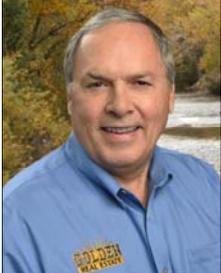


# What Recourse Does a Buyer Have When Seller Fails to Disclose Serious Defects?

That was a question asked last week by a reader who believed the seller had intentionally failed to disclose a hidden defect in a home she had bought.

## REAL ESTATE TODAY



By **JIM SMITH, Realtor®**

My experience has been that most sellers are completely forthcoming in disclosing known defects, both past and present, in their homes, and that post-closing discovery of undisclosed defects is almost unheard of. Compare this to when you purchase a used car. Even when you buy the car from a dealer offering a used car warranty, it is truly "buyer beware."

Sellers and their agents are required by law to disclose all known material defects in a home they are selling.

The listing agent is particularly at risk for failing to disclose any defects known by him or her, but it is possible that a seller may fail to reveal known defects to his or her listing agent.

While disclosure is required, the completion of the state-approved Sellers Property Disclosure is not required. The only time you're likely to see that document not completed by the seller is when the seller is an investor or inheritor of the property and frankly is not familiar with the property. The same is true of lenders who acquire the property through foreclosure.

The Sellers Property Disclosure is a complicated 6-page document that should be completed by the seller to his or her "current actual knowledge." It asks about every aspect of the property — structural, HVAC, appliances, environmental issues, electrical & plumbing systems, water & sewer, roof, and much more. Although a seller can check "do not know" for each item, I encourage my sellers to answer "yes" or "no" according to their current actual knowledge, so it doesn't raise questions in the mind of a buyer.

After a seller completes this form to the best of their ability, I always check it before they sign because there are many questions that the average seller doesn't understand. For example, does the house have a lift station for sewage? Is it subject to an augmentation plan? Does it have polybutylene or galvanized pipe or aluminum wiring? Does it have a backflow prevention device and does that device work?

Also, there are sections of this form which ask whether an appliance is in working condition, and many sellers check "no" when they should check "not applicable." These are some of the reasons why I like to check my sellers' data entry before they sign.

Although the listing agent should not complete the disclosure, I recommend that the listing agent function as the seller's scribe. By that, I mean that he or she pulls up the form on their computer and asks each question, explaining where necessary and filling in the answers which the seller provides. It speeds up the process and makes the document as accurate as possible.

As the listing agent, I rarely need to impress upon my sellers the importance of being completely honest, and

only once in 14 years has a buyer of one of my listings made a claim after closing that certain known defects had not been disclosed. In that case lawyers were retained by both parties (and by me as the agent), but the case was not pursued by the buyer because (1) the buyer had chosen not to hire his own inspector and (2) there was no way to prove that the hidden defects were known to the seller (or to me as agent).

Let's say, however, that a seller has failed to disclose to his agent and to the buyer a known defect, which is then discovered by the buyer. What is the buyer's recourse?

First of all, the contract to buy the property states that both parties must go through mediation before suing, although case law suggests that this provision does not apply after closing. (Courts typically will require it, however, when a lawsuit is filed.) The cost of mediation is a few hundred dollars paid in advance by each party. The mediator will attempt to have the parties compromise

rather than hold out for legal action, which either party can do.

As long as the real estate professional was unaware of a hidden defect, his mandatory errors & omissions insurance will cover him for the claim and provide his legal defense.

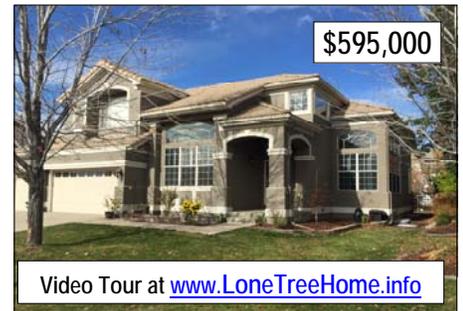
Inspectors should have their own errors & omissions coverage. Hire an inspector with that coverage so you will have recourse if the defect was something he or she should have reasonably been expected to uncover.

Although licensed real estate professionals have limited legal authority for reviewing state-approved real estate contracts, it is appropriate on occasion for buyers and sellers to consult with a real estate attorney. Our attorney is Hap Burnham, who reviewed this article prior to publication. He welcomes calls from readers about specific legal issues regarding this or any topic. His phone number is 303-278-2200. His email address is [HBurnham@mba1973.hbs.edu](mailto:HBurnham@mba1973.hbs.edu).

## Price Reduced on Two Listings from Golden Real Estate

### 2-Story Home with Main-Floor Master Suite in the Fairways

This magnificent home at 8715 Tall Grass Place is in the Fairways subdivision of Lone Tree, near Lincoln Avenue and Yosemite Street. That puts it less than a mile from the Sky Ridge Medical Center and the light rail station at Lincoln Avenue, and just over a mile from the Park Meadows Mall. Although close to both I-25 and C-470, the home is in a super quiet cul-de-sac with many features that will appeal to today's high-end buyers. It has a 3-car garage, a fenced yard (plus a separate sunning patio with privacy fence), a main-floor master suite, two upstairs bedrooms and loft, plus a finished basement with a family room, additional bedroom and lots of storage space. Take a narrated video tour at the website, then come to our open house Saturday, 1-4 pm.



Video Tour at [www.LoneTreeHome.info](http://www.LoneTreeHome.info)

### North Table Mountain Village Home Listed by Kristi Brunel



This 2,393-square-foot home at 6109 El Diente Circle in North Table Mountain Village has 4 bedrooms and 3 baths. It sits on a large corner lot with easy access to multiple trails. Now reduced, this one-owner home has been meticulously cared for. Featuring a bedroom and a full bath on the main level, a three car garage, an open floor plan for entertaining and an unfinished basement, you can put the finishing touches on this home to make it your own. To schedule a private showing, please call Kristi Brunel at 303 525-2520. Take a narrated video tour at [www.NorthTableMountainVillage.info](http://www.NorthTableMountainVillage.info).



All Agents Are Certified EcoBrokers®

**Jim Smith**

Broker/Owner

**Golden Real Estate, Inc.**

DIRECT: 303-525-1851

EMAIL: [Jim@GoldenRealEstate.com](mailto:Jim@GoldenRealEstate.com)

17695 South Golden Road, Golden 80401

WEBSITE: [www.GoldenRealEstate.com](http://www.GoldenRealEstate.com)



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