

Home Disclosure Law Takes Effect

Mitch Maurer Jul 2, 1995

"Buyer beware" soon will be a thing of the past for most home buyers in Oklahoma.

Starting Saturday, home sellers using a real estate agent must complete a disclosure form telling buyers of any known problems with the house.

For buyers, it means they often will have more information on the condition of the home before entering into a contract to purchase the residence.

And for sellers, following the law will cut down the amount of liability they are exposed to after the sale.

"The buyer beware day and age is really gone," said Al Unser, executive vice president of the Greater Tulsa Association of Realtors. "Buyers need to know that they have a right to see a seller's disclosure statement."

Under the law, a buyer must sign the disclosure form before he can be bound by making an offer that is accepted. If the seller

accepts an offer before the buyer signs the form, the buyer must then reconfirm the offer for the property before being bound by a contract. (See related story in World of Homes.)

If a buyer is purchasing a home for sale by an owner not using a real estate agent, the buyer may make a written request for a disclosure form. Disclosure forms are available from the Oklahoma Real Estate Commission, in Oklahoma City.

Real estate agents also are required to disclose any known defects in the home that they know about and the seller did not disclose. New homes that never have been lived in are exempt from the disclosure law.

Robert Nichols, a Tulsa attorney who frequently handles real estate cases, said most states in recent years have enacted similar seller disclosure laws for residential property. He said the laws formalize the duties of a seller to tell a buyer about defects in the property and often limit the time the seller may be liable. The statute of limitations, without the law, often would not start until the date the buyer discovered a defect, which could have been

years.

"The two-year statute of limitations is a good thing for the real estate industry," Nichols said. "This law also puts attorney fees into residential real estate actions for the first time.

"I think the thought there is to deter frivolous actions, but it could be a two-edge sword because it might encourage someone with a very minor action to file a suit if they think it is a meritorious claim. In a case like that, the attorneys fees could be much more than the actual damage."

The Oklahoma law limits awards to actual damages, such as the cost to repair the defect. Punitive damages are not allowed if the seller followed the disclosure guidelines.

The law prohibits an action by a buyer against the seller for any defect in the residence that is acknowledged on the disclosure form. In addition, the Residential Property Condition Disclosure Act limits the time a buyer may file a lawsuit against the seller to two years from the time of transfer of the property.

Members of the Greater Tulsa Area Realtors Association have been

using a form similar to the disclosure form for several years. That form, however, did not give the statutory liability protection to sellers of houses.

"The Realtors in the Tulsa area have been voluntarily doing that for some time," said Unser. "But it is mandatory now."

A defect is defined in the law as any "condition, malfunction or problem that would have a materially adverse effect on the value of the property, or that would impair the health or safety of future occupants of the property."

The law covers water and sewer systems; structural systems including the roof, walls, floors and basement; plumbing, heating and air conditioning systems; termite damage; fire or tornado damage; land-use matters including easements or restrictive covenants; the existence of hazardous materials including asbestos; and "any other defects known to the seller...."

The disclosure statement form drafted by the Oklahoma Real Estate Commission has a list of 25 questions the seller is supposed to check "yes," "no," or "unk" (unknown).

The questions range from, "Has there been any occurrence of water in the heating and air conditioning ducts?" to, "Are you aware of the presense of a landfill?"

If owners check "yes" to any of the questions, they are required to explain the condition in writing.

The number of home buyers having property inspected by professionals has increased nearly 10 percent in the past few years, according to the American Society of Home Inspectors.