

Mandatory Disclosures

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Modern residential leases and loans require so much disclosure that in practice nothing is disclosed at all.
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If you sign an apartment lease in New York City, you need to sign a daunting pile of separate documents, each disclosing something different. There is a disclosure about window guards. There is a disclosure about fire safety, both generally and about your specific building. Federal law requires some disclosures on lead paint, accompanied by a pamphlet with terrifying warnings about lead paint. Another disclosure goes into the history of any bedbug infestations. The landlord must disclose whether the apartment has sprinklers and whether they work. There's a procedure that's disclosed to report gas leaks. A separate disclosure describes the no-smoking policy in the building. There's a notice about recycling procedures. Plus another one about the risks of stove knobs and an opportunity to require the property owner to provide locking mechanisms (although presumably if tenants wanted those, they could order them on Amazon for less than \$20). When New York passed its "good cause" eviction law, this led to another required disclosure: a two-page notice about the new law.

And, in late 2024, when the City Council banned certain broker fees, it also added a requirement for owners to disclose the fees that tenants would need to pay when they sign leases. Every one of these disclosures must be signed.

That's nothing compared to what happens at an ordinary residential mortgage loan closing – a simple transaction until all the disclosures start. Some of those disclosures must take place a certain period before the closing, with the possibility of delaying the closing if something changes or is inadequately disclosed. At closing, the borrower receives a closing disclosure, which restates the loan amount and interest rate and lists the closing costs. There's also a separate itemization of costs and fees. Another disclosure verifies the borrower's identity. Another one lets the borrower know that a third-party quality control company might review the loan documents. Federally required disclosures tell the borrower about flood insurance. Another one helpfully tells the borrower that if the borrower doesn't pay, the lender might report it to credit bureaus. A state-required disclosure deals with escrow accounts. There might be a disclosure that the loan will probably get sold. Again, everything must be signed.

The disclosures described above don't include the actual operative lease or loan documents, both of which also seem to multiply into a pile of ever-more separate documents over time, though that pile is often dwarfed by the various disclosures. At a typical residential lease or loan closing, the tenant or borrower will blaze through the pile of paper, reading nothing, signing everything.

Given recent trends, it is reasonable to expect more required disclosures next year. The volume of disclosures only seems to increase, as is typical for governmental and bureaucratic requirements of all types. No one ever goes back to see if the existing laws and disclosure requirements serve any actual purpose and are worth keeping.

Disclosure is surely a good thing. But residential leases and loans seem to have become so overwhelmed with disclosures that they have become opaque. So much is being disclosed that the borrower or tenant ignores everything. It ought to be possible to improve that process and streamline the piles of paper. Fortunately, it is.

Many of the disclosures relate to generic facts about lease transactions, loan transactions, or real estate generally. Those could all go on a website, with an invitation for the borrower or tenant to go read them – a single invitation that the borrower or tenant might be required to countersign. That might actually increase the likelihood of effective disclosure, because under the existing state of affairs, borrowers and tenants don't read anything. If it were on a website, however, they might read it.

Some of the required disclosures relate instead to specific facts about the particular transaction. Those could easily be collected into a single disclosure document, making each disclosure only once, with a single signature confirming that the borrower or tenant knows they should read the stuff. Again, the net effect might enhance disclosure.

Simpler disclosures would replace a pile of documents (with lots of signatures and things to keep track of) with much less paper or pixels, thus simplifying and reducing the cost of transactions. For any individual transaction, of course, all the disclosures, documents, and signatures are perhaps just a minor nuisance, but over millions of transactions they add up to a significant amount of avoidable friction, complexity, and opportunity for error.

It's probably unrealistic to expect any change, except for the worse.

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