

CINCINNATI BUSINESS COURIER

Duty to disclose (or buyer beware)

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Buying and selling a home can be a stressful experience for all involved. Of course a seller's No. 1 goal is to get the most out of his or her home, but this can sometimes discourage them from disclosing important information such as cracks in a foundation wall. In the short term, it may be easier to sell a home for a great price without disclosing a known flaw, but in the long term, it can cost a lot of time and money to fight a lawsuit over the condition of the property. It is the seller's obligation to disclose certain information about the home, and it is the buyer's responsibility to be completely informed before purchasing the property.

There is no easy answer when determining what obligations a seller has to disclose to a potential buyer. However, based on our experience, we have compiled a few tips that both a buyer and seller should keep in mind.

Tip 1: In order to minimize potential risk, a seller should spend plenty of time reviewing and completing the Residential Property Disclosure Form, which asks owners to disclose certain conditions such as water damage or cracks in the foundation. This information is required in most residential real estate transactions.

Tip 2: Make sure, as either a buyer or seller, that you secure in writing that the agent you are working with represents you. A seller's agent works for the real estate company that lists and markets the property for the seller. He or she exclusively represents the seller, which means that he or she may assist the buyer in purchasing the property,



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but his or her duty of loyalty is only to the seller.

Tip 3: If it's important, get it in writing. A standard purchase contract states that if a representation, warranty or agreement you thought you had with the other party is not in the contract, it does not count. If you want to be able to rely on something, it must be in the contract.

Tip 4: Pay attention to any "AS IS" provisions. Even if the contract has an "AS IS" type of provision in it, the seller still has certain duties to disclose. If an unhappy buyer can prove fraudulent nondisclosure by the buyer, a court is likely to ignore the "AS IS" language written in the purchase contract.

Tip 5: As a buyer, review inspection reports and recommendations carefully and decide how you want to proceed. Often, inspection reports will note a concern with the home, but the buyer does not fully un-



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derstand its importance. Follow up with the inspector regarding the issue or hire another expert to give you the reassurance you need to move forward. It is generally the buyer's responsibility to take the necessary steps to understand the nature and extent of a known problem.

Tip 6: From the seller's perspective – disclose, disclose, disclose! If you know something is wrong with the property, make sure you take the proper steps to disclose this information to a potential buyer.

From the buyer's perspective, investigate. You should be interested in more than the physical condition of the property – consider qualities such as availability and adequacy of utilities, crime rates, school districts, building codes and zoning, to name a few.

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