

Episode 2. Seller Disclosure From An Investor's Point of View

In today's installment of Letter of the Law, we will be looking at the Seller Disclosure Act from the point of view of a house flipper. It has become very common for these types of sellers to claim to be exempt from the seller's disclosure requirements because they have never lived in the home. This is legally incorrect. The information that must be disclosed in a seller's disclosure statement is not limited to information learned while living in a home. Unless a specific statutory exemption applies, a seller who has never lived in the home is still required to answer the questions in the seller's disclosure statement.

There is an exemption under the seller disclosure act for builders, but it only applies to newly built homes that have never been occupied by anyone. There is no exemption for contractors who purchase an existing home, remodel it, and then resell it.

Even if an investor-seller has never lived in the home, it is likely that they know something about the condition of the home. In fact, an investor who remodels a home in anticipation of resale is likely to know quite a bit about the condition of the home. Even if the investor-seller does not do any work on the home before listing it for resale, they are likely to have gained some knowledge about the condition of the home before purchasing it. The prior seller may have disclosed information about the condition of the home. In addition, the investor-seller is likely to have conducted their own inspection before purchasing the home.

So, while it is theoretically possible that an investor-seller who has never lived in a home knows nothing about the condition of that home, it is unlikely. Remember that it is fraudulent to assert that you have no knowledge as to the condition of the home, if, in fact, that is not true. If, for example, a seller knows that the roof leaks, it is, of course, fraudulent to say that it does not leak. It is no less fraudulent for this seller to say that they do not know if the roof leaks. Both statements are false. Sellers cannot avoid responsibility under the law by simply answering "unknown" to all of the questions in the form.

When an investor-seller fills out a seller's disclosure statement, there is nothing wrong with letting the buyer know that they have owned the home for a brief time and have never lived in it. An investor-seller may wish to do this to explain that their knowledge of the condition of the home is therefore limited. But the investor-seller must also answer the questions in the disclosure statement to the best of their ability.

In short, investor-sellers must complete a seller's disclosure statement by disclosing whatever they may know about the home regardless of whether they have ever actually lived there. A seller-investor who falsely claims not to know something about the condition of the home they are selling may be sued for fraud. Moreover, if an investor-seller does not provide a seller's disclosure statement because of a mistaken belief that they are exempt, the buyer may terminate their purchase agreement at any time up until closing.

Hopefully you've found these two dedicated installments on Seller Disclosure to be helpful. We continue to receive questions on disclosure requirements and want to ensure that your State Association provides you with thoughtful resources to help you out in the field. Thank you and we'll see you next time!