

Selling Your Home - Disclosure

Whose obligation is it to disclose pertinent information about a property?

In most states, it is the seller, but obligations to disclose information about a property vary. Under the strictest laws, you and your agent, if you have one, are required to disclose all facts materially affecting the value or desirability of the property which are known or accessible only to you. This might include: homeowners association dues; whether or not work done on the house meets local building codes and permits requirements; the presence of any neighborhood nuisances or noises which a prospective buyer might not notice, such as a dog that barks every night or poor TV reception; any death within three years on the property; and any restrictions on the use of the property, such as zoning ordinances or association rules. It is wise to check your state's disclosure rules prior to a home purchase.

What are the standard contingencies?

Most purchase offers include two standard contingencies: a financing contingency, which makes the sale dependent on the buyers' ability to obtain a loan commitment from a lender, and an inspection contingency, which allows buyers to have professionals inspect the property to their satisfaction. As a buyer, you could forfeit your deposit under certain circumstances, such as backing out of the deal for a reason not stipulated in the contract. The purchase contract must include the sellers responsibilities, such things as passing clear title, maintaining the property in its present condition until closing and making any agreed-upon repairs to the property.

Do I need an attorney when I buy a house?

In some states, you do need an attorney to complete a real estate transaction, but in others you do not. Most home buyers are capable of handling routine real estate purchase contracts as long as they make certain they read the fine print and understand all the terms of the contract. In particular, you should be clear on the terms of any contingency clauses that will allow them to back out of the contract. If you have any questions at all, it may be advisable to consult an attorney to avoid future legal hassles. In looking for an attorney, ask friends for recommendations or ask your real estate agent to recommend several. Call to inquire about fees and to check on their experience. In general, more experienced attorneys will cost more, but real estate fees as a rule are small relative to the cost of the property you are buying.

What repairs should the seller make?

If you want to get top dollar for your property, you probably need to make all minor repairs and selected major repairs before going on the market. Nearly all purchase contracts include an inspection clause, a

buyer contingency that allows a buyer to back out if numerous defects are found or negotiate their repair. The trick is not to overspend on pre-sale repairs, especially if there are few houses on the market but many buyers willing to buy at almost any price. On the other hand, making such repairs may be the only way to sell your house in a down market.

Do sellers have to disclose the terms of other offers?

Sellers are not legally obligated to disclose the terms of other offers to prospective buyers.

Will a neighbor problem reduce the value of my property?

While it may not reduce the actual value, a cluttered landscape next door can detract from the positive aspects of your home. Review your local laws, which should be on file at the public library, county law library or City Hall. A typical "junk vehicle" ordinance, for example, requires any disabled car to either be enclosed or placed behind a fence. And most cities prohibit parking any vehicle on a city street too long. It also may be worthwhile to check into local zoning ordinances. An operator of a home-based business usually is required to obtain a variance or permanent zoning change in residential areas. In addition, if a neighbor's repair work produces loud noises, he may be breaking local noise-control ordinances, which are enforced by the police department. Before bringing in the authorities, you may want to make a copy of the pertinent ordinance and give it to your neighbor to give them a chance to correct the problem.

Resources:

* "Neighbor Law: Fences, Trees, Boundaries and Noise," Cora Jordan, Nolo Press, Berkeley, Calif.; 1991.

How do I get the real scoop on homes I am looking at?

Home inspections, seller disclosure requirements and the agent's experience will help. Disclosure laws vary by state, but in some states, the law requires the seller to complete a real estate transfer disclosure statement. Here is a summary of the things you could expect to see in a disclosure form:

* In the kitchen -- a range, oven, microwave, dishwasher, garbage disposal, trash compactor.

* Safety features such as burglar and fire alarms, smoke detectors, sprinklers, security gate, window screens and intercom.

* The presence of a TV antenna or satellite dish, carport or garage, automatic garage door opener, rain gutters, sump pump.

- * Amenities such as a pool or spa, patio or deck, built-in barbeque and fireplaces.
- * Type of heating, condition of electrical wiring, gas supply and presence of any external power source, such as solar panels.
- * The type of water heater, water supply, sewer system or septic tank also should be disclosed.

Sellers also are required to indicate any significant defects or malfunctions existing in the home's major systems. A checklist specifies interior and exterior walls, ceilings, roof, insulation, windows, fences, driveway, sidewalks, floors, doors, foundation, as well as the electrical and plumbing systems. The form also asks sellers to note the presence of environmental hazards, walls or fences shared with adjoining landowners, any encroachments or easements, room additions or repairs made without the necessary permits or not in compliance with building codes, zoning violations, citations against the property and lawsuits against the seller affecting the property. Also look for, or ask about, settling, sliding or soil problems, flooding or drainage problems and any major damage resulting from earthquakes, floods or landslides.

People buying a condominium must be told about covenants, codes and restrictions or other deed restrictions. It's important to note that the simple idea of disclosing defects has broadened significantly in recent years. Many jurisdictions have their own mandated disclosure forms as do many brokers and agents. Also, the home inspection and home warranty industries have grown significantly to accommodate increased demand from cautious buyers. Be sure to ask questions about anything that remains unclear or does not seem to be properly addressed by the forms provided to you.