

No One To Blame But Himself

By Judith Johanssen

There are many documents a seller will need to sign in a real estate transaction, but one document that can help set the tone is the statutorily required Residential Property Condition Disclosure Report.

This document is three pages long and lists items such as heating, electrical, plumbing, structure, roof, etc. The seller simply checks off "Yes", "No" or "Unknown" indicating a problem (or not) with that item and can write in additional comments or explanations.

This disclosure report is significant. Sellers need to know that this form is to be filled out fully and while it should be completed according to their best information and belief, it is not to be construed as a warranty. The responsibility to complete the form is the seller's alone. The seller's agent's responsibility is to provide the form to the seller; however, if the seller is a For-Sale-By-Owner seller, that seller has the responsibility to find and complete the form.

A seller should read each line item on the disclosure carefully. If there have been repairs, a seller can attach invoices. This is the history of the house's condition as the seller knows it, and a buyer's decision to buy one property over another often comes down to a property's physical condition.

It's probably true that some sellers do not disclose all problems they've experienced, especially those that could scare away buyers (water in the basement, foundation cracks or termites), hoping and/or believing no one will ever discover the truth, but when the buyer does find out (neighbors love to talk), seller beware.

A seller who is found to have intentionally lied on the report can be sued for non-disclosure, misrepresentation, or fraud and a court will happily fashion an appropriate remedy. In one case, a court nullified a sale of the property to the buyer, ordered the seller to reimburse the buyer for the purchase price, closing costs, the amount of money the buyer spent trying to fix a very broken well, and attorney's fees.

Recently, a seller, whose property was under contract and the closing date fast approaching, asked who was to blame for the non-disclosure of a sewer lien on his property. It was his agent's fault, right? She failed to mention the sewer lien to the buyer's agent. Then he admitted he hadn't told his agent about the lien because he had simply forgotten about it, and when the buyer finally learned about it, he refused to pay it off.

I asked what he had written on his disclosure report about the sewer and he said he hadn't written in anything, despite the fact that there were several questions about the sewer and its cost with room for an explanation. Seller now saw that the reason the buyer was refusing to pay off the lien was because he had failed to disclose it. Seller said he hadn't really looked at the form carefully and now saw he had left many of the items unanswered.

Suddenly the seller's tune changed, realizing that it was his mistake, not the agent's and that his mistake would cost him some money. Note that while it was not the listing agent's job to verify all the answers the seller offered, a good buyer's agent will check with the town's tax assessor to verify the property's taxes and the land records for liens, if any.

Lastly, a seller who fails to complete and produce a Residential Property Condition Disclosure Report will have to pay the buyer \$300 at closing. Some sellers choose to not complete the form and pay the \$300.

Judith I. Johanssen is Assistant Counsel for the Connecticut Association of Realtors®, Inc.

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