

Real Estate Matters - Ask the Real Estate Lawyers

by Ilyce_Glink & Samuel J. Tamkim

Q: If you believe the seller lied on the home sale disclosure form, how long after you buy a house do you have to pursue legal options? And, if I turned around now and sold the home -- but disclosed the problem -- could I still go after the original seller?A: Most states have disclosure laws requiring a seller to disclose to buyers any known material defects in a home. The language might vary from state to state and the forms may vary, but the intent is roughly the same: to give a buyer a fair chance at knowing what the seller knows about defects in a home. The key issue is to pinpoint the material defect. For example, if the seller knows the foundation is crumbling and the house is ready to cave in, that certainly must be disclosed. However, if the home has a leaky faucet in the kitchen, that probably does not need to be disclosed. Assuming that your question relates to a material defect you discovered after closing on your house, you would then look to state laws regarding disclosure. Some states require a buyer to sue the seller for failure to disclose within one year of closing on the home. If you're willing to do some legwork and have access to the Internet, you should be able to look up the statute regarding seller disclosure requirements. That law should also state the time period a buyer has to bring suit against a seller. Obviously, you can hire an attorney and walk through the issues, and he or she can tell you the time limit you have to bring suit. An attorney could also advise you on whether it's worthwhile to sue. In some states, seller disclosure laws allow a buyer to recover attorneys' fees when pursuing a seller for a faulty disclosure. If you find you have the right to sue the seller, you may be able to sue in small claims court, but you won't be able to recover attorneys' fees for your own time. You generally can only get those fees reimbursed when you actually hire an attorney who actively participates in the case. If you have resold the home and took a loss because of the disclosure issue, you might still be entitled to compensation from the original seller. Seller disclosure laws were not drafted to force a buyer to have to choose between suing the seller and holding onto the home or selling. Such laws are designed to give buyers an opportunity to learn about defects in a home before buying. Furthermore, if the seller failed to disclose something and the buyer found out about the failure before closing, the buyer could walk away from the deal. Once the deal has closed, the laws give a buyer the right to sue the seller and recover the cost of fixing the problem.

Q: Four years ago, our neighbor placed a fence on my land. We want to take it down, but every time we've tried this before, he's come out and yelled at us, saying the fence is on his land. We can prove that the property is ours. This guy has also tried to take over another neighbor's land. The reason he put up the fence and is trying to take our 9,000 square feet is so he can keep one more horse. A: If you want to know the official boundary between your property and your neighbor's, you could hire a surveyor to survey the land, stake the corners of your property and mark the edge of the land at issue. You could also go to the tax assessor's office and compare the map of your property with the survey you paid for. If this neighbor has encroached on your land, you may have to sue him to remove the fence, or you may be able to remove it yourself. If he wants additional land for his horse, he can always rent or buy it from you. For more information on your legal options, consult a real estate attorney. © 2006 Tribune Media Services