

What Sellers Need to Know

By Judith I. Johannsen

When it comes to buying and selling real property, we tend to think that it's the buyers who need to know what to do, when to do it and why because they have more to do – they are the ones making the offers, obtaining financing and arranging for inspections; however, sellers also have to know a few things to make their sales transactions smooth.

Residential Property Condition Disclosure Report. Connecticut sellers (unless exempt) are statutorily required to provide a completed Residential Property Condition Disclosure Report to buyers before those buyers become legally bound by purchase and sales agreements, leases with options to purchase, and purchase options.

This disclosure report is a state-created form that sets forth 34 questions about the property in general, the condition of the system/utilities and the building structure/improvements and to which sellers respond "Yes", "No" or "Unknown". While sellers' responses provide current and historical property information, they are not meant to be a substitute for buyers' tests or inspections, nor are they to be construed as a warranty to buyers.

The responsibility for completing the report form belongs to the sellers, not the agents, and sellers who do not provide the disclosure form to their buyers as required will have to credit their buyers \$300 at closing.

The Inspection Report. Most, if not all, purchase and sale agreements include a contingency for buyers to have inspections performed on the properties they are buying, but as CT does not have standardized forms, the wording of inspection contingencies is wide-ranging. Therefore, both buyers and sellers need to understand what their particular contingencies state as that language is the roadmap of how the parties behave with respect to inspections and inspection reports, negotiating repairs, and the possibility of ending their purchase and sale agreement.

Listing Agreement Protection Period. Sellers who hire real estate companies to sell their properties sign listing agreements. These agreements state the name of the parties, identify the property, the length of time the listing is in effect, how a company's compensation is earned, and when it is paid. Some listing agreements also include a protection period which allows real estate companies to be paid a commission after the listing agreements expire when sellers sell their properties to buyers who saw the properties during the time the listings were in effect. The purpose of the protection period is to prevent sellers from avoiding paying a commission by purposefully not selling to buyers until their listing agreements expire. Protection periods are typically cut short if sellers sign new exclusive listing agreements.

Condominium Resale Packages. Residential condominium unit sellers (in condo complexes of more than 12 units) are required to provide buyers with a resale certificate and condominium documents. Sellers request the certificate and the documents in writing from their associations and the associations, within ten days of the request, must furnish the documents to the buyers or buyers' attorneys. The association's fee may not exceed \$125 for the package's preparation, although an extra \$10 may be requested if the association provides the documentation within three (3) business days after the written request is received. The associations are also required to provide a written itemization of the actual document preparation costs.

The Buyers' Deposits/Liquidated Damages Clause. A liquidated damages clause in a purchase and sales agreement allows one party to have the deposit if the other party defaults in his/hers contractual obligations. Not satisfying a contingency is not the same as a default. An example of a default is when a buyer does not make application for financing or does not hire a property inspector when the contract requires him to do so. Not qualifying for a mortgage loan is not satisfying the financing contingency and is not a default. So, when a buyer cannot obtain a mortgage loan and asks for the return of his deposit, a seller should not claim the deposit belongs to him and withhold his agreement to release the deposit.

Just like being King is good, being a seller is good, but being an informed seller is invaluable.

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

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