



## **IMPORTANT INFORMATION CONCERNING YOUR DISCLOSURE RIGHTS AND OBLIGATIONS**

Seller disclosure is one of the most important parts of a real estate transaction. Sellers need to know what information they are obligated to disclose, and Buyers need to understand their own duty of diligence and investigation. This Memo is provided by Windermere's attorneys as general legal information and not advice. Real estate brokers are not attorneys, and you should consult an attorney if you have any specific disclosure questions.

### **Information for Buyers**

Most buyers expect far more disclosure from the seller than the law requires. Sellers have no duty to inspect their property or look for defects and may not even consider a condition a defect after living with it for years. Instead, Sellers have a limited duty to disclose material defects that substantially affect the physical condition of or title to the property and information that substantially adversely affects the value of the property.

Sellers typically have no duty to disclose neighborhood conditions or past events at the property. For instance, sellers usually have no legal duty to disclose the following conditions either at the property or in the neighborhood:

- Murders, suicides, rapes or other crimes;
- Ongoing criminal or gang activity in the neighborhood;
- Registered sex offenders in the neighborhood;
- Future development in the area; or
- Political or religious activities in the area.

If these or similar matters are of concern to a buyer, then the buyer should include an inspection and "Neighborhood Review" contingency in any agreement and follow through with the inspection.

Washington law imposes a duty of diligence on the buyer to fully investigate the property and any information provided by the seller. A buyer is charged with the knowledge that the buyer would have obtained with a diligent investigation. For example, a buyer who receives an inspection report identifying a possible defect has a duty to investigate further and may be barred from seeking compensation from the seller if the defect could have been discovered through further inspection. A diligent investigation is the best way for buyers to avoid problems after closing and for sellers to reduce their risk of claims. A diligent investigation often involves more than a standard home inspection.

### **Information for Sellers**

Although the law provides sellers with many protections, it does not prevent unhappy buyers from starting a lawsuit, and most buyer lawsuits are not covered by insurance. Sellers should consider disclosure to be a form of insurance. By disclosing a condition, the seller shifts the burden of investigation to the buyer. By remaining silent, a seller risks the appearance of concealment and a lawsuit.

To prove fraudulent concealment, a buyer only has to prove that the seller had actual knowledge of a hidden defect and failed to disclose it. The buyer does not have to prove a seller's intent to deceive or hide the defect. At the same time, once the seller does disclose an actual or possible defect, the duty shifts to the buyer to exercise diligence and investigate.

Instead of minimizing disclosures, a prudent seller will try to consider the property from the perspective of a buyer and then disclose what a buyer would want to know. Many of the conditions that lead to lawsuits would have been acceptable to the buyer if they had been disclosed in advance. Other conditions simply are not important enough to the buyer to fully investigate before purchasing a property. To maximize the benefit of disclosure law, sellers may want to make full disclosure of the property and neighborhood even if they have no legal duty to do so. It is usually better to be over-insured than not insured at all.