

Real Estate: Seller Disclosures

By: Tiffany Newton

If you are considering buying or selling a home in the near future, it is important to understand what you as the seller have to disclose to the prospective buyer and what information you as the buyer are entitled to receive.

The Residential Real Property Disclosure Act requires the seller in a residential real estate transaction to make certain disclosures to the buyer regarding their knowledge of defects about the property. These required disclosures only apply to residential real estate transactions. The seller of any residential property shall complete the disclosure, certify the disclosure and provide the disclosure to the potential buyer.

In completing the disclosure, the seller is to provide the prospective buyer with information regarding material defects in the residential real property. A material defect means a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants unless it has been corrected. The seller is only required to make disclosures of any material defects that the seller has actual notice or actual knowledge. The disclosure also does not require the seller to make any specific investigation regarding whether defects exist.

The disclosures that are made by the seller do not replace a home inspection. The seller should provide an explanation to any of the disclosures in which he or she indicates "yes" the statement is correct. The law requires that the seller answer "yes", "no" or "not applicable" to the following list of 23 material defects:

1. Seller has occupied the property within the last 12 months.
2. I am aware of flooding or recurring leakage problems in the crawl space or basement.
3. I am aware that the property is located in a flood plain or that I currently have flood hazard insurance on the property.
4. I am aware of material defects in the basement foundation (including cracks and bulges).
5. I am aware of leaks or material defects in the roof, ceilings, or chimney.
6. I am aware of material defects in the walls, windows, doors, or floors.
7. I am aware of material defects in the electrical system.
8. I am aware of material defects in the plumbing system (includes such things as water heater, sump pump, water treatment system, sprinkler system, and swimming pool).
9. I am aware of material defects in the well or well equipment.
10. I am aware of unsafe conditions in the drinking water.
11. I am aware of material defects in the heating, air conditioning or ventilating systems.
12. I am aware of material defects in the fireplace or woodboring stove.
13. I am aware of material defects in the septic, sanitary sewer, or other disposal system.
14. I am aware of unsafe concentrations of radon on the premises.
15. I am aware of unsafe concentrations of or unsafe conditions relating to asbestos on the premises.
16. I am aware of unsafe concentrations or unsafe conditions relating to lead paint, lead water pipes, lead plumbing pipes or lead in the soil on the premises.

17. I am aware of mine subsidence, underground pits, settlement, sliding, upheaval, or other earth stability defects on the premises.
18. I am aware of current infestations of termites or other wood boring insects.
19. I am aware of a structural defect caused by previous infestations of termites or other wood boring insects.
20. I am aware of the underground fuel storage tanks on the property.
21. I am aware of boundary or lot line disputes.
22. I have received notice of violation of local, state or federal laws or regulations relating to this property, which violation has not been corrected.
23. I am aware that his property has been used for the manufacture of methamphetamine as defined in Section 10 of the Methamphetamine Control and Community Protection Act.

As you can see from the list of defects that are required to be disclosed, not every defect of the property is required to be disclosed. Also, the statements being made by the seller are only whether or not they are aware of any of the listed defects. It is not a statement regarding whether or not those defects actually exist. It is important as a buyer or as a seller to discuss the disclosures with your realtor or real estate attorney as early as possible.