and the sellers.

## 5 True or False?

If elevated radon levels are discovered on the tested property, the seller does not have to mitigate it.

## QUIZ ANSWERS:

**1 False**

Radon testing companies have the legal responsibility to transmit testing agreements to property owners and should not ask or demand that real estate licensees to do so on their behalf.

**2 False**

The Minnesota Department of Health (MDH) provides a non-interference agreement that radon testers are required to present to sellers and request a signature. Sellers can choose to sign, but **the statute does not require their signature**. Sellers should speak with their Realtor® or consult their legal counsel if they have reservations about signing the form, or do not believe it's feasible to comply with the ideal test conditions it outlines.

**3 True**

Until recently, litigation prevented the implementation of a law that was passed in 2019. The lawsuit was dismissed in February 2020 and **as of June 1 all radon mitigators operating in Minnesota were required to be licensed**.

**4 False**

If the buyers choose to share the test results with the seller, the seller is then required to disclose the findings with all other potential buyers. Further, the Minnesota Radon Rules state that the Department of Health may require mitigators to present names of owners, addresses, and radon recordings to them. See Minn. R. 4620.7900.

**5 True**

The Radon Awareness Act only requires a seller with any knowledge of radon concentrations in the dwelling to disclose that to a prospective buyer. There is no requirement for the seller to remediate.



# GETTING DOWN & DIRTY WITH SEPTIC SYSTEMS



***They may not be glamorous, but they sure are essential—here's a guide to what every Realtor® and their clients must know***

Septic systems—technically known as subsurface sewage treatment systems (SSTS)—are a fixture of rural living in Minnesota. Collectively, the state's 500,000 septic systems treat 25% of our wastewater. Given the toxic brew of viruses, bacteria, parasites, chemicals and nutrients that septic systems harbor, they pose a grave threat to lakes, rivers, and the precious ground water that two thirds of us drink. That's why it's imperative to public health that all SSTS operate safely and efficiently.

State law requires every Minnesota county to enforce specific environmental protection standards for septic systems. However, the state also allows cities and towns to adopt their own ordinances, which can differ from state law to a certain degree. So, it's important for Realtors® to know the standards of local governments in their area and educate their clients accordingly.

## **All known details about the SSTS must be disclosed before sale**

If there's a septic system on the property, the seller must disclose that fact to the prospective buyer in writing before a purchase agreement is signed. The disclosure should include:

- Whether the sewage goes to a permitted facility
- Location and description of the SSTS
- Details about any non-compliance issues\*
- Presence of any abandoned systems
- Copy of inspection report from licensed inspector or local government inspector (only applies if seller had an inspection performed)

Sellers can face stiff penalties if they fail to make these disclosures, including costs and attorney's fees if an action is brought against them within two years.

*\*See graphic on following page: Is Your Septic System Compliant?*

## **Minnesota Realtors SSTS-Related Forms**

- Addendum to Purchase Agreement: Subsurface Sewage Treatment System and Well Inspection Contingency
- Disclosure Statement: Subsurface Sewage Treatment
- Disclosure Statement: Location Map
- Disclosure Statement: Seller's Property Disclosure Statement or Disclosure

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## Fast Facts

### INSPECTIONS

Follow local government inspection requirements

In Minnesota, there are no state-required point-of sale-inspection requirements for septic systems. However, several local governments may require inspections and/or tests at time of sale.

### BOTH NEW & EXISTING SYSTEMS MUST BE INSPECTED

Inspections of both new construction and existing systems are required. Typically, a building permit typically is not be issued by a local government unless the current septic system has been inspected and determined whether it is compliant.

### SELLERS DON'T HAVE TO PAY FOR INSPECTIONS

Sellers are not required to pay for such an inspection unless

agreed to by both parties. The Addendum to Purchase Agreement: Subsurface Sewage Treatment System and Well Inspection Contingency addresses this issue.

### THERE ARE CONSEQUENCES FOR NON-COMPLIANCE

If a system is found to be non-compliant, it is considered an imminent threat to public health and safety. The SSTS must be upgraded, replaced or no longer used within 10 months or the owner may be fined.

### Hire only state-licensed professionals

Realtors® should advise their clients that all septic professionals—inspectors, designers, installers, and others—must hold a state license and comply with state septic system laws and rules for any work done on an SSTS.

## Is Your Septic System Compliant?

Although local ordinances vary, all SSTS in Minnesota need to meet these common criteria to be compliant with county and state laws. Take a look at the graphic and see how your SSTS checks out.

### Compliant



Pipe drains into drain field that is at least three feet above ground water



Septic tank is completely enclosed and watertight



Treats sewage through slow filtration and absorption across drain field (some systems have vent pipes for evaporation)



Neutralizes most bacteria and pathogens



Effectively treats effluent before it can reach and pollute neighboring water sources

### Non-Compliant



Pipe drains directly to lake, river, ditch or ground level. Or pipe that discharges into seepage pit, dry well, cesspool or leaching pit. Inadequate distance to ground water (two feet or less)



Septic tank is cracked and leaches untreated effluent into soil, eventually reaching groundwater (some tanks built in the 1950s and 60s did not have bottoms)



Allows sewage to surface in yard and creates odors



Produces high levels of nitrates or coliform bacteria that infiltrate well water



Creates algae blooms or excessive plant growth in neighboring ponds or lakes

# CARBON MONOXIDE

## THE SILENT KILLER



### What is Carbon Monoxide?

Carbon monoxide (CO) is an odorless, colorless toxic gas that forms when fuels and other carbon compounds are burned. When concentrated in an indoor space, CO can cause illness or death.

### Common Sources of CO in Homes

Domestic machines and appliances that produce CO include:



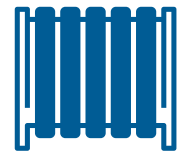
**FUEL-BURNING ENGINES**  
autos, generators, lawn  
equipment, power tools



**CLOTHES DRYERS\***



**WATER HEATERS\***



**FURNACES & BOILERS\***



**FIREPLACES**  
(gas & woodburning)



**WOOD STOVES\***



**CHARCOAL GRILLS**



**CAMP STOVES**

\* When properly vented and maintained, these utilities are safe to use indoors. Other items like charcoal grills, fuel-burning engines, and camp stoves should never be used in enclosed spaces.

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## Symptoms of CO Poisoning

### LOW LEVEL

At lower concentrations, you might experience a mild headache and shortness of breath.

### MID-LEVEL

As CO levels increase, symptoms can include:

- Dizziness
- Severe headaches
- Nausea & fatigue

### HIGH-LEVEL

At high concentrations, CO poisoning can create:

- Confusion
- Irritability
- Impaired judgement and coordination
- Loss of consciousness
- Death

## Did You Know?

Despite a state law requiring every home and dwelling to have approved, operational carbon monoxide alarms, about a dozen Minnesotans die from CO poisoning every year. This is often because the residents did not install or properly maintain their CO alarms.

## CO alarms are mandated by state law

Because of the dangers of CO, the Minnesota legislature passed [Minn. Stat. § 299F.51](#). The law states:

“Every single-family dwelling and every dwelling unit in a multifamily dwelling must have an approved and operational carbon monoxide alarm installed within ten feet of each room lawfully used for sleeping purposes.”

See “Carbon Monoxide” in the [Environmental Issues](#) section of *The Legal Companion* for details on legal requirements for owners of multifamily units.

## Hard Wired or Plug In? CO Alarms and Purchase Agreements

Although the law doesn’t specifically require sellers to install CO alarms before listing the property for sale or transferring ownership, it *does* require that functional CO alarms are present at *all* times. So, ultimately, the owner is responsible for having the right alarms in place.

That said, if the alarms are plug-in or battery operated, they may be considered personal property that the seller can remove when they leave. Hard-wired devices, however, are considered permanent and included in the property sale.

As a Realtor®, it’s important to make sure that all parties in the transaction understand this before moving forward with the purchase agreement.

To minimize the potential for confusion, Minnesota Realtors® added this language to the Disclosure Statement: Seller’s Property Disclosure Statement and the Disclosure Statement: Seller’s Disclosure Alternatives:

“NOTICE REGARDING CARBON MONOXIDE DETECTORS: Minn. Stat. § 299F.51 requires Carbon Monoxide Detectors to be located within ten (10) feet from all sleeping rooms. Carbon Monoxide Detectors may or may not be personal property and may or may not be included in the sale of the home.”

To learn more about carbon monoxide and its impact on human health, visit these informative pages:

- [Carbon Monoxide Poisoning in Your Home](#) (Minnesota Department of Health)
- [Carbon Monoxide Poisoning](#) (Minnesota Department of Health)



# INVASION OF THE MOLD SPORES

*Mold damage can kill a sale and destroy a home. Here's how to stop it*

Mold is everywhere. Indoors. Outdoors. On the leftover veggie stir-fry you shoved to the back of the fridge three months ago. Scientifically classified as a member of the Kingdom Fungi, mold has been on the planet for hundreds of millions of years. Most molds are harmless. In fact, many are beneficial to humans—they're the primary source of antibiotics. A few are potentially toxic. It's the latter group that grabs all the headlines, and most of the headaches for Realtors®. This quick guide will help you recognize mold's health hazards and property issues, identify its sources, and understand its role in material disclosures.

## Mold and illness: separating fact from fiction

Some molds produce mycotoxins that can trigger serious health problems in people with allergies, asthma, and immunocompromised disorders. However, mold's connection to other reported maladies is inconclusive. The Centers for Disease Control (CDC) notes that there is no evidence proving that exposure to mold toxins causes lethargy, memory loss, internal bleeding or other adverse effects.

## The hidden destroyer

Mold is a home wrecker. Growing and spreading within a wall or other enclosed space, it thrives on moisture and feeds on almost any organic matter: drywall, wooden studs, floorboards, ceiling tiles, and many other materials. When found on hard surfaces, it is easily killed using a bleach solution. However, things like drywall, insulation, carpet, and other porous materials must be entirely removed and replaced. If left unchecked, it can damage a home beyond repair.

*If left unchecked, it can damage a home beyond repair.*

## If you know about mold, you must disclose

Given mold's well-earned reputation for destruction, it's like a material fact that should be disclosed. Unfortunately, it's not always easy to find. Although it often produces a telltale odor, mold can also remain undetected for years, lurking under carpets, hiding behind walls, and slowly rotting infrastructure. Because only known material facts must be disclosed, mold may or may not be disclosed, even if it is present on the property.

Of course, if a seller or a Realtor® knows about mold growth, it is likely a material fact that must be disclosed to potential buyers. Minnesota Realtors® provides these approved disclosure statement forms for addressing mold:

- **DISCLOSURE STATEMENT: SELLER'S PROPERTY DISCLOSURE STATEMENT**  
Asks the seller if the property previously had or currently contains mold
- **DISCLOSURE STATEMENT: SELLER'S PROPERTY ALTERNATIVES**  
Seller's Disclosure Alternatives forms contain information on the sources of water intrusion and mold growth and its health effects

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## Fantastic fungi and where to find them

Where moisture goes mold is sure to follow. Here's an overview of mold's favorite spawning grounds via exterior and interior moisture sources. Checking out these trouble spots is the first step toward remediating mold intrusion on a property.

### Common Sources of Moisture

#### Interior



Plumbing leaks



Condensation from indoor humidity or cold surfaces



Overflow from tubs, sinks & toilets



Firewood stored indoors



Humidifiers



Inadequate venting of kitchen & bath



Improperly vented clothes dryer exhaust



Line drying laundry indoors



Houseplants — watering can create excess humidity

#### Exterior



Improper flashing around windows & doors



Improper grading



Flooding



Roof leaks

## Winning the battle against mold

The best way to defeat mold is to control moisture levels in the home. After discovering and correcting the sources of leaks, floods and other moisture intrusion, homeowners can ensure their home is less hospitable to mold by:

- Keeping humidity levels between 30 – 50% throughout the year. Both air conditioning and dehumidifiers help reduce humidity
- Externally ventilating kitchen, bathroom, and clothes dryer exhaust
- Removing carpets from bathrooms, basements, and other high-moisture areas

You can learn more about mold by reading [Basic Facts About Mold & Dampness](#) from the Centers for Disease Control and Prevention.

# CAUTION: THESE WALLS ARE HAZARDOUS TO YOUR HEALTH

## *What your clients need to know about lead-based paint, the law, and disclosures*

Before its use was banned in 1978, lead had been a key ingredient in paint for millennia. Prized for giving paint products density and durability, lead also accelerated drying and kept colors fresh and vibrant.

But as lead-based paint ages, it peels, flakes, and crumbles to dust where it can become airborne and inhaled. Once in the bloodstream, it can cause serious health issues, including high blood pressure, cardiovascular disease, kidney damage, and fertility problems.

Children are particularly vulnerable to lead poisoning. According to the Environmental Protection Agency (EPA), even small amounts of lead can cause:

- Learning and behavior difficulties
- Lower IQ
- Hyperactivity
- Slowed growth
- Hearing problems
- Anemia

In severe cases, children suffered seizures, comas, and even death. When pregnant women are exposed to lead, fetuses

might not grow normally and the risk of premature birth increases.

### **Disclosing lead is the law**

Given lead's extraordinary toxicity, the federal government passed The Residential Lead-Based Paint Hazard Reduction Act of 1992. The law mandates that when the presence of lead is known, it must be disclosed to any potential renter or buyer along with information about the dangers of lead-based paints. Further, general information regarding hazards must be disclosed. Additionally, information about non-paint sources like lead pipes and lead-contaminated soil must also be revealed.

The act applies to all housing built before 1978, except for properties specifically for the elderly or persons with disabilities, unless a child under age six lives there or is expected to live there. Learn more by reading See [42 U.S.C. § 4851b](#) and [42 U.S.C. § 4852d\(1\)\(a\)](#).

Willfully violating the act can result in penalties from the EPA, and possible liability to the buyer or tenant of the

property up to triple the damages they incurred, plus attorney's fees and other litigation costs.

Sellers do not have to remove lead-based paint. Although the law requires sellers and landlords to disclose the known presence of lead, they do not have to test for it or remove it from the property. Additionally, contracts for the sale or lease of property are not invalidated by the failure to fulfill the requirements of the act.






## Your duty to inform and educate sellers and buyers

All Realtors® involved in the transaction, whether they

represent the seller or the buyer, have to inform sellers of their responsibilities under the Real Estate Notification and Disclosure Rule. If the seller fails to comply, you must report this to the buyer (or renter in the case of rentals). However, you are not liable for specific lead-based paint lead-based paint hazard information that the seller or lessor did not disclose to you.

Learn more about your obligations as a Realtor® by reading the EPA's Lead Residential [Lead-Based Paint Disclosure Program](#).

### Realtors® checklist for complying with lead-disclosure law

-  **PROVIDE EPA PAMPHLET ON LEAD HAZARDS** As part of the contract process, you have to provide this EPA-approved pamphlet that helps residents identify and control lead-based paint hazards: *Protect Your Family from Lead in Your Home*. Although this is technically the seller's responsibility, as a best practice the seller's agent should give it to the buyer and the buyer's agent, too.
-  **DISCLOSE INFORMATION ABOUT KNOWN HAZARDS** Reveal any information shared by the seller about the presence of lead-based paint or lead-based paint hazards in the home or building.
-  **RELEASE RECORDS AND REPORTS** Records and reports concerning common areas and other units when such information was obtained as a result of a building-wide evaluation. NOTE: This requirement only applies to multi-unit residences.
-  **ATTACH LEAD WARNING STATEMENT TO CONTRACT** Additionally, you must attach a "Lead Warning Statement," or insert that language in the contract, and confirm that you have complied with all notification requirements. You can view versions of the EPA statement in English and Spanish below:
  - **Sample Seller's Disclosure of Information English** (PDF)
  - **Spanish** (PDF)
-  **SLATE A PERIOD FOR PAINT INSPECTION OR RISK ASSESSMENT** Finally, you have to provide a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

## Learn more about lead-based paint and real estate transactions

See p.175 of [The Legal Companion](#) for more information about lead-based paint, including related forms from Minnesota Realtors®, details about offers and purchase agreements, and the federal government's program for renovating properties with lead-based paint.





# THE BEAST BENEATH YOUR FEET

## *Toxic vapors are invading homes across the state*

It starts deep below. Unseen and unheard, it seeps into your home. You can't smell it or feel it or taste it or touch it, but it's reaching you through the air that you breathe. Headaches, nausea, respiratory issues, miscarriages and even cancer. These are just a few of the afflictions associated with vapor intrusion, a phenomenon where toxic gases migrate from chemically contaminated groundwater into homes.

It's a widespread problem in Minnesota. Decades ago, hundreds of properties were poisoned when industrial solvents spilled into the soil. Passing through rock and strata, the chemicals spread through the water tables of neighboring properties, polluting hundreds more locations. Over time, the chemicals—known as volatile organic compounds (VOCs)—evaporate, penetrating homes through cracked foundations, sewers, drain lines, pipes, and other subterranean passages.

According to the Minnesota Department of Health (MDH), the most common VOCs found in Minnesota are

trichloroethylene (TCE), an industrial degreaser, and tetrachloroethylene (PCE), a dry-cleaning solvent, and components of petroleum. Health risks range from mild eye and respiratory irritation to increased risks of birth defects and cancer through long-term exposure.

The Minnesota Pollution Control Agency (MPCA) is managing the investigation and cleanup of 881 vapor-intrusion sites. To date, almost 300 have been resolved. However, recent scientific advances in understanding groundwater contamination mean that over 1,400 previously closed sites might need to be reopened for additional remediation.

### **Sellers must disclose. Polluters must clean up**

According to the MPCA, soil vapor testing is required when the release of VOCs is suspected or has been identified on a property's soil or groundwater. An official from MPCA said

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this procedure is part of the Minnesota Superfund program for mitigating hazardous wastes.

“A single-family residential homeowner is required to disclose that they were contacted regarding any suspected contamination,” said Michael Rafferty, MPCA supervisor of communications. He added that the homeowner must disclose the status of the current situation—from testing to final remediation—in real estate disclosure forms. The party responsible\* for the contamination is obligated to conduct testing. If high concentrations of pollutants are found, this must be reported to MPCA. The party is also responsible for cleanup of the property.

“If there is not a viable responsible party, the State of Minnesota may need to get involved in the cleanup,” Rafferty said.

*\*MPCA defines a “responsible party” according to 2019 MN Statutes 115B.03 Responsible Person: A responsible party is a person/s responsible for a release or threatened release of a hazardous substance, pollutant, or contaminant.*

## Use MNR Forms to address concerns about vapor intrusion

Minnesota Realtors® Seller’s Property Disclosure Statement was amended in 2016 to address growing concerns about vapor intrusion. It asks if an environmental remediation system exists on the property and whether it is in working condition. Environmental remediation systems could include radon, vapor intrusion, or other systems. The form also addresses whether the seller is aware of any potential or actual environmental contamination on the property.

Learn more about vapor intrusion by visiting these web pages:

- [MDH Vapor Intrusion](#)
- [MPCA Investigates Vapor Intrusion Near Contaminated Sites](#)
- [EPA: What is Vapor Intrusion?](#)

If you have specific questions about vapor intrusion on a property, call the MPCA Vapor Hotline number, 651-757-2040 or email [vaporinfo.pca@state.mn.us](mailto:vaporinfo.pca@state.mn.us).

## For further reading on environmental issues...

The Legal Companion goes more in-depth on the issues discussed in this issue of The Legal Download, as well as other environmental issues such as:

- Asbestos
- Hazardous Waste
- Methamphetamine Production
- Storage Tanks
- Wells
- Wetlands

**Access The Legal Companion [HERE >>](#)**

### The Legal Companion A Guide to Common Real Estate Issues

