**KNOW YOUR LEGAL RIGHTS**

**Selling or buying a home? Be sure your legal bases are covered**

Know Your Legal Rights is a bi-monthly column distributed by the State Bar of Wisconsin. It is written by members of the State Bar of Wisconsin’s Lawyer Referral and Information Service (LRIS), which connects Wisconsin residents with lawyers throughout the state. Learn more at [*wislaw.org*](http://www.wislaw.org/).

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By Attorney Kevin Trost, Trost LLC, Madison

Perhaps it was an accidental mistake, or perhaps it was an intentional deception. Either way, undisclosed defects are discovered in residential real estate sales more often than you would expect.

Undisclosed defects could be something as mundane as a non-latching window or something as serious as a foundation problem that threatens the stability of a house.

One of the most frequently encountered defects is a leaky basement due to foundation problems or improper grading in the yard. Another frequently encountered defect is home or basement renovation work that was performed without permits and thus had no code inspection by the local municipality.

Under Wisconsin law, sellers of single family houses have a legal obligation to disclose defects known to them.

Sellers are legally required to complete a real estate condition report. This is a standard form that lists defects or problems with a house. Sellers must acknowledge their awareness of any defects and include additional details. Once a seller accepts an offer, they have 10 days to provide the buyer with a copy of the report.

**What if the sellers fail to disclose a defect?**

When sellers fail to disclose known property defects, the buyers can pursue claims against the sellers for false advertising, misrepresentation, or breach of contract to pay for the cost of repairing the problems.

Before sellers start losing sleep about completing the required disclosures, they should remember that potential legal liability arises when they do not disclose defects of which they are aware. However, sellers are not a source of money for the buyers to repair unknown problems.

**What happens when undisclosed defects are discovered?**

Claims brought by buyers focus on proving that the sellers knew about a problem with the house and failed to disclose it during the real estate sale. There may not be direct evidence of the sellers’ knowledge unless the buyers find that the sellers had received repair recommendations from a professional contractor and chose to ignore them.

In most cases, buyers’ claims rely on circumstantial evidence that the sellers knew about a defect with the house. For example, buyers can point to water entering the basement with every rain as evidence that the sellers knew about a problem and failed to disclose it. While some disputes over undisclosed defects will inevitably result in a lawsuit in court, many can be resolved informally without a court filing.

**How do you protect yourself during a real estate sale?**

Savvy sellers and buyers should take steps prior to the completion of a sale to avoid future legal entanglements over undisclosed defects.

Sellers should thoughtfully and carefully complete the real estate condition report and not treat the form’s questions as a task that can be completed in ten minutes. Sellers should remember that they are best off oversharing when disclosing their home’s problems.

Buyers should inspect houses with a critical eye. Think ahead: when you decide to start looking for your new home, talk to several licensed home inspectors and hire the one you believe is knowledgeable, detailed, and trustworthy in their work. Check references. This way, you are not scrambling at the last minute to find a qualified expert and are more likely to receive discerning feedback.

If both the buyer and the seller take these actions, the need for litigation will be less likely.

*Kevin Trost is the founding attorney of Trost, LLC, and his legal practice includes resolving real estate disputes throughout Wisconsin. His interest in addressing undisclosed defects in real estate sales is the result of personal experience. He is a member of the State Bar of Wisconsin’s Lawyer Referral and Information Service, which connects Wisconsin residents with lawyers throughout the state. Learn more at*[*wislaw.org*](http://wislaw.org/)*.*