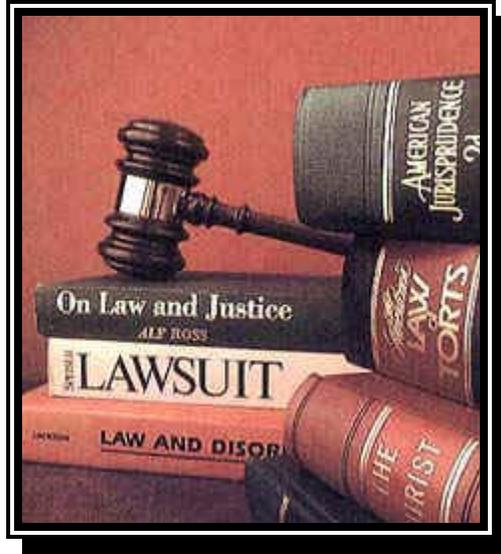


Disclosing defects early saves hassles later



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Dian Hymer (San Francisco Chronicle)

Selling your home for a high price is wonderful—as long as you can confidently bank the proceeds. Unfortunately, a certain number of sellers end up in lawsuits involving their home sale transaction. One way to avoid a lawsuit is to learn from other's mistakes. Here are some problems you can easily avoid.

It's a good idea to spruce your home up before putting it on the market. But if the cosmetic enhancements disguise property defects, be sure that you disclose those defects to prospective buyers.

Disclosure laws vary from one state to the next. However, the trend nationally is toward requiring sellers to disclose material facts about a property when they sell. A material fact is something that would affect the buyers' decision to buy, or the price they'd be willing to pay.

Sellers who disclose material facts are less likely to be sued for lack of disclosure or concealment later. For instance, let's say that your roof leaked and stained the living room ceiling. To cover the eyesore, you painted the ceiling before marketing the property. If you disclose this up front, the buyer has the opportunity to investigate the problem before closing the sale. This way, he can make an informed decision with full knowledge of the situation.



Sellers are prone to overestimating the size of their home. And, in most cases, bigger means more money when you sell. However, misrepresenting the square footage of your home or the land on which it stands can get you into hot water. Recently, sellers told their real estate agent that their house had almost 5,000 square feet. An appraiser's report on the property indicated the square footage was little more than half this amount. The sellers insisted on going with the higher figure because they had renovated a basement area, which accounted for the extra square footage. But this work was done without building permits and was therefore not legal living space. The buyer, who purchased the property, sued the seller and won. The jury found that the sellers and their agent were guilty of false advertisement and fraudulent inducement, for which punitive damages were awarded.

House-seller tip: There are ways to describe a home other than quoting square footage. One way is to state the room count, including the number of legal bedrooms and bathrooms. But, if you're intent on advertising square footage, make sure that you round down, not up, and indicate that the figure is approximate. Also include the source of your information, such as the assessor's records or an appraiser's report. It's wise to include a disclaimer in your representation stating that the square footage may not be accurate and will not be verified. This gives notice to the buyers that if the square footage is important to their decision to buy, they should investigate this on their own.

Sellers can also get into trouble when they conceal inspection reports. One seller obtained a pest report before marketing his home. The report recommended more work than the seller had anticipated, so he ordered a second inspection from a different company. The second report was not as thorough, and therefore was not as detrimental. When the seller marketed his home, he gave the second report to the buyers. The buyers later became aware of the first report, sued the seller and won.

The closing: It's usually far less costly to deal with defects before closing than it is to battle it out in court after closing.

Dian Hymer is author of "House Hunting: The Take-Along Workbook for Home Buyers," and "Starting Out: The Complete Home Buyer's Guide," (Chronicle Books