



California Real Estate Inspection Association (CREIA) Press / Media Information

Latest Press Release: CREIA Offers Disclosure Tips for REALTORS®

Courtesy of the California Real Estate Inspection Association (CREIA)

May 2005 (Palm Springs, Calif) – “There was time, not long ago, when the simple rule of property sales was caveat emptor — “let the buyer beware.” Since the 1984 Eston decision, that rule has changed to caveat vendor — “let the seller beware.” Nowadays the trend in California is to “let the broker beware.”

California Civil Code 2079 states, “It is the duty of a real estate broker or salesperson...to conduct a reasonably competent and diligent visual inspection of the property for sale and to disclose to the prospective purchaser all facts materially affecting the value or desirability of the property that an investigation would reveal....” Typical of many laws, this wording is vague and ambiguous, allowing a broad interpretation. To help REALTORS® with their disclosure obligations, the following tips are suggested.

Do Not Analyze or Draw Conclusions. Agents should disclose visible conditions, but avoid determining how they were created or the effects they may have. For example, cracks in a concrete driveway may be from settlement, earthquakes, tree roots, or a variety of other things. It is not the agent’s responsibility to determine why they are there but to simply note the visible (e.g., “cracks at driveway”). Avoid terms such as “cosmetic,” “settling,” “normal,” “large,” or “small.” Instead, use terms such as “visible,” “noticeable,” “common,” or “multiple”.

Do Not Predict the Future. The potential ramifications of visible conditions are not within the scope of a real estate professional’s disclosure. For example, exposed electrical wiring could be a potential human shock or fire risk, or simply low voltage and pose no threat at all. It is not for an agent to decide and predict. Downplaying a condition can also be dangerous. For example, discoloration on a heat register may just be dust in the filter, or it could be a malfunctioning furnace. Downplaying a condition that turns out to be more than meets the eye can place agents in a precarious liability position.

Do Not Discourage Further Investigations. Clients often want to go through the property with a fine toothcomb. An agent may be tempted to persuade the buyer not to waste money on unnecessary investigations. For example, statements such as “radon is not an issue in California,” or “this area has no history of soil problems,” can expose an agent to potential disclosure problems.

Do Not Give or Receive Assistance With Disclosure Statements. An agent’s disclosure statement is theirs; a seller’s disclosure statement is theirs. Including statements from others can be dangerous. Assisting the seller with their statements can increase an agent’s liability. Explaining disclosure responsibility to a seller is acceptable, but telling them specific information to disclose is going beyond the scope of an agent’s disclosure obligations. If an agent must include information on their statement not personally detected, be sure to list the source — such as, “gardener indicated the sprinkler system was inoperable.” Disclosure statements are a delicate part of the real estate transaction. Great care should be taken when completing them to avoid confusion, and to ensure they are complete and accurate.

Secure the Services of a Qualified Inspector. It is imperative that services of a competent home inspector be secured. A poor inspection can have drastic consequences and increase disclosure liability. Make sure to hire an inspector who is trained and experienced in home inspection, maintains proper insurance, and is a member of a professional association such as the California Real Estate Inspection Association (CREIA).

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Since 1976, the California Real Estate Inspection Association (CREIA), a non-profit voluntary membership organization has been providing education, training, and support services to the real estate inspection industry and to the public. Inspectors must adhere to CREIA’s Code of Ethics and follow the Standards of Practice developed by the association. These Standards of Practice have been recognized by the State of California, and are considered the source for home inspector Standard of Care by the real estate and legal communities.

This information is brought to you by Noteworthy Property Inspections, your local Professional Home Inspector.

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