

SELLER DISCLOSURE LAWS REQUIRED JULY 1, 2006

On July 1, 2006, along with all the laws, rules and regulations which have been the subject of the new core course, there is another law which will take effect which has impact on licensees and their clients. Since 1999, there has been a statute which has required sellers to make the same disclosures as are made by licensees, but the requirement only came into play if there was no licensee involved in the transaction on either side (the "FSBO" law). The law was changed so that it applies to all transactions, whether or not there is a licensee involved. The change goes into effect July 1. The relevant provisions include the following:

Summary:

1. All sellers have to make the same property disclosures as real estate licensees. It also further clarifies what is expected for "known material defects";
2. Sellers must provide arsenic in water and arsenic in wood brochures;
3. Buyers not given seller property disclosure forms prior to an offer can terminate the contract up to 72 hours after receipt of a late disclosure form;
4. Sellers have a legal obligation to supplement property disclosure information if it changes up to the day of closing.

Detail:

1. Title 33, section 173 lists the types of information which need to be included in a property disclosure statement. These include water supply system, heating system or heating source, waste disposal system , hazardous materials, and known defects. Known defect is defined as a "condition, known by the seller, that has a significant adverse effect on the value of property, significantly impairs the health or safety of future occupants of the property or, if not repaired, removed or replaced, significantly shortens the expected normal life of the premises." (section 171, par. 1). The already-existing standard for licensees is the requirement to disclose "material defects in the physical condition of the property." Since the legislative intent in passing the "FSBO" law was to mirror the requirements for disclosure by sellers to those by licensees, we believe that the "known defect" definition in the law should be viewed as an explanation of what is material, and that it applies to those conditions as described occurring on the property. In order to help seller clients comply with the requirement, the "Seller's Property Disclosure" form in Zipforms has been amended in Section V, "General Information" under the bullet "Known Material Defects" to read "Known Material Defects about Physical Condition and/or value of Property, including those that may have an adverse impact on health/safety:".
2. Title 33, section 173-A was added to the "FSBO" law in 2003 and requires sellers of residential real property to provide to the purchaser information developed by the Department of Human Services, Bureau of Health regarding what homeowners should know about arsenic in private water supplies and arsenic in treated wood. Therefore, sellers will need to provide the arsenic water brochure to buyers of any residential property which has a well, and will need to provide the arsenic in wood brochure to any buyers of residential property. The brochures may be accessed by link on the MAR website. This is a seller responsibility, but becomes the responsibility of the listing licensee to inform their client of their duty to disclose. The best way to comply is to attach the brochures to the property disclosure form. The Purchase and Sale Agreement in Zipforms in paragraph 12 includes an acknowledgement that the buyer has received the information. As well, a bullet has been added to the listing agreement whereby the seller acknowledges their duty to disclose. There is a Q & A about arsenic in the Residential Property Transaction Booklet.
3. Title 33, section 174 gives purchasers the right to terminate a contract if they have not received the property disclosure statement before an offer is made. The termination of the resulting contract, or withdrawal of an offer, would need to occur no later than 72 hours after receipt of the late property disclosure. MREC rule already requires that the disclosure information be given to buyers before they make an offer on the property, so this provision should not result in any change in practice. Just be aware of it, and be sure that you follow the already-existing rule so that the buyer doesn't acquire a right to cancel/withdraw.
4. Title 33, section 175 requires that sellers supplement their property disclosure statement with a written supplemental disclosure if, prior to closing or occupancy, the seller acquires actual knowledge of an error, inaccuracy or omission in the disclosure statement already delivered to the buyer. Our "Seller's Property Disclosure" form in Zipforms already includes an introductory statement that "The Seller agrees to notify the Listing Broker promptly of any changes in the information and this form will be appropriately changed with an amendment date." So this should not require any change in existing practice.

5. Title 33, section 176 states that the property disclosure statement is not a warranty by the seller and is not intended to be a part of any contract between the buyer and the seller. This issue is already covered in the introductory language of the Seller's Property Disclosure and in paragraph 22 of the Purchase and Sales Agreement. Also, the seller is allowed to tell a buyer that an item is unknown. And the information is to be based on the best available information; the seller is not obligated to investigate or make inquiry to complete the property disclosure statement. The law further states that the disclosure statement may not be used by the buyer as a substitute for any inspections that the buyer may obtain. "Nothing in this subchapter precludes the obligation of a purchaser to inspect the physical condition of the property." (sec 176, par 2). This should not require any change in existing practice.

6/30/06