

The 13 Secrets of the Rich or Informed™



**Business, Estate, & Asset Protection Plans
Secrets of Insurance, Financial & Pension Products
Secrets to Asset Protection Even When Being Sued!**

Don't Sell That Home Without Reading This First!

Only Work with the Best Real Estate Brokers

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You've hired the best real estate broker, so you thought, now your home is sold. You go on and soon forget about the old and bring in the new. But then, when you least expect it, you are served with a Demand for Mediation and Arbitration (or Lawsuit) for hundreds of thousands of dollars. Why you ask. You are accused of concealing (known) defective conditions. But recall that Seller is required to disclose 'known' problems or defects with the property even though Seller is not warranting the improvements. After all, Buyer has an affirmative duty to inspect. So why am I being sued you ask? We loved that home. It wasn't defective.

Now what? You are forced to hire an attorney and defend. Yes, this will cost serious money and you are now (personally) exposed to hundreds of thousands of dollars as well as the attorney's legal fees for Buyer. This is now serious. This can be costly, impair the financial ability of many, or cause insolvency for some.

Could I have Avoided This You Ask? Yes and no. Yes, you need to sell you property with stated "as is" conditions but you need to go further and restrict the sale to "as is without warranty or representation and with waiver of lawsuits against Seller for defective or dangerous conditions" agreement or express waiver. Many brokers rely on the California Association of Realtors ("CAR") forms indicating that the sale was "as is." However, you might need more in a legal battle.

The CAR Residential Purchase Agreement and Joint Escrow Instructions at Paragraph 9 typically states that unless otherwise agreed the Property is sold in the present physical ("as-is") condition as of the date of acceptance. But the Buyer's lawyer will accuse you of *concealing* known defects or having sub-par or unlicensed construction or repairs done on the home.

The Buyer's Inspection Advisory generally puts the burden on Buyer, not Seller, to inspect and find defects. Buyer's Inspection Advisory states that Seller is not warranting the improvements and that

Buyer has an affirmative duty to inspect. Seller is required to disclose 'known' problems or defects with the property.

The Seller's Advisory generally warns the Seller of the duty to affirmatively disclose to the Buyer (whether asked or not) in writing, any and all known facts or defects, **that materially affect the value or desirability of the property**, even if the property is taken in its present condition. The Broker cannot advise Seller of the legal sufficiency of any disclosures. The Broker's inspection is limited to obvious visual defects or conditions. When in doubt put it on the list.

Solution: You need to work with smart brokers and agents – who are in touch with smart lawyers. You need to document the state of disrepair **or – “undesirables”** - and maybe accept a reduction in purchase price through escrow instead of making repairs or corrections. You should disclose defects known or expected and put the burden on Buyer to waive his/her rights. You should only hire licensed, bonded and insured contractors for all repairs and construction. Sellers should also restrict the sale to as is without warranty or representation and with waiver of lawsuits against Seller for defective or dangerous conditions. Moreover, maybe the Seller should hire a licensed inspector to find “known” conditions of disrepair, defects or undesirables. Certainly, the Seller should either offer a compromised credit through escrow to the Buyer while acknowledging the Buyer's inspection list, and or have Buyer accept the “known” conditions of disrepair, defects or undesirables and expressly waive same.

Owner's Other Protections: In addition to the above items, Seller's might consider holding such property in other protective devices such as select trusts (not mere living trusts) to contain the liability exposure.

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Richard Rydstrom, Esq. is a California lawyer with over 26 years' experience in litigation and business, real estate and contract transactions.