

Residential Property Disclosure

“Sellers, do tell... and buyers, check well!”

You're ready to sell your house. You've cleaned the carpets, touched up all the paint, replaced the front door, and recaulked around all of the windows. The house looks great and you're ready to go. But wait... You just remembered that shortly after the house was built one of the pilings settled slightly and as a result one of the kitchen windows is hard to open and close. You don't even care any more because you're used to it. There has been no indication of additional settling in the past five years.

Do you have to tell your agent or the prospective buyer about a past problem and thus hurt your chances of getting the price you want for the house?

You just bought a house. The seller and the agent told you it was in perfect condition, and it certainly looked like it to you. You closed in January so you had no need to open any of the windows. It is now spring and you tried to open the kitchen window to let in the fresh air but the window was stuck. You asked a builder friend to check it for you, and he said that due to some slight settling in the past, the window frame had shifted slightly thus making the window hard to open.

Does the seller have to fix the window for you? Is your real estate agent at fault for not informing you of the defect when you first decided to buy the property?

Good questions. Real estate is often a family's single most costly investment. So sellers want to be sure to get the best return possible, and buyers want to be sure their hard-earned dollars will be well spent. When the seller's needs and the buyer's needs come into conflict, the law is increasingly in favor of the consumer, i.e. the buyer. A smooth sale for both the buyer and the seller is most likely when both parties are aware of their responsibilities in advance.

What does a seller need to disclose?

North Carolina law requires owners of residential real estate to furnish purchasers a Residential Property Disclosure Statement regarding the condition of their property. This law went into effect January 1, 1996 and applies to all sales whether or not the owner is assisted by a real estate agent. Owners must either identify and describe the condition of various components of their property (water supply, plumbing, heating, environmental problems, etc.); or state they they are not aware of any problems; or elect to make "no representations" about the condition of their property.

If a buyer does not receive this disclosure prior to submitting an Offer to Purchase and Contract, the buyer may terminate any resulting real estate contract or withdraw the offer no later than three days after receipt of the disclosure statement. Bad news, indeed, for a seller who was counting on the sale.

What does a real estate agent need to disclose?

The law is clear: the agent must disclose any reasonable facts about the property which the agent knows or should reasonably be expected to know. So even if a seller elects to make "no representations," that does not give the seller's agent the right to conceal any material facts. An agent cannot misrepresent the condition of the property. In addition, an agent is expected to make a reasonable effort to discover and disclose any information which affects the value of the property. However, an agent cannot be expected to know everything and

should recommend that the buyer consult an expert for such matters as delineating wetlands, determining environmental hazards, and the like.

What protection does the buyer have?

The Offer to Purchase and Contract approved by the North Carolina Bar Association and the North Carolina Association of Realtors contains a Standard Provision specifically designed to give the buyer the opportunity to inspect the property before closing. Provision 8, entitled "Inspections" says that unless otherwise stated in the contract, everything shall be in good working order, not in need of immediate repair, and performing the function for which intended.

The buyer has the option to have the property inspected by a reputable inspector or contractor, at buyer's expense in sufficient time before closing to permit any repairs to be completed by closing. If the seller refuses to complete any necessary repairs or to provide for their completion, the buyer has the option of terminating the contract in which case the earnest money shall be refunded.

And here is the key: "Closing shall constitute acceptance of (the property) in its then existing condition unless provision is otherwise made in writing."

So what is the moral of the story?

The seller and the seller's real estate agent should disclose that the property settled and that the kitchen window therefore sticks.

And the buyer should have had the property inspected prior to closing to ensure that everything was in working order. Had the sticking window been discovered before closing, the seller would have been obligated to make the repair at the seller's expense, or the buyer would have had the option of terminating the contract.

Courtesy of Beach Realty & Construction