

Best of the Hotline: Inspections and estimates of repair

FACTS

Before listing their home for sale, the sellers were advised by their sales agent to obtain an inspection of that portion of the property's exterior that is stucco. The agent felt that it would be better to have a highly competent stucco expert perform the inspection before the property went on the market. Sellers would then have the opportunity to address any conditions through repairs or adjustment of the sale price.

The inspection revealed problems and an estimate was provided by the stucco inspector. While the report suggested that the problems were minor and few, the estimate of repair was high.

Q. I think all will agree that the sellers must reveal the material defects discovered by the stucco inspection. Better yet, these sellers have agreed to provide the report (no one can question the veracity of the seller if the full report is furnished). Do the sellers also have to provide a copy of the estimate of repair to the buyer?

A. The Real Estate Seller Disclosure Law requires "any seller who intends to transfer any interest in real property [to] disclose to the buyer any material defects of the property known to the seller by completing all applicable items in a property disclosure statement." The mandatory disclosure statement does ask about deterioration and other problems with walls and PAR's seller disclosure statement asks questions about the condition of stucco and exterior, synthetic finishing systems. The questions do not, however, ask if any estimates were prepared and therefore it would seem that no estimates have to be provided under the Law.

It is illegal in Pennsylvania, under our common law, to engage in a material misrepresentation for the purpose of deceiving. To give one a stucco inspection report that might be hard to interpret, then to add the label that the problems are "benign" or that it reveals only "minor problems" would be disingenuous in light of a very heavy repair bill. Under those circumstances, a seller might be gambling by not revealing the extent of the inspector's estimate of repair. On the other hand, if the sellers provide the report without characterization and without the separately stated estimate of repairs, they would be in compliance with the requirements of the law. If asked if they had received an estimate of repair, the sellers would have to answer truthfully, regardless of whether they provided that estimate.

The good news is that you, as a listing agent, have a say in what the seller reports. If you and the seller cannot come to an agreement on whether an estimate of repair is to be divulged, consider terminating your listing agreement and giving the seller a chance to work with someone more inclined to adopt his method.

This should serve as a caution to buyer agents. When you receive an inspection report prepared for someone other than your buyer client, you should not rely on that report because your buyers did not contract with the inspector and they likely have no recourse if the report is flawed and erroneous. Further, while a report may seem relatively benign (few and seemingly superficial defects), the cost of repairs can be great. Buyers should hire their own inspectors and get as much detail as is possible, including details about repairs.

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