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Ready to buy a new home but need to sell your current home first?

Understanding (1) the Residential Seller's Property Disclosure and (2) Contracts that are contingent on sale of prior home

By David M. Brown

Residential Seller's Property Disclosure Statement (SPDS)

So you're looking to purchase a new home but first must sell your current one. What do you have to tell the potential buyer about it? Our source is Michelle Lind, CEO of Arizona REALTORS®.

What is the seller required to disclose about his/her property?

Lind: Arizona law requires the seller to disclose material facts about the property even if the seller is not asked by the buyer or real estate agent.

What's the purpose of the SPDS?

Lind: Developed by Arizona REALTORS, the SPDS is a seven-page document

that requests information from the seller in regard to property and ownership, building and safety information, utilities, environmental information, and other conditions and factors. Each seller is asked to complete a SPDS which documents full knowledge about all conditions of the house. Sellers are not required by law to fill out this form.

Often, sellers who have owned their homes for an extended amount of time forget information such as when they fixed a roof leak or had termite treatment. For example: A seller is not sure if a roof leak from 10 years ago is important as the seller has not had any issues since that time. The SPDS provides the means for

the seller to disclose that information and further advise the buyer that it has not been an issue. This information allows a buyer to perform further inspections if it is material to the buyer. Nonetheless, the information has been disclosed so that if a buyer later tries to claim they did not have knowledge about a prior roof leak, the seller can prove he/she provided the information.

What must be revealed about the building and grounds?

Lind: The Arizona judiciary has required disclosure of all known facts materially affecting the value of the property that are not readily observable and are not known to the buyer.

What if a crime has been committed at the home for sale?

Lind: Statutorily, sellers are not obligated to disclose that the property is or has been a site of a natural death, suicide, homicide or any other crime classified as a felony, owned or occupied by a person exposed

to HIV or diagnosed as having AIDS or any other disease not known to be transmitted through common occupancy of real estate, or located in the vicinity of a sex offender. The law does not protect a seller who makes an intentional misrepresentation.

Buying a new home with a contract that is contingent on the sale of your prior home

Most homeowners don't want to — or cannot afford to — carry two mortgages, meaning that closing on a new home is contingent on selling their current home. If you are able to choose a contingency contract, how does it work? Our sources are Melissa Donahue, senior mortgage consultant for the Scottsdale office of OnQ Financial, and Lori Doerfler, 2018 president of Arizona REALTORS®, and a REALTOR in Lake Havasu City.

What is a contingency contract?

Doerfler: A contingency is a clause in a contract that requires the completion of a certain act before the buyer is obligated to perform his/her contractual obligations. The most common contingencies are financing, property condition and condition of title. In addition, a buyer can condition a new-home purchase on closing the sale of the departure property.

How do most builders feel about 'contingent on sale of prior home' contracts?

Donahue: I have found that they will consider them case-by-case. A builder looks at several factors: Is the departure residence listed for sale? Do the new-home buyers have an accepted purchase contract for that home? Is the home located in an area where homes are selling quickly? In a hot market, homes are likely to sell quickly if they are at the right price-point and so the risk on a contingent offer is less. The builder has more confidence that the buyer will be able to sell his/her current home. However, they want to be certain that the buyer is ready to close on the new home when it is complete.