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## SELLER'S DUTY TO DISCLOSE

In the sale of real estate, a seller has the duty to disclose all existing material facts known to the seller, but not apparent or reasonably ascertainable to the buyer. *McRae v. Bolstad*, 101 Wn.2d 161 (1984). The duty to disclose arises only where the seller has knowledge of the defect, the defect is dangerous to the property, health or life of the purchaser, the defect is unknown to the purchaser, and a careful, reasonable inspection by the purchaser would not disclose the defect. *Atherton Condominium Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506 (1990). A fact is material to the extent that it substantially affects adversely the value of the property or operates to materially impair or defeat the purpose of the transaction. *Mitchell v. Straith*, 40 Wn. App. 405 (1985). A seller is not required to disclose *past* defects, which, to the best of the seller's knowledge, have been corrected. *Hughes v. Stusser* 68 Wn.2d 707 (1966); *Luxon v. Caviezel*, 42 Wn. App. 261 (1985). If the purchaser is aware of the existence of a defect, the burden of determining the *extent* of the defect is on the purchaser by making appropriate inquiry, investigation and inspection, and there is no duty on the seller to volunteer further information. *Puget Sound Service Corp. v. Dalarna Management Corp.*, 51 Wn. App. 209 (1988).

A seller is not liable for an economic loss resulting from an undisclosed defect or discrepancy, unless the parties agree otherwise or the seller had actual knowledge of the undisclosed defect or discrepancy. "Economic loss" means a defect or discrepancy in the property itself not involving personal injury or damage to other property. *Alejandre v. Bull*, 159 Wn.2d 674, 153 P.3d 864 (2007).

A seller of residential property is required to deliver to the buyer a completed, signed, and dated "Real Property Transfer Disclosure Statement" in the form prescribed by law. RCW 64.06.020. The requirement applies to most sales of one-to-four family dwelling units, resale condominiums and unimproved land zoned for residential use, subject to certain exemptions, but does not apply to sales of new or conversion condominiums, or commercial property. A seller is required to deliver the disclosure statement within five days after mutual acceptance of an earnest money agreement, unless the parties agree otherwise. The buyer has the right to rescind the transaction within three days after receipt of the disclosure statement, unless the parties agree otherwise or the buyer waives the right to receive a disclosure statement. The seller is required to amend the disclosure statement if information is discovered or an adverse change occurs while a sale is pending, and the buyer has an additional three-day right of rescission, unless the seller corrects the adverse change at least three days prior to closing. The buyer is entitled to an extension of the closing date, if necessary, in order to have a full three days within which to review an amended disclosure statement.

The prescribed form of the disclosure statement greatly expands the seller's disclosure obligations from what is required under existing common law. However, the buyer's remedy for the seller's failure to deliver the disclosure statement is limited to rescission of the sale prior to closing. The seller is not liable for any error, inaccuracy, or omission in the disclosure statement or for conveying inaccurate information from public records or other professionals, unless the seller had actual knowledge of the error, inaccuracy, or omission. The statutory disclosure requirements are in addition to, and do not supersede, the seller's duty under common law to disclose all existing material facts known to the seller, but not apparent or reasonably ascertainable to the buyer.

The seller disclosure law applies regardless of whether the property is listed for sale with a real estate broker. The disclosure forms are available through any licensed real estate broker or salesperson.

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