To Disclose or Not – That is the Question

Mark F. Himsworth, Esq.

You may recall that not long ago, we wrote about the case of Milliken v. Jacono, wherein a panel of the Superior Court held that a jury should decide whether the seller of a home had a duty to disclose to the buyer that a murder-suicide had occurred in it. On reargument, however, a divided Superior Court just recently reversed. The Court found that the occurrence of a murder-suicide does not constitute a “material defect” to real estate that required disclosure under Pennsylvania’s Real Estate Seller’s Disclosure Law (RESDL). Thus, the trial court’s finding in favor of sellers and the sellers’ real estate agents, without the need for trial, was affirmed.

The gist of the majority’s opinion was that the RESDL does not require the disclosure of “psychological” damage to a home. As the Court stated, “sellers should only be required to reveal material defects with the physical structure of the house, with legal impairments on the property, and with hazardous materials located there.” See §7304 RESDL. However, “to allow consideration of possible psychological defects opens a myriad of disclosures that sellers will need to reveal and start a descent down a very slippery slope.”

The dissenting opinion took issue with the majority’s restrictive view of §7304, in effect limiting the items of disclosure to what was specified in that section, as if it were exclusive. However, §7313 is clear in that that is not intended to limit or bridge any obligation for disclosure created by any other provision of law, or that may exist in order to avoid fraud, misrepresentation or deceit in the transaction. §7102 defines a “material defect” as a “problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property.” The dissenting opinion pointed to the evidence in the case that an expert opined that the murder-suicide stigma attached to the property reduced the value by 10% to 15%, or in this case by approximately $100,000.

It remains to be seen whether further review will be sought before the Supreme Court of Pennsylvania. So, regardless, err on the side of caution with respect to disclosure and disclose. If a buyer has a particular question or concern, the buyer’s agent should ask questions, and, in response, a seller’s agent should obtain and provide truthful answers.

For more information, please contact Mark Himsworth at 215-661-0400 or MHimsworth@HRMML.com.