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Home sellers beware: Undisclosed info comes back to bite

But owners should use caution on how they disclose

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You're getting ready to sell your home. The market is a bit softer than it was a year ago. There's more competition from other sellers.

So, you plan to tidy the place up and you're thinking of down playing the defects. After all, who would buy your place if you revealed the trouble you had with the roof or the fact that your neighbor's son practices on his drums past most people's bedtimes?

Sellers beware! What you don't disclose to the buyer could come back to bite you.

Disclosure laws vary from state to state. Check with your real estate agent or attorney if you have any questions about your disclosure obligations. The trend nationally is toward requiring sellers to disclose more about defects that they're aware of, not less.

For the past few years, buyers have paid record high prices for homes. In some cases, they waived their rights to inspect the property. As the market softens, buyers are less likely to be forgiving of defects they discover after closing, especially if they're sure the seller concealed them.

Your aim is to sell for a nice price and bank the profit. Misleading the buyer about the condition of your property can have serious consequences. Don't risk diminishing your sale proceeds in a legal action. Thorough and careful disclosures not only protect the buyer, they also protect you.

Most home buyers appreciate knowing as much as possible about a property before they buy it. They can usually live with the fact that the place isn't perfect as long as they have a chance to investigate and digest this information upfront. Law suits can develop when material information is withheld, or when buyers are intentionally deceived.

It's a good idea to disclose what's wrong with your property, as well as past problems that you've repaired and areas that require routine maintenance to keep problems from occurring.

For example, you may have skylights that need caulking periodically to keep them from leaking. You could receive a call from an outraged buyer after the first rain if you failed to disclose this critical piece of information. On the other hand, if you disclosed this to the buyer, preferably in writing, the buyer was forewarned.

Sellers who are convinced that disclosure is a good thing can still find themselves in hot water if they aren't careful about how they make their disclosures. Telling a buyer that a problem is fixed is asking for trouble. When you tell a buyer that a defect is fixed, this infers that the problem won't recur. Do you want to be on the hook if the "fix" turns out to be only a Band-Aid?

HOME SELLER TIP: Rather than affirm that a problem is fixed, be specific about what was done to deal with the situation. For example, let's say that your roof leaked last year. You called a roofer who made a repair.

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Rather than tell the buyer that the roof is fixed, you might simply make a factual statement. This would indicate why you called a roofer, who you called, what the roofer did and when. In other words, you are not offering a warranty as to the condition of the roof.

It's also wise to resist the temptation to oversell the condition of your property. Pride of ownership is a common condition. But, don't let your emotional attachment to your home get in the way of making accurate disclosures. Sellers love to tell buyers about how perfectly the furnace works or that the neighborhood is perfectly safe.

THE CLOSING: No one's house is perfect, so don't go on record insisting that yours is.

Dian Hymer is author of "House Hunting, The Take-Along Workbook for Home Buyers" and "Starting Out, The Complete Home Buyer's Guide," Chronicle Books.

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