

Home Inspection

Why it's important to take a close look at what you're buying

By Grace Anne Glavin

In today's world of residential real estate, a body of law has evolved that imposes responsibility and liability on the seller of a house. This can include exorbitant attorneys fees and costs if the house has defects, and there is not full disclosure by the seller with ample ability for the buyer to inspect.

Caveat Emptor which is lawyer Latin for "Buyer Beware," had been the traditional rule of real estate sale or purchase for centuries. Once a transaction was closed, any defects or repair items in a house was just "tough luck" for a sometimes unsuspecting buyer.

The product liability revolution introduced a doctrine of "Seller's Duty to Disclose," which called for sellers to advise buyers about concealed defects that would materially affect the value of the property or presumably hurt someone.

In the old days, people bought "used" houses the way they would buy "used" cars: what you pay for is what you get and you should be prepared to fix everything yourself. Then, about 25 years ago, when interest rates skyrocketed (15 percent in 1982), the 30-year mortgage offered by savings and loan associations and then commercial banks and mortgage brokers became the norm for the average working family who needed to make their mortgage payments affordable, replacing the old 15- and 20-year mortgages. The product liability revolution introduced a doctrine of "Seller's Duty to Disclose," which called for sellers to advise buyers about concealed defects that would materially affect the value of the property or presumably hurt someone. A classic concealed defect seen regularly in residential closings is the concealing of structural damage caused by live swarmer

termites. A seller will have had the termites treated by an exterminator and the treatment holes repaired and painted over. Upon selling, though, he does not disclose the damage within the walls or support beams. The seller could be sued for the cost of repairing the house and also the attorneys fees, court costs and other incidental damages.

Several years ago, the Florida Bar/ Board of Realtors recommended Contract for Sale and Purchase of Residential Real Estate forms that included a Seller's Disclosure Form wherein the seller answers questions on termites and wood-destroying organisms, roof, HVAC, electrical, plumbing, settling and sinkhole issues, even about any threatened litigation or neighborhood changes such as highway condemnation. Although not truly part of the contract, this Seller's Disclosure became very helpful and popular among For Sale By Owners and realtor listed sellers alike because it is the best prevention against a lawsuit when something goes wrong on the house after closing.

The Standard FAR (Florida Association of Realtors) and FAR/BAR (Florida Association of Realtors and Florida Bar) Contract for Sale and Purchase discusses at Paragraph D termites and wood destroying organism conditions and at Paragraph N structural defects, leaks and working systems.

Most residential properties are offered "as is" with right of inspection to be completed no later than usually ten days following the effective date of

the contract.

Most realtors and attorneys now recommend that a seller order a home inspection (average price \$300) from a competent home inspector when the home is being listed so that (1) the seller can be comfortable that he is disclosing everything and also (2) the seller can quickly make any minor repairs so that the house will show better and the buyer will not be able to negotiate down the price after his inspection period.

Home inspectors will make about a two-hour review of the entire house and pool if requested and will provide a report with pictures and recommendations. There is no licensure for home inspectors by the State of Florida so the best way to choose a good company is a referral from your attorney, realtor or title company.

Grace Anne Glavin, Esq., attorney at law specializes in real estate, estate planning and family law. Her law offices and title company are in Winter Springs.



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LINDA KING, D.O.

1349 S. International Parkway
Suite 1431

Lake Mary Professional Campus

407-333-3372

fax 407-333-3672

- ER physician for 20 years in Central Florida plus 6 years studying anti-aging and nutritional medicine
- Member of American Academy of Anti-Aging Medicine
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