

WHAT ARE THE DISCLOSURE DUTIES OF A REALTOR IN THE SALE OF REAL PROPERTY?

Lawrence J. Dreyfuss
The Dreyfuss Firm, plc
7700 Irvine Center Drive, Suite 710
Irvine, California 92618
(949)727-0977
larrydreyfuss@dreyfusslaw.com

It is relatively common in real estate sales transactions for buyers to discover undisclosed property defects after escrow closes. Fingers are then pointed and lawsuits sometimes filed. Usually everyone involved in the sale gets named as a defendant, including the realtors. But what really is the disclosure duty of a real estate professional in a residential sales transaction?

A realtor is obligated to conduct a reasonably competent and diligent visual inspection of the property and to disclose any readily apparent defects discovered in that inspection. Such discoveries are often referred to as “red flags” warning that defects may exist. The realtor is not held to the standard of an “expert,” and is merely obligated to disclose the potential defect, not to interpret or explain its cause. For example, the realtor should disclose the existence of driveway cracks or water stains, but need not explain that these cracks were caused by tree roots or soil movement or that those stains were caused by plumbing cracks or roof leaks, unless the realtor has actual knowledge of that causation.

The realtor is not obligated to inspect areas that are inaccessible or offsite. He or she owes no duty to investigate permits or zoning records. But if the diligent visual search should have disclosed an obvious unpermitted modification or a use that is obviously a zoning violation, disclosure is required. And if an advertisement or MLS listing represents that a particular use is available or suggested, the realtor may be liable if that use was not permitted or violates zoning rules. For example, a realtor was found liable for suggesting that a vacant lot was perfect for construction of the buyer’s “dream house” when it ultimately turned out to be zoned solely commercial. Another was held liable for advertising that the property was 3,500 square feet when only 2,000 was actually permitted and therefore legally useable. A realtor cannot merely rely upon the

word of the owners in advertising a use or condition that proves to be contrary to zoning or other law.

In addition to information obtained through the diligent visual inspection, a realtor is obligated to disclose defects or other material conditions that are actually known to him or her. Realtors who live in or are from particular neighborhoods may know of special conditions or issues and therefore have greater disclosure duties. So if a power plant, airport or freeway is coming in across the street, the realtor who knows of these plans is obligated to disclose them even though no diligent inspection of the property alone would have revealed them.

The realtor owes fiduciary duties to place the interest of the party the realtor represents at least as highly as his or her own. The disclosure duties to the parties on the other side of the transaction do not rise to the level of fiduciary duties, but they still include the other obligations discussed above.

Liability in these cases tends to be very fact sensitive. If you are the victim of nondisclosure of material facts, I suggest you call for an appointment so that your particular situation can be analyzed and evaluated fully, and a determination may be made as to whether a claim should be asserted on your behalf.

Lawrence Dreyfuss is president of The Dreyfuss Firm, a professional law corporation located in Irvine, California. He is a 1974 graduate of UCLA and a 1977 graduate of The UCLA School of Law, and has more than 32 years civil litigation experience. He handles cases throughout California in state and federal trial and appeals courts concerning real property transactions and non-disclosures, secured lending and foreclosures, title problems, partition of jointly owned property, broker liability, contract disputes, and numerous other business and real estate issues. Mr. Dreyfuss has received the highest possible ratings (AV) for legal expertise and ethics from Martindale Hubbell, the preeminent national resource for attorney evaluations.

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