

Disclosure - Q & A

Q: Whose obligation is it to disclose pertinent information about a property?

A: Obligations to disclose information about a property vary from state to state.

Under the strictest laws, the seller and the seller's broker, if there is one, are required to disclose all facts materially affecting the value or desirability of the property which are known or accessible only to him.

Items sellers often disclose include: homeowners association dues; whether or not work done on the house meets local building codes and permits requirements; the presence of any neighborhood nuisances or noises which a prospective buyer might not notice, such as a dog that barks every night or poor TV reception; any death within three years on the property and any restrictions on the use of the property, such as zoning ordinances or association rules.

It is wise to check your state's disclosure rules prior to a home purchase.

Q: Do sellers have to disclose the terms of other offers?

A: According to experts, sellers do not have to disclose other offers

Q: Will a neighbor problem reduce the value of my property?

A: While it may not reduce the actual value, a cluttered landscape can detract from the positive aspects of your home. Review your local laws, which should be on file at the public library, county law library or City Hall.

A typical "junk vehicle" ordinance, for example, requires any disabled car to either be enclosed or placed behind a fence. And most cities prohibit parking any vehicle on a city street too long.

It also may be worthwhile to check into local zoning ordinances. An operator of a home-based business usually is required to obtain a variance or permanent zoning change in residential areas.

In addition, if a neighbor's repair work produces loud noises, he may be breaking local noise-control ordinances, which are enforced by the police department.

Before bringing in the authorities, you may want to make a copy of the pertinent ordinance and give it to your neighbor to give them a chance to correct the problem.

Resources:

* "Neighbor Law: Fences, Trees, Boundaries and Noise," Cora Jordan, Nolo Press, Berkeley, Calif.; 1991.

Q: What are the standard contingencies?

A: Most offers include two standard contingencies: a financing contingency, which makes the sale dependent on the buyers' ability to obtain a loan commitment from a lender, and an inspection contingency, which allows buyers to have professionals inspect the property to their satisfaction.

A buyer could forfeit his or her deposit under certain circumstances, such as backing out of the deal for a reason not stipulated in the contract.

The purchase contract must include the seller's responsibilities, such things as passing clear title, maintaining the property in its present condition until closing and making any agreed-upon repairs to the property.

Q: What repairs should the seller make?

A: Most sellers like to make all minor repairs before going on the market in order to seek a higher sales price. In addition, nearly all purchase contracts include a buyer contingency "inspection clause," which allows a buyer to back out if numerous defects are found. Once the problems are noted, buyers can attempt to negotiate repairs or a lower price.

Q: How do I get the real scoop on homes I am looking at?

A: Home inspections, seller disclosure requirements and the agent's experience will help. Disclosure laws vary by state, but in some states, the law requires the seller to complete a real estate transfer disclosure statement. Here is a summary of the things you could expect to see in a disclosure form:

- * In the kitchen -- a range, oven, microwave, dishwasher, garbage disposal, trash compactor.
- * Safety features such as burglar and fire alarms, smoke detectors, sprinklers, security gate, window screens and intercom.
- * The presence of a TV antenna or satellite dish, carport or garage, automatic garage door opener, rain gutters, sump pump.
- * Amenities such as a pool or spa, patio or deck, built-in barbeque and fireplaces.
- * Type of heating, condition of electrical wiring, gas supply and presence of any external power source, such as solar panels.
- * The type of water heater, water supply, sewer system or septic tank also should be disclosed.

Sellers also are required to indicate any significant defects or malfunctions existing in the home's major systems. A checklist specifies interior and exterior walls, ceilings, roof, insulation, windows, fences, driveway, sidewalks, floors, doors, foundation, as well as the electrical and plumbing systems.

The form also asks sellers to note the presence of environmental hazards, walls or fences shared with adjoining landowners, any encroachments or easements, room additions or repairs made without the necessary permits or not in compliance with building codes, zoning violations, citations against the property and lawsuits against the seller affecting the property.

Also look for, or ask about, settling, sliding or soil problems, flooding or drainage problems and any major damage resulting from earthquakes, floods or landslides.

People buying a condominium must be told about covenants, codes and restrictions or other deed restrictions.

It's important to note that the simple idea of disclosing defects has broadened significantly in recent years. Many jurisdictions have their own mandated disclosure forms as do many brokers and agents. Also, the home inspection and home warranty industries have grown significantly to accommodate increased demand from cautious buyers. Be sure to ask questions about anything that remains unclear or does not seem to be properly addressed by the forms provided to you.
