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When in doubt? Disclose, disclose, disclose.



*Honesty is the best policy when it comes to disclosing the condition of a home that's being sold, according to industry experts.
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Every home has its flaws. We can try to hide them, but the truth eventually comes out. Hiding the truth from a buyer can, at the very least, result in the termination of a contract. Substantial revelations about the condition of your home can cost money and even a potential lawsuit.

How upfront should you be about the condition of your home? Most industry professionals agree that absolute honesty is the best policy.

“My feeling is always to disclose, even when you do not feel it is necessary,” Bobby Lee, managing attorney at Sage Title Group in Bethesda, said in a recent email. “It eliminates any issues arising at the last moment causing stress, delay and tension among the parties.”

According to property disclosures laws in most jurisdictions in the Washington region and across the country, flaws in a home that unquestionably should be disclosed are referred to

as latent or material defects — defects that pose a direct threat to the health or safety of the purchaser or an occupant of the property. These include, but are not limited to, toxic conditions such as the presence of mold, radon, lead, carbon dioxide, or asbestos; previous fires; structural issues; faulty electrical wiring; and water intrusion.

Some property flaws, however, are not so blatantly apparent in the need to disclose.

In a recent transaction in which I was representing the seller of a condominium, the seller informed me that money was embezzled from the association reserve funds. The issue had already been litigated and resolved, and no longer appeared in the condo resale documents.

So, does the embezzlement need to be disclosed, if it is already resolved and no longer affects the condo association? I remembered what I had learned in Lee's continuing education class — to disclose, disclose, disclose — even when, especially when, you are unsure.

“When in doubt, disclose,” Lee preached to his class. If an issue has been remediated or resolved, Lee advises that the best course of action is to disclose the issue and indicate how the issue was resolved and provide supporting documentation.

When selling a home, it is important to understand the local laws regarding disclosure and disclaimer. If you elect to disclose, you agree to share information that you know about the property, such as the age and condition of the roof and HVAC system; the operating condition of plumbing and electric systems; the presence of wood destroying insects; and latent defects.

If local laws allow for a disclaimer, you are given an opportunity to make no representations or warranties as to the condition of the property. However, this does not negate your obligation to disclose known latent defects.

In 2017, I was representing a buyer in an “as-is” transaction, in which the seller elected to disclaim rather than disclose facts about the house. Before settlement, we learned that a tree had recently fallen on the house and severely damaged the roof and roof trusses. The seller did not disclose this to us, despite the fact that the seller was fully aware of the damage caused by the tree.

How did we become aware of it?

As a buyer's agent, I always ask my client's property insurance company to provide the Comprehensive Loss Underwriting Exchange (CLUE) report to review. The CLUE report is compiled by insurers and contains a five- to seven-year snapshot of any claims on the property. The sellers had recently filed a claim to rebuild the roof of the house.

After discovering the claim on the house, we notified the sellers of our discovery and demanded they hire a structural engineer to certify the roof was repaired correctly,

considering they had not disclosed this pertinent information to us. The sellers agreed to keep the deal together and avoid potential litigation.

Should the sellers have disclosed the tree damage and repair of the roof, considering the issue had been resolved? Once again, when in doubt, disclose. Disclosing this fact could have saved the sellers the hefty cost of hiring a structural engineer.

When the end goal is getting the most money for your home, can disclosing defects reduce your leverage in negotiations? According to Patrick Mills, an associate broker with CORE Real Estate in New York, the answer is no.

Mills says that he recommends to sellers to be completely truthful about all the defects with the property. Mills advises sellers to make repairs or identify repair options for the buyer, alleviating any of their concerns and turning the focus back to the home's amenities. He explained that even inconsequential issues, such as a burned-out lightbulb, can divert a buyer's focus onto a perceived electrical issue instead of the renovated gourmet kitchen.

Like any transaction between two parties, following the law and abiding by the golden rule will ensure a successful and mutually rewarding outcome.