

Sellers Not Always Required to Provide Property Condition Disclosure Report

By Judith I. Johannsen

How does a buyer know that the house s/he's buying is in good repair? One way is to personally look over the home during a showing and then have the property inspected by an impartial licensed home inspector. Another source of information is the required seller's Residential Property Condition Disclosure Report, but some sellers and some transactions are exempt from the requirement.

Connecticut's property condition disclosure statute (CGS 20-327b) requires a seller of residential property (residential property is defined as not less than one and not more than four dwelling units) to provide a completed Property Condition Disclosure Report to the prospective purchaser before becoming legally bound in purchases, leases with options to purchase and purchase options in order to disclose to a buyer what s/he is buying.

The Residential Property Condition Disclosure Report is a state-created form that poses 34 questions about the property, its various systems and components, to which a seller can respond "Yes", "No" or "Unknown", and while the seller's responses provide known current and historical information on the property, they are not meant to be a substitute for inspections or tests, nor are they to be construed as a warranty to the buyer.

Three predictable responses from sellers when given the report to complete are, "Do I really have to do this?" quickly followed by, "What if I don't do it?" and then, "Will you do it for me?"

The answer to the first question is yes, a seller must provide the disclosure report in the residential transactions mentioned above, whether or not s/he uses a real estate agent, *unless* the seller or the transaction is exempt.

The statutory exemptions to the requirement of providing the disclosure are: transfers from one or more co-owners solely to one or more of his co-owners; transfers made to the spouse, parent, sibling, child, grandparent or grandchild where no consideration is paid; transfers pursuant to a court order; transfers of newly constructed residential real property covered by the statutory one-year new home warranty; transfers made by executors, administrators, trustees or conservators; transfers by the federal government or any government chartered corporation (such as FHA, FNMA or FDIC); transfers by deed in lieu of foreclosure; transfers by the state of Connecticut or any political subdivision thereof; and transfers of property acquired through foreclosure or deed in lieu of foreclosure.

Sellers of properties that do not fit the exemptions predictably search for reasons to dodge completing the form. The four most heard protestations include, "But, I'm acting as Power of Attorney for the seller" (as if *that* had magic powers), "But, I'm just the investor", "But, I'm the relocation company", and lastly, "But, I haven't lived there for years!" (the Sgt. Schultz "I know nothing" defense). None of these reasons/excuses/protestations are valid as they do not fall into any of the enumerated exemptions.

To answer the second question, for sellers who are not exempt and who do not provide the completed property condition disclosure report to the buyer before s/he becomes bound on a purchase and sale agreement, a binder, an option to buy or purchase option, there is a surprise for you at closing – you give the buyer a \$300 credit toward the purchase price.

In response to the third question, the responsibility for completing the property condition disclosure report belongs to the seller, not the real estate agent. A seller is expected to complete the form the best s/he can based on his/her own knowledge of the property, remembering that the disclosure is not construed as a warranty and is only meant to provide prospective purchasers with the seller's knowledge about the property. However, while a seller has no obligation to investigate, inspect or research the property's condition and cannot be held liable for a conditions/he should have known about, s/he will be held liable for any intentional misstatements or statements made without regard as to their correctness.

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