Real Estate Disclosure Law Goes Into Effect in New York State

By Mark Pierce

On March 1, 2002 New York State became the 35th State to require every seller of one to four family residences to complete and sign a property condition disclosure statement (the law does not apply to the sale of condo’s, co-ops and new construction). Both broker assisted sellers and individuals selling their own homes must comply with this law. The Uniform Disclosure Statement, as it is being called, will alert potential buyers about aspects of the property that may need attention.

The disclosure statement has 48 questions that cover the following four areas.
• General Information
• Environmental Information
• Structural Condition
• Mechanical Systems and Services

Each question requires one of four answers: yes, no, unknown, or not applicable. Some of the questions also require more descriptive answers (see sidebar for a list of the questions). Of course a seller can answer unknown to all the questions, but as attorney Howard Goldson notes, if a seller “doesn’t know anything about the house he’s living in, it’s a red flag” (as quoted in the Nov. 23, 2002 Newsday article written by R. Roel).

The new legislation requires the seller to complete the disclosure form without assistance from a real estate agent and to provide the form to the buyer. The buyer is not bound by a contract of sale until he/she has received the disclosure form. In addition, if the seller discovers a problem after an initial disclosure form has been completed and a contract of sale has been signed, the seller is required to provide the buyer with a revised property disclosure statement disclosing the new problem. If the seller fails to provide the buyer with a completed disclosure form, and the buyer still goes forward with the sale, the seller must then give the buyer a $500 credit at the closing. And if a seller makes a knowingly false statement on the disclosure form “the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy” (p.8, 5339—A; amendment to New York State Real Property Law).

While this legislation is designed primarily to protect buyers, it is not a guarantee that a piece of property will be completely free of defects. And sellers are not required to pay for inspections in order to answer the questions on the disclosure statement. They are required only to disclose defects they are aware of. Since significant structural and environmental defects are sometimes hidden from sight, buyers are still encouraged to inspect property carefully and contract for professional inspections when necessary. The new law also does not prevent sellers from selling their property “as is”.

Both the National Association of Realtors and the New York State Association of Realtors strongly supported the legislation to enact this law. Under the new legislation real estate agents will be expected to educate their customers, both buyers and sellers, about the details. And while realtors may provide the disclosure form to the seller, they must instruct the seller to fill the form out on their own. The new legislation is expected to benefit real estate agents and sellers because it will prevent disputes and help decrease litigation. And buyers will benefit from more information at a critical decision making time.

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