

Disclosure, Disclosure, Disclosure Avoid Potential Liability After Closing

By: The Kinzli Team at RE/MAX Alliance

Do I have to disclose the flooded basement from 1996? What about the ghost I keep seeing in the barn? Disclosure questions come up in every listing appointment. Sellers tend to be hesitant to disclose past issues especially if they have been repaired or addressed. According to Scott Peterson, the general counsel for the Colorado Association of Realtors, in a recent presentation to the Fort Collins Board of Realtors, one of the most common complaints into the Realtor legal hotline is issues with non-disclosure. Sellers can be held legally and financially liable after closing for non-disclosure, so transparency is critical.

Proper disclosure not only releases a seller from liability after closing, it creates good will and a level of trust between parties which is one of the most critical factors to negotiating and closing a real estate transaction. The best way to do this is to carefully and thoroughly complete the Seller's Property Disclosure form provided by the Colorado Division of Real Estate. It is also important to provide past insurance claims, receipts for any past repairs completed, as well as any other documentation pertaining to the property.

Seller's are obligated to disclose any "adverse material facts" pertaining to the property. This includes things like past water leaks, structural issues past and present, cracking concrete, drainage issues, window or door issues, the known presence of environmental hazards, any inoperable components of the home, as well as many other items listed in Seller's Property Disclosure. At minimum, the Seller's Property Disclosure should be provided to the buyer prior to making an offer. This way, the buyer can get any questions answered ahead of negotiations. The trust that is built with property disclosure is critical and will help the parties work through unforeseen issues that can often come up during the closing process.

Conversely, Colorado Revised Statute 38-35.5-101 states that sellers and real estate brokers do not have a duty to disclose psychologically impactful circumstances such as a death, a violent crime, or felony in a property as they are not considered material facts. As for that ghost? The statute doesn't specifically address paranormal activity, so that issue is up for debate.

With issues regarding disclosure, always be honest and upfront, because if you don't tell the buyer, the neighbors certainly will!



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