

FIRST TIME HOME BUYER'S SEMINAR
October 30, 2012
California State University, Northridge

DISCUSSION TOPICS

I. DISCLOSURE OBLIGATIONS TO THE BUYER

A. Brief History

i. Easton vs. Strassburger

- 1984 California Superior Court Case 152CA390 which clarified the obligations of real estate agents to the buyer.
- The sellers have always had an obligation to disclose what they knew about the property which "affects the desirability or value."

B. Disclosure Statements

There has been a significant movement in the last 25 years to put into statute the specific requirements of what needs to be disclosed to buyers by both the sellers and agents and, most importantly, what format the various disclosures must take.

i. Transfer Disclosure Statement

- An example is Civil Code Section 1102 the Transfer Disclosure Statement Form. This form was actually taken literally from the Statute as written.

ii. Additional Disclosure Forms

- The California Association of Realtors has been very proactive in developing multiple additional disclosure forms which cover a number of topics.
- CAR forms include:
 1. Statewide Buyer and Seller Advisory (there are 48 items of concern that are listed on this form).

- This is a statutory requirement under Civil Code Section 1710.2 that if there has been a death on the property for whatever reason, then the fact of the death on the property must be disclosed to the buyer.
- ii. Remember the standard is “anything that affects the value or desirability of the property” that includes offsite conditions
 - Noise, neighbors, airports, rapid transit, chicken coop down the street, toxic dumps, etc.

C. Limitation of the Seller’s Liability

- The limitation on the seller’s liability is to those areas which the seller knew or should have known.
- If the seller does not know about a particular circumstance, then its difficult to hold a seller responsible if that condition comes to light after the close of escrow.

D. The Point is to Avoid Unpleasant Surprises

- It is much better to learn the status and the condition of the property prior to the close of escrow and to cancel the transaction than to be stuck with a situation that could cost many thousands of dollars or make your life difficult living in a house you regret buying.

IV. HOW TO TAKE TITLE

- If you are married and the property is community property, the best way to take title is as “husband and wife as community property with right of survivorship” so that it passes automatically.
- If you are single,
 - “A married man/woman” means formerly married.
 - “A single man/woman” means never married.
- “Joint Tenancy” means the automatic passing to the surviving joint tenant upon the death of a joint tenant. However, joint tenancy may have adverse tax implications.

C. Planned Developments Disclosures (Condominiums):

- When you are buying into a planned community, it is governed by various documents as well as a statutory scheme which governs the operation of the Homeowners Association.

CC&Rs

- Seller must make available to the buyer the CC&Rs (Covenants, Conditions and Restrictions) which is a recorded document which governs the use and many aspects of the property.
- The property rules and regulations that the board has adopted in addition under the authority granted in the CC&Rs.
- Financial information about the Homeowners Association which includes assessments, both regular and special.
- Any litigation that is pending, insurance claims, the status of any prior settlements.

D. Homes from Builders (New Homes)

- New construction is an area which lends itself to potential difficulty by the buyer. Inspecting a new home requires a careful eye at the details as well as a qualified home inspector to assist you even though it's a brand new home.
- Review areas to inspect.

III. OTHER DISCLOSURES

A. Lender's Duties After Foreclosure

- Generally, lenders who are reselling a property after foreclosure are exempt from the disclosure laws and often you do not receive documentation from them in the form of a Transfer Disclosure Statement or other disclosures which makes your home inspection process that much more important.

B. "Anything that Affects the Value or Desirability of the Property"

- i. Death on the real property within 3 years

A. Home Inspection:

- Always insist on conducting a home inspection during the due diligence period, usually 17 days after contract is signed.
- Insist on a qualified home inspector.
- Check their credentials.
- Generally there is no license in California required for a home inspector. Any one can call themselves a home inspector.
- Many are members of a trade association but often many do not have insurance and limit their liability contractually to the amount that was paid for the inspection which can be as little as \$200 or \$300. Courts may uphold these contractual limitations on liability.
- If it is all practical, be present at the home inspection, they are working for you.

B. Pay Attention

- You must pay attention to the details when you inspect the house during the contingency period.
- Check the property lines, settling, cracks on the side of the house or in the foundation, and drainage issues. Where are the fences located? Are there trees? Are there roots causing any damage?
- Look at the physical characteristics of the roof and the gutters, chimneys
- Check both the inside and outside of the property, open the cabinets, look under for water stains, etc., look at the ceilings and walls, walk all the carpeted areas, and open the closets and look inside
- It doesn't necessarily take a trained eye to reveal a problem or to some extent a cosmetic cover-up. Look carefully.
- Often the most pervasive and expensive fixes are those that cannot necessarily be seen by a visual inspection. Mold is the most specific and difficult type of problem that can cause many of thousands of dollars in damage but may not be visible. Be attentive to any water damage.

2. A generalized Buyer Advisory Form.
3. The Material Issues Form.
4. The Agent's Visual Inspection Form which conforms with California Civil Code Section 2079 for the agent's requirements. (Note that the real estate agents have an obligation to conduct a reasonably competent and diligent inspection of the open and accessible areas of the property and to so note them in writing to the buyer prior to.)
5. Mold Disclosure.
6. Buyer's Inspection Elections which cover over 30 separate items which should be examined by the buyer in the course of conducting due diligence.
7. The Termite Inspection, Water Heater, Smoke Detector Compliance Forms.
8. Septic Inspections, Property Monument, New Construction Property Disclosure Forms.
9. Natural Hazard Disclosure Statement.
10. Megan's Law Database Disclosure.
11. Buyer's Inspection Waiver.
12. Buyer's Inspections Advisory.

- The buyer can be overloaded with all of these forms and blithely sign them without paying attention to the contents.

II. BE PROACTIVE

It is very important that as a buyer you take an active role in conducting the due diligence inspections.

- “Tenants in Common” means each individual owns an individual interest in property and the property does not pass automatically to the tenant in common on the death of co-owner; rather, it goes to their heirs.
- “Trust” is part of an estate plan.

V. RELATIONSHIP WITH AGENTS

B. Duties of the Agent

There are different duties to the buyer and the seller by the agent depending on who they are representing.

- The agent representing someone has a fiduciary duty, the highest duty imposed by law.
- The agent representing the other party has a duty to the other party to disclose what they know. They have to be honest and forthcoming and in good faith.
- The agents, regardless of who they represent, must respond truthfully to inquiries by either party based upon their knowledge.

VI. OTHER AREAS TO DISCUSS

- What to do if you discover a problem before escrow closes or after close of escrow? Immediately contact your agent and let them know the problem you have. Sometimes they are already alerted to it and will try to work out a solution.
- Remedies: Mediation, arbitration, and broker’s involvement.