

Disclaimers, Disclosures, and Fixer-Uppers



CLOSING THOUGHTS

By **JIM YOUNG**

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The warnings and disclaimers on the products we buy can be amusing (at least to aging English majors), especially when it seems the disclaimer was first written in another language.

I recently bought a stovetop cappuccino maker, which warns, "The use of non-original spare parts implies the annulment of our responsibility and assistance." I am also urged to turn the safety valve toward the wall to "avoid any eventual accidents." I think it would have been better if it read "inevitable," but "eventual" is pretty good.

When a person buys a home, they get certain disclaimers as well. The information provided by the seller may warn you that what you thought was a simple fixer-upper is actually a home dilapidated enough to turn it into a money pit. Remember the movie of that name starring a young Tom Hanks? Or better yet, the wonderful "Mr. Blandings Builds His Dream House" with Cary Grant and Myrna Loy?

If a buyer doesn't discover that the property is a fixer-upper until they move in, it can lead them back to his or her lawyer's office

after the closing to explore, ahem, remedies.

So what is a seller to do? This brings us to Connecticut's Home Disclosure law, Connecticut General Statute 20-327b. This law requires the seller of residential property to complete and provide an approved form to a prospective purchaser prior to the prospective purchaser executing an agreement to purchase the property (try saying that five times fast).

The law applies to the transfer of property consisting of four dwelling units or fewer made with or without the assistance of a real estate agent. If the seller fails to provide the disclosure as required, then the seller must credit the buyer with the sum of \$500 at closing.

In March, the state released a new and updated disclosure form. It is interesting to note the changes from the old form, and to think a bit on the topic of disclosure in selling real estate.

The state is compelling property owners covered by the act—there are certain exemptions—to make disclosure beyond what the common law would require, or face a penalty in the form of a \$500 credit to the buyer at the closing. This is similar to the penalty imposed on a seller who fails to provide a statement about carbon monoxide detectors.

Generally, the exemptions apply when one owner conveys to a co-owner; when one transfers to certain relatives as a gift; transfers pursuant to court orders; transfers newly constructed residential real proper-

ty covered by the statutory one year new home warranty; when an executor, trustee, conservator, or federal government or any of its agencies makes the transfer; transfers by deed in lieu of foreclosure; transfers by the state or any political subdivision; and transfers of property acquired through foreclosure or deed in lieu of foreclosure.

One might note there is no exemption for a person acting under a power of attorney. The law surrounding the duty to disclose is somewhat complex. But generally, if there is a condition that might be a material consideration to a buyer, and especially a condition that may not be found by a buyer exerting reasonable diligence in examining the property (a "latent" defect), the seller should disclose it in writing. This disclosure should be made even if the problem is not one of the 38 or so included on the disclosure form.

Failing to disclose a material defect, and especially a latent material defect, might well lead to litigation and a finding that the seller is obligated to make the buyer whole for the cost of repairing the defect and fees and costs. Under certain circumstances, this liability can also extend to the real estate agent involved.

An argument can be made that a smart seller will take this form and not only complete it to the best of their ability, but add additional information which might make their home more appealing to a buyer. For example, if the seller has made improve-

ments to the home, perhaps those improvements should be listed on the form or otherwise disclosed. A buyer who gets a disclosure form with many of the "unknown" boxes checked might wonder if the seller is being candid in his or her responses, and such a form might discourage otherwise interested buyers.

So if you as a seller are going to give the disclosure instead of \$500, please complete it thoughtfully. Know that it is going to be relied upon, and may come back to haunt you. If there is a defect you forget to disclose, and it is material, you may well find yourself on the receiving end of a letter from the buyer's attorney post-closing.

On the other hand, not giving the disclosure at all might make a real estate agent uncomfortable, or make a buyer decide they would prefer to move on to another property. If you are wondering about whether to disclose something or not, put yourself in the buyer's shoes and think about whether you would want to be informed on the matter. Err on the side of over-disclosing.

Jim Young is a partner in Andrews & Young P.C., which has offices in Waterford and Groton, and has been serving the southeastern Connecticut area since 1987. The statements made in this particular column are not intended to be taken as legal advice for any particular fact situation. Consult with an attorney.

PROPERTY TRANSACTIONS

BOZRAH

7 Roy Rd: GC Holdings LLC to StJohn, Zachary W & StJohn, Marissa B, \$222,000.

193 Bozrah St: Semmelrock Rose M Est & Capalors, Catherine A to Miller, Jonathan, \$118,000.

95 Caroline Rd: Baker, Randall H & Baker, Christine M to Iacoi, Louis J & Sunderland, Hannah, \$268,000.

COLCHESTER

984 Middletown Rd: Cretella, Thomas J & Cretella, Janessa L to Liappes, Gena, \$240,000.

419 Linwood Cemetery Rd #419: Cooper, Pamela E to King, Joshua, \$107,500.

251 Carli Blvd: Taylor, Debra A to Pepin, Mark & Pepin, Michele, \$305,000.

347 West Rd: Olshan, Justin & Gdula, Jami L to Kaur, Joshua J & Kaur, Courtney T, \$374,000.

363 Chestnut Hill Rd: Magalhaes, Lurdes to Cromwell, Albert & Letterman, Diane, \$189,700.

GRISWOLD

10 Cathcart Dr #1: Gileau, Gary to Krukoff, Annmarie, \$99,900.

207 Sheldon Rd: Corey, Gerard J to Rounbehler, Arthur J & Rounbehler, Kelly K, \$247,000.

1161 Voluntown Rd: Capital Dev Partners LLC to SNS Investments LLC, \$1,670,000.

1151 Voluntown Rd: Capital Dev Partners LLC to SNS Investments LLC, \$1,670,000.

GROTON

2590 Gold Star Hwy #215: Day, Carol L to Sasko, Robert & Sasko, Lorraine, \$150,000.

920 Pleasant Valley Rd N: Harris, Tokiko to Seufferling, Jennifer L, \$145,000.

297 Lestertown Rd: FNMA to Navarro, Dominique T & Navarro, Carlos A, \$155,000.

73 Elderkin Ave: USA VA to Casagrande, Katie E, \$120,000.

119 Warner St: Toth, Pamela A to Lucero, William & Lucero, Joy, \$125,000.

118 Oslo St: Bourgeois, Jeffrey to Kennick,

Sean, \$348,000.

171 Capstan Ave: Deutsche Bk Natl T Co Tr to Cooper, Scott & Cooper, Susan L, \$176,100.

41 Topsail Ln: Dierking, Luke N to Nicholls, Gary L, \$286,000.

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