5 THINGS YOU SHOULD KNOW ABOUT DISCLOSURES

1. What is a disclosure?

Disclosure statements, which can come in a variety of forms, are the buyer's opportunity to learn as much as they can about the property and the seller's experience in it.

Potential seller disclosures range from knowledge of leaky windows to loud neighbors to information about a major construction or development project nearby. Not only do disclosure documents serve to inform buyers, they can protect the sellers from future legal action. It is the seller's chance to lay out anything that can negatively affect the value, usefulness or enjoyment of the property.

2. How does a seller go about making a disclosure to the buyer?

Disclosure laws vary from state to state, even down to the city and county level. California has some of the most stringent disclosure requirements. Often, sellers there are required to complete or sign off on over 50 pages of documents, such as a Natural Hazards Disclosure Statement, Lead Based Paint Disclosure, Advisories about Market Conditions and even Megan's Law Disclosures.

Depending on where you live, sellers can be on the hook for what they disclose (or fail to) for up to ten years.

Disclosure typically comes in the form of boilerplate documents (put together by the local or state Realtor association), where the seller is responsible for answering a series of yes/no questions detailing their home and their experience there. Disclosure statements are legal documents that can stand up in court.

3. What do sellers typically disclose to potential buyers?

The work and upgrades sellers have done to their property are a common disclosure, whether the work was done with or without permits. If done with permits, buyers are advised to cross check the seller's disclosure with the city building permit report. Doing work without the city signing off with a permit is a key disclosure. If the work was not approved by the city, it may not have been performed to code and may cause a fire or health hazard. Buyers should independently investigate any non-permit work that was done.

Other common disclosures include the existence of pets, termite problems, neighborhood nuisances, any history of property line disputes, and defects or malfunctions with major systems or appliances. Disclosure documents often ask sellers if they are involved in bankruptcy proceedings, if there any liens on the property, and so on. Failure to disclose can result in a messy conflict with the buyer after the sale.

Some disclosure documents are very detailed. For instance, among the questions posed by the San Francisco Association of Realtors disclosure statement are:

Is there any non-tempered glass on shower or sliding doors?
Have there been any unusual odor problems in the neighborhood?
Was there any death on the property in the last three years?

4. Is a disclosure the same as an inspection? Are the two related?

A disclosure is something given to the buyer by the seller documenting their knowledge of the property. It is not the same thing as an inspection; because there are things the seller may not be aware of that an inspection brings to light.

This is why a property inspection should always be done by the buyer while in escrow. The inspector will check the property out from top to bottom, many times verifying what the seller has disclosed but sometimes bringing to light new issues. Often, we will see sellers hire a property inspector before going on the market. It seems backwards, but this is the sellers' opportunity to hire an independent party to inspect the property, in case they missed or were not aware of something.

5. When does the buyer typically receive a seller's disclosure statements?

In most markets, disclosure documents are provided to buyers once the seller has accepted their offer. In addition to their inspections or loan contingency, the buyer has an opportunity to review the seller's disclosures. If the buyer discovers something negative about the property through disclosure, he can usually back out of the offer without losing his escrow deposit.

In some markets, sellers provide these disclosures to the buyers even before they receive an offer. Some sellers prefer to have buyers know everything they need to know up front. This is also smart because it saves everyone time, hassle and expense by preventing deals from falling apart once they're in escrow.

Buyers are required to sign off on disclosure documents and reports. So it's important to review them carefully and ask questions if you need to.