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PROPERTY DISCLOSURE INFORMATION

According to Commission rules, it is the duty of licensees to obtain the information necessary to make required property disclosure information available, in writing, to prospective buyers prior to or during preparation of offers. As a “living document,” the property disclosure information should be periodically reviewed and updated to reflect any changes that have occurred at the property.

In our last article, we noted that investigations of consumer complaints have found numerous instances of incomplete or inaccurate property disclosure information. Here are some examples from our investigation files:

- A buyer was provided with the written property disclosure information form that had been prepared by the listing licensee. A number of questions on the form were left unanswered, including one that asked if the property was subject to any homeowner association or restrictive covenants. The listing licensee was aware of a “Declaration of Protective Covenants, Conditions, Restrictions and Road Maintenance Agreement,” which included a list of 25 covenants and restrictions to which the property would be subject, but it was not referenced in the property disclosure information. In a consent agreement the licensee acknowledged failure to disclose required information and was fined \$2,000.
- A licensee prepared written property disclosure information and advertisements which indicated that the heating system of the property being listed for sale had been converted to utilize natural gas. After placing the home under contract and conducting property inspections, the prospective buyer discovered that information to be incorrect – the heating system still used oil for fuel and natural gas was not available in that location. At a hearing in the matter, Commission members imposed a \$2,000 fine.
- A buyer was provided with written property disclosure information that failed to disclose an easement for a neighbor’s septic system. In addition, the listing licensee left a number of questions in the form unanswered. In a consent agreement, the licensee agreed to pay a \$1,000 fine.
- After closing their purchase, buyers discovered that their property was burdened by a driveway easement serving the abutting property, that was owned by the listing licensee. After an investigation, the licensee acknowledged in a consent agreement that the driveway easement, another encroachment and wastewater disposal information had not been correctly disclosed. The licensee was fined \$5,000 and their broker license was suspended for 60 days.
- In a hearing, Commission members found that a listing licensee failed to disclose to buyers that the property listed for sale, which included an “in-law apartment” and other improvements, had been updated without building permits or approvals from the town. A \$1,000 fine was imposed.
- Approximately one year after closing, the buyer learned that a 60 foot right of way burdened the property. An investigation revealed that the written property disclosure information only mentioned “covenant, road association” and that the listing licensee had

not provided survey information that was available and which clearly depicted the ROW. In a consent agreement, the licensee agreed to pay a \$1,000 fine.

- In a consent agreement, a licensee agreed to pay a fine of \$2,000 after failing to disclose that the subdivision, in which lots were listed for sale, had been the site of a DEP involved cleanup of asbestos debris.

Bank-owned or foreclosure properties are not exempt from disclosure requirements. Licensees must make a reasonable effort to obtain the information necessary for accurate and complete property disclosure information. It is permissible to indicate “unknown” or “not applicable (N/A)” if the licensee is truly unable to obtain the information, or if the question does not pertain to the property.

Whatever form your agency has elected to use to provide property disclosure information, it must be completely and legibly filled out. There should be no blanks, or unchecked answer boxes, on the written property disclosure information that is provided to a prospective buyer. The addition of notations to clarify or explain the source of information is a good practice.

If aware of a material defect, it must be disclosed in the written property disclosure information. Although not defined in the Real Estate Brokerage Act, the term was explained in a previous core course as “a physical condition of the property that is significantly adverse.” If you are not sure if a noted condition is a material defect – consult with your designated broker!