

Investigate Before You Buy – Residential Liability

Most people readily admit that purchasing a home is their biggest investment. Yet, many also do not take the time or go to the expense of properly investigating the home before closing. If a purchaser fails to investigate and relies on the information provided with the marketing materials, or the Sales Disclosure Form, that purchaser will likely be left without recourse against the seller.

Indiana law requires a seller to deliver to a buyer a Residential Sales Disclosure Form – identifying many components of a home and designed to inform the purchaser if such components are in working order (structural, roofing material, electrical, heating and air, etc.). If this form identifies negative information, a purchaser has the right to terminate the purchase agreement. However, the form is specifically **not** to be relied upon as a warranty.

Sellers are not specifically required to warn a buyer of all problems with a particular property. If asked, they have the duty to provide true and accurate information. However, most purchasers do not sit down with a seller at any point during the purchase transaction to discuss the property. In addition, many purchasers skip the simple step of hiring a home inspection company to investigate the property. Home inspectors have building expertise and specifically check the property to ensure code compliance and identify other potential problems. Both of these practices could save a buyer much heartache and expense.

Purchasers of new construction are afforded some additional protection under the law. A builder has to meet an implied warranty of habitability or provide certain affirmative warranties and insurance to protect a purchaser from poor construction practices. This warranty may be passed along to a subsequent purchaser – but also may be costly to enforce. Any enforcement will require hiring an attorney and incurring legal expenses, which may not be recoverable.

Clearly, the most prudent purchasers complete thorough due diligence before closing on a home. Hiring an inspector, talking to the seller, and investigating the home personally are all necessary steps to take to lessen the likelihood of having to fix problems in the future and at the purchaser's expense. Consulting an attorney as to the legal effect of the purchase agreement is also prudent. Finally, home warranties are available on the market and a purchaser should insist that the seller can provide such a policy.

The best practice is to be cautious. Buying a home is exciting, but purchasers must temper the excitement with prudence. A flooding basement one month after closing can ruin the excitement forever.

This article was written by Krista B. Lockyear, an attorney with Rudolph, Fine, Porter & Johnson, LLP in Evansville, Indiana. For additional information, you may

contact Krista at (812) 422-9444 (e-mail: kbl@rfpj.com). Her practice areas include: real estate, zoning and land use, title insurance and probate administration.

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