When buying a home, be alert to latent defects

R eal estate is commonly purchased on the basis of the most secure financial investments people can make in their lifetime. So it’s no surprise that buying a home can be a wonderful experience both emotionally and financially. But what you may be lacking in the glow of your new acquisition are problems that can be lurking out of sight in the home you’re about to buy.

“Latent defects can be described as defects that exist in a property after its purchase that the buyer could not have seen with his or her naked eyes,” said Sylvain Schneider, a real estate lawyer specializing in real-estate law at Bachet, Schneider Stoeckly Inc.

There are three specific circumstances that need to be met in order for a defect to be considered latent from a legal perspective. The latent defect must relate obviously to a prudent buyer or inspector; there must have existed at the time of the purchase but not been noticed until after the transaction; and be such that it would’ve had an impact on the buyer’s final offer, or decision to purchase the property entirely. In other words, had the buyer known about the latent defect, he/she would’ve asked for a reduction in purchase price, or would have walked away from the property, leaving the offer null and void.

Prior to buying a property, it’s important to hire a qualified inspector to ensure that you’re well informed on the state of the property and in proper repairs.

“Try to negotiate in writing the various aspects of a property outlined in the pre-inspection report, particularly if it recommends further investigation of certain elements such as plumbing, electrical or foundation, it will not serve as a defence if it’s later discovered that the property contains latent defects.”

Latent defects can arise as water infiltration, foundation problems, plumbing and electrical issues, and so on. If you feel you’ve discovered a potential latent defect, there are certain steps that you should take: “The first thing to do is take dated photos, and then call in an expert in the field to investigate, and a general contractor or licensed repair person to give you cost estimates,” said Schneider. “Our clients need to hire a real estate lawyer to advise you on the legal ramifications.”

After the discovery of the latent defect, it is imperative to denounce the latent defect to the seller via a letter within a period of six months.

“The primary goal of sending the letter and putting the seller in default is to allow the seller to inspect the property to ensure it and, if necessary, hire an expert to evaluate whether or not the claim of a latent defect has merit,” explained Schneider.

“It’s also very important that when buyers find a defect, they do not repair it prior to putting the offer with the chance to inspect the property and report it — unless, of course, the situation requires emergency repairs. “If the buyer makes the repairs prior to allowing the seller to inspect the property it could negate the potential for success of the buyer’s lawsuit,” Schneider said.

In the event that a seller and his or her expert examine the latent defect, the seller may decide on one of the following scenarios: a partial or full submission of the latent defect, which could be in the form of a monetary sum or co-ordinating the actual repairs paid by the seller, or a denial of any type of responsibility of the latent defect to the inspector.

In the event that the buyer declines to see the seller for the latent defect, he or she must do so within thirty days of discovery. While a lawsuit is an option, it’s important to consider that legal action has financial burdens and emotional consequences for the parties involved.

“Instead of taking the time to hire an attorney when discovering a latent defect is aparameter,” Schneider said. “Instead of this we recommend that both buyers and sellers make it a streamline real estate market continue to be active.”

Sylvain Schneider, a Montreal law- yer specializing in real-estate law.

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