Understanding South Carolina Residential Real Estate Closing Disclosures

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To sell a piece of residential real estate in South Carolina, such as a house, the seller is required by law to disclose certain information. The purpose of these disclosures is to ensure that the buyer is aware of known defects and problems with the property. There are numerous types of defects, all of which can potentially decrease the value of the home. Ensuring that the law is followed helps protect people from spending a great deal of money to buy someone else's problems.

If you have questions about what is required of you as a seller, or you believe the person who sold you your property failed to disclose a defect, talk to the real estate litigation attorneys of Rosen Hagood.

What Defects Must be Disclosed According to South Carolina Real Estate Law?

South Carolina Code Section 27-50-40 contains the list of disclosures required by law. It's worth noting that not all residential real estate transactions fall under the scope of this statute. For example, a husband who transfers a house to his wife as part of a divorce is not subject to these requirements. But they do apply to certain transfers other than direct sales, such as property leases with an option to purchase. If you want to know whether your purchase (if you're the buyer) or sale (if you're the seller) requires disclosure for certain residential real estate, ask a knowledgeable attorney.

As to the disclosures themselves, the seller must deliver them to the buyer in writing. There is certain language that has to be included in the disclosure, but it must at least contain information concerning the following characteristics and conditions of the residential property:

- Water supply and sanitary sewage disposal system
- Roof, chimneys, floors, foundation, basement, and other structural components, along with modifications of these structural components
- Plumbing, electrical, heating, cooling, and other mechanical systems
- Current infestation of wood-destroying insects or organisms, or pest infestation damage that has not been repaired
- Zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the property, encroachments from or to adjacent property, and notices from any governmental agency

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affecting the property

- Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, whether buried or covered and any other environmental contamination
- Existence of a rental, rental management, vacation rental, or other lease contracts in place on the property at the time of closing, and any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services that were provided to the property leased by the tenant
- Existence of a meter conservation charge that applies to electricity or natural gas service to the property
- Whether the property is governed by a homeowners association

These disclosures are typically made via a form approved by the South Carolina Real Estate Commission. There are three possible answers to the above conditions and characteristics as listed in the form: Yes, No, and No Representation. “Yes” and “No” are self-explanatory, although a “Yes” answer may include further explanation so the buyer understands the condition. A “No Representation” answer could – and probably should – invite further scrutiny from the buyer, including in the form of a private inspection.

When Must Residential Real Estate Disclosures Be Given?

The disclosure must be given to the buyer prior to signing a real estate contract. The seller’s obligation to provide accurate disclosures, however, does not end there. If the seller later remembers a defect or later discovers something that reasonably indicates the original disclosure was inaccurate, the seller of the residential property must promptly deliver a corrected disclosure or repair the defect that was not previously disclosed.

Knowingly furnishing false, misleading, or incomplete information in the disclosure will subject the seller to legal action. That action could result in the seller having to pay the buyer’s actual damages, court costs, and attorney’s fees.

South Carolina’s residential real estate closing disclosures are intended to ensure that sellers are protected and buyers are treated fairly. Give us a call at Rosen Hagood today to learn more.

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