

HOW NOT TO SELL A HAUNTED HOUSE

In keeping with the ghostly time of year, I submit the following legal advice for home sellers. The old rule of “buyer beware” has been eroded over the years by court cases involving less than candid sellers and disappointed buyers. These days, the basic rule in home sales is disclosure. A seller is expected and, in some instances, required to disclose to a potential buyer defects in the home, such as physical problems, environmental contamination and the like.

The duty of disclosure was elevated in a 1991 appellate case in New York State in which a buyer rescinded the purchase contract and sued the seller for a return of his earnest money deposit on the basis that the seller had not disclosed the fact that the home was haunted. The buyer contended that the seller should have disclosed the ghosts, and the seller defended under the legal doctrine of “buyer beware” and the theory that no duty of disclosure existed.

The Judge in the case summarized the tension between the two legal theories as follows:

From the perspective of a person in the position of plaintiff herein (the buyer), a very practical problem arises with respect to the discovery of a paranormal phenomenon: “Who you gonna’ call?” as the title song to the movie “Ghostbusters” asks. Applying the strict rule of caveat emptor to a contract involving a house possessed by poltergeists conjures up visions of a psychic or medium routinely accompanying the structural engineer and Terminix man on an inspection of every home subject to a contract of sale. It portends that the prudent attorney will establish an escrow account lest the subject of the transaction come back to haunt him and his client—or pray that his malpractice insurance coverage extends to supernatural disasters. In the interest of avoiding such untenable consequences, the notion that a haunting is a condition which can and should be ascertained upon reasonable inspection of the premises is a hobgoblin which should be exorcised from the body of legal precedent and laid quietly to rest.

Ultimately, the Judge reversed the ruling of the lower court and ruled that rescission was available to the buyer and that the money should be returned.

So, if you lie in bed and hear things going “bump” in the night or you have a “face to face” relationship with ghostly house guests, you should not remain silent as a tomb when you are trying to sell your house. Rather, you should consider making a disclosure to the buyer. You

should let them decide for themselves if they want to share the home with the spirits;
hopefully all of whom are like Casper, the friendly ghost.

HAPPY HALLOWEEN!!