

What If Sellers and Their Agents Don't Disclose Known Defects to Their Listings?

Last week I got a call from a reader who sold a house with structural defects last year, defects he had properly disclosed. He was concerned because he thought the current seller might not be disclosing those same defects to prospective buyers. He feared that the seller had simply covered up the defects when he finished the basement, hiding them from unsuspecting buyers.

REAL ESTATE TODAY



By **JIM SMITH, Realtor®**

What safeguards are in place to protect buyers from being sold a home with undisclosed defects? The primary safeguard, of course, is basic honesty - that most sellers and agents are forthcoming, as I've found, when it comes to disclosing defects. Another is that the listing agent could lose his real estate license if it can be proved that he or she conspired in failing to disclose a major defect. Unfortunately, should you purchase a property directly from a seller who is not himself a licensed agent, you don't have that same protection.

A buyer's recourse against an unlicensed seller for failing to disclose a defect is civil in nature. The buyer would have to sue the seller and rely on a judge or jury to decide in his favor and rule that the seller must provide compensation for their deceit. Even if successful, though, the buyer still has to deal with the defect, which can be a hassle. And what if they're not successful? Well, along with having to fund the repair of the defect themselves, they're out whatever time and money it took to work their way through the court system. On the other hand, it costs virtually nothing for that buyer to seek damages from a licensed agent: just go to the Colorado Real Estate Division's website and fill out an online complaint.

Our Fleet of EVs Continues to Grow



On any given day you will find two Chevy Volts, a Tesla Model S and now a Tesla Model X in the Golden Real Estate parking lot on South Golden Road. All of them are charged for free thanks to our 20-kilowatt solar photo-voltaic (PV) array, which also heats, cools and powers our office. The general public is also welcome to use our free charging stations for their electric vehicles.

Are you a Realtor with an EV? At Golden Real Estate, your car would be fueled for free!

STRUCTURAL CONDITIONS	Yes	No	Do Not Know	N/A
Do any of the following conditions now exist or have they ever existed:				
Structural problems			<input checked="" type="checkbox"/>	
Moisture and/or water problems		<input checked="" type="checkbox"/>		
Damage due to termites, other insects, birds, or rodents	<input checked="" type="checkbox"/>			
Damage due to hail, wind, fire, flood or other			<input checked="" type="checkbox"/>	
Cracks, heaving or settling problems	<input checked="" type="checkbox"/>			
Exterior wall or window problems	<input checked="" type="checkbox"/>			
Exterior Artificial Stucco (EIFS)			<input checked="" type="checkbox"/>	
Any additions or alterations made		<input checked="" type="checkbox"/>		
Building code, city or county violations		<input checked="" type="checkbox"/>		

PRE-2018 DISCLOSURE

STRUCTURAL CONDITIONS	Yes
If you know of any of the following problems EVER EXISTING check the "Yes" column:	
Structural problems	
Moisture and/or water problems	
Damage due to termites, other insects, birds, or rodents	
Damage due to hail, wind, fire, flood or other	
Cracks, heaving or settling problems	
Exterior wall or window problems	
Exterior Artificial Stucco (EIFS)	

NEW 2018 DISCLOSURE

My personal experience is that both sellers and their agents have been forthcoming in disclosing known property defects using the very detailed Sellers Property Disclosure form provided by the Colorado Real Estate Commission.

This January, a simplified version of the disclosure was issued, and some agents, including myself, are not entirely pleased with it.

Prior to January 1st, the Sellers Property Disclosure asked sellers to answer "Yes," "No," "Do Not Know" or "N/A" to each item, as shown on the disclosure above from one of my own transactions.

The Sellers Property Disclosure that all listing agents were required to begin using on January 1, 2018 asks only whether there is (or was) a problem, but doesn't provide an opportunity for the seller to affirm that there is no problem. Above right is the

same section of the new disclosure as completed by the seller of one of my 2018 listings.

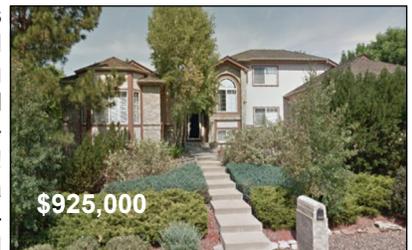
What was nice about the previous version was that it required an answer to every item, even if that answer was "do not know" or "not applicable." I'm not a lawyer, but it seems to me that if there were to be a civil trial over a failure to disclose a known defect, it would be more convincing to show that the seller answered incorrectly rather than simply remained silent on the issue at hand.

One reason agents are unhappy with the new form is that there will often be entire pages of the form with no checkmarks at all, raising the question of whether the seller even completed the form.

Despite this development, you can be comfortable with the fact that listing agents and their clients take seriously their responsibility of disclosing all material facts about a property. Next time you want to compare real estate agents to car salesmen, this is only one of the ways that it's a bogus comparison. Failure to disclose a car's defects isn't a crime.

Just Listed: Unique 7-Bedroom Home in Arvada

A unique buyer opportunity in The Ridge at Harvest Lane, this Arvada home at **7587 Union Court** has served as a residential assisted living group home for the past 10 years. (Neighboring houses are all single family.) Whether continuing with assisted living, a group home, multi-family/multi-generational living, or something else, this versatile property offers a tremendous opportunity! This home features 4,203 square feet, 7 bedrooms including a main-floor master suite, plus a loft, 4 full or 3/4 bathrooms, spacious living spaces on the main floor and walkout basement, and plenty of outdoor space on this 0.28-acre corner lot. Stop by the **open house on Sunday, April 8th, from 10-2** to see for yourself! Because this home was licensed for a group home, it has exceptional safety features, including fire sprinklers and alarm system, which could reduce your homeowner's insurance if you make it a private home. The home is also fully handicapped accessible, including a ramp to enter the home, fully accessible bathrooms, and even a stair elevator between the first floor (which has 3 bedrooms) and the basement (which has 4 bedrooms). Lots of furniture and equipment is included. You can view interior pictures plus a narrated video tour at www.ArvidaHome.info, then call **Kristi Brunel** for a private showing at **303 525-2520**.



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