



DISCLOSURES: HOW MUCH IS TOO MUCH?

When a home is sold, the seller is obligated to disclose to the buyer any problems that could affect the value or desirability of the property. The disclosure is most often made in written form - and, in most states, it is illegal for the seller to conceal any major physical defects.

Major defects would certainly include issues like a crack in the foundation, a leaky roof, or the presence of toxic materials, such as asbestos. But exactly what must be disclosed varies from state to state and, in fact, is one good reason why buyers are wise to pay for a home inspection prior to closing.

In some states, disclosure requirements are very strict. In California, for example, sellers must disclose potential hazards from earthquakes, fires, environmental hazards and floods. They must disclose whether a murder or death occurred on the property within the last three years, and alert the seller to a database maintained by law enforcement that lists the location of registered sex offenders.

But what about a basement that floods, but only during heavy rains? Or the dog next door that barks all night enough to drive you nuts? Do those things need to be disclosed? And what about the seller's suspicion - but no sure knowledge - that the septic tank is nearly full?

Generally speaking, the seller must disclose what he knows to be an issue. If he's worried enough to disclose it to the agent, then it should be disclosed to the buyer. If it isn't disclosed, and the unwary buyer discovers it later on her own, the seller could be open to a law suit. In other words, when in doubt, err on the side of disclosure.

On the other hand, disclosing a problem doesn't mean the seller needs to repair or correct it. The seller may decide to ignore certain issues - or to use them as points of negotiation when it comes to settling on a final sales price.

Most states mandate that disclosures must be made on special forms the seller must sign and date. If you are unsure what is required in your market, check with your state department of real estate, which will also let you know precisely what issues what must be disclosed in your state.