



## Well Disclosure and Sale of Foreclosed Property

The Minnesota Department of Health (MDH) is receiving an increasing number of inquiries from real estate professionals, closing agents, and property buyers asking if the well disclosure requirements are waived or the property is exempt from the requirements because the property being transferred is foreclosed property. The Minnesota Association of REALTORS®, local real estate professional associations, and county recorders are receiving similar inquiries. Usually, the person asking the question, often a buyer or an agent representing the buyer, has been told that the disclosure requirements are waived because the property is “bank-owned” or is being sold “as is.” It does appear that in the vast majority of these inquiries, the seller is a bank or lender.

### Review of State of Minnesota Requirements for Well Disclosure

Regardless of whom the seller is and whether a property is a foreclosed property, the seller **must** follow the requirements of Minnesota Statutes, section 103I.235, and provide a well disclosure statement to the buyer before signing of a purchase agreement and file a Well Disclosure Certificate (or provide statement on the deed) with the County Recorder/Registrar of Titles when recording a property transfer. The seller is required to disclose the number, location, and current status of all wells on the property.

There are two circumstances where a Well Disclosure Certificate is not required, but a statement is made and certified on the deed or instrument of conveyance:

- If the number and status of wells remain unchanged from the previously filed Well Disclosure Certificate, a statement may be placed on the deed or other instrument of conveyance stating *“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 certified by the buyer or seller. To check on previously filed certificates, contact the Well Management Section at 651 201-4600 or 800-383-9808 or [Well Disclosure Certificate Information](http://www.health.state.mn.us/wdclookup) ([www.health.state.mn.us/wdclookup](http://www.health.state.mn.us/wdclookup)).
- If there are no wells on the property, then the Seller must certify a statement on the deed that reads *“The Seller certifies that the Seller does not know of any wells on the described real property.”* This statement should not be used simply because the seller has no immediate knowledge of any wells on the property. The seller must determine if any wells exist, such as by checking state and local records, comparing the age of the home and the date when municipal water was provided, and having a well contractor or property inspector check the property.

### Seller’s Liability for Improper or False Disclosure

If a seller fails to disclose the existence and known status of a well at the time of sale, or had reason to know of the existence and known status of a well, the seller is liable to the buyer for the costs relating to sealing of the well and reasonable attorney fees for collection of costs from the seller, if the action is commenced within six years of the closing date (see Minnesota Statutes, section 103I.235, subdivision 2). The seller is obligated to disclose the current status of each well and not simply rely on previous filings. Well status conditions may have changed since that filing.