



Legal Hotline

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Environmental Hazards

Here are a few recent questions posed on the MAR Legal Hotline, which should provide some direction on how to deal with complex real estate issues.

Asbestos

Q. I have a listing that has pipes in the basement that appear to be insulated in asbestos. The seller said he was “going to take care of it.” I’m afraid he’s going to try to remove it himself. What can I do to protect him, as well as myself?

A. Explain to your client that the worst thing he can do is try to remove it himself. Removal may very well be unnecessary, and it is definitely dangerous to his family’s health as well as his own. In fact, the state’s Department of Environmental Protection (DEP) explicitly states that if asbestos is in good condition, no state or federal law requires its removal.

DEP’s information and FAQ sheet is located at the following web address: <http://www.mass.gov/dep/air/asbguid.htm>

Lead Paint Disclosure

Q. The seller of one of my listings accepted an offer from a couple with three children. The buyers hired a lead

inspector who told them that the house has significant lead paint hazards, and they asked the seller to de-lead the home or give them back the deposit. The seller opted to return the deposit and has now told me to put it back on the market. What, if anything, do I need to tell other persons who might be interested in the property? Does it now have to be de-leaded since it was tested?

A. Pursuant to Massachusetts lead paint laws, both you and the seller must inform prospective purchasers that the home has been tested for lead paint and hazards have been found to exist. If the seller has a copy of the lead inspection, then that should be given as well. Also, your seller should sign a new lead paint disclosure form indicating the changed status of the property from “no knowledge” to “known hazards” on the signature page of the lead form.

Contrary to popular belief, neither your seller nor any subsequent buyer is legally obligated to do anything regarding lead paint abatement or de-leading in this home so long as no child under the age of six resides there. If a buyer has a child under the age of six, then it is their responsibility and not

the seller’s to bring the home into compliance.

De-Lead Promotion

Q. One of my listings was a complete rehab/condo conversion in an older three-family. The seller has told me that the house is now de-leaded as a result of this work and would like me to promote it as such. Can I get into trouble by simply relaying this information to buyers?

A. Yes. If a seller cannot show you a valid de-leading certification for the unit, then you cannot assume it is lead safe. According to the Massachusetts Department of Public Health’s Childhood Lead Poisoning Prevention Program website, “Forty-seven percent of the housing stock in New York and Massachusetts was built before 1950. The older a housing unit, the more likely it will have been painted with lead paint; the older the paint, the higher the concentration of lead in the paint.”

While your client may have done significant rehab work on the unit, that does not mean that it, or the common areas accessing it, are lead safe. Only an inspection can determine the lead status of the home. ■



Realtors® with additional questions may call the MAR Legal Hotline at 800-370-5342 weekdays from 9 a.m. to 1 p.m.