

## **Sellers: Why Full Disclosure is Critical**

### **A Seller's Worst Nightmare**

Once sellers have completed a transaction, the last thing they want is to revisit the sale some time later through a claim for damages by the buyers. The single most important action homeowner sellers can take to reduce the risk of being the subject of a claim or lawsuit is to properly disclose any issues with the home. A significant majority of transaction-related lawsuits are filed by buyers against sellers alleging that the sellers *failed to disclose*: i.e. "You did not tell us about the (insert your favorite defect here)." The ounce of prevention that will avoid this situation is extremely simple – use the disclosure forms provided by your real estate agent to fully and properly disclose anything that might reasonably affect the value or desirability of your property.

### **Why Sellers Do Not Like To Disclose**

Typically a failure to disclose lawsuit happens because the sellers have not told the buyers of some facts that show up later as expensive repair items for the buyers. Why do sellers not tell buyers of the defects in their property? Usually it is because they believe that if they tell, the buyers will not purchase their property. *That belief is simply wrong most of the time.* Experience shows that most buyers will come to terms with a "defect" issue disclosed during escrow, especially if the matter is disclosed up front when they are most excited about their purchase. In those cases where the buyers do elect to cancel, the sellers should be thankful, not upset, because the buyers absolutely *would have* found out eventually, when money that they would have invested in new carpet, for example, instead goes to fix the defect. At that point the buyers' disappointment turns to resentment against the sellers and they have no other recourse but to make a claim against the sellers. Given the costs that are typically necessary to defend a claim, the sellers' proceeds from the sale are quickly swallowed up by mediation, arbitration and/or litigation costs.

### **Disclosure: The Best Insurance Against Future Claims**

Full disclosure is, in reality, the cheapest form of lawsuit insurance for a seller – it costs nothing. Remember: sellers are required to disclose is anything that might reasonably be an issue affecting the value or desirability of the home *in the mind of the buyers*. Sellers may not make the decision to disclose or not based upon what would be "important" for them. The more sellers disclose, the safer they are. The smaller or more esoteric the disclosure, the less likely it is to have an effect on the buyers' decision to buy and thus the less the sellers have to be afraid of scaring off buyers. Sellers should think of each individual bit of disclosed information like a lawsuit inoculation against stressful and expensive litigation related to that disclosed fact – it is one less thing for buyers to later complain about.

### **"Fixed" or Not**

Sellers should be especially careful to disclose a condition even though they might believe it has been "fixed." It is amazing how many problems that have been "fixed" end

up breaking again a month or so after the close of escrow. Disclosure of a old “fixed” problem typically has absolutely no effect on the sale – it is usually viewed by the buyers as one less problem to be concerned with. If an undisclosed “fixed” problem is discovered after the fact, however, when the “fix” breaks, the buyers often believe that the sellers were intentionally hiding things and hard feelings and a dispute almost always result.

### **A Simple Rule**

Sellers, ask yourselves the question, “Do I want to disclose this?” If the answer is no, ***you must disclose!*** Think about it: why would you not want to disclose unless you believe that disclosure of the information would hurt the chance of a sale? That is the definition of what must be disclosed under California law.

Follow this simple rule – disclose, disclose, disclose - and you will have done everything possible to eliminate the chance that you will ever be defendants in a lawsuit over the sale of your property.