CHAPTER THIRTY

RESIDENTIAL REAL PROPERTY CONDITION DISCLOSURE ACT

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Instruction No. 30.1

RESIDENTIAL REAL PROPERTY – INTRODUCTION

Before making the contract for the sale of residential real estate in this case, the seller was required to deliver to the buyer a property condition disclosure statement as to whether the seller had actual knowledge of defects or information in relation to [specify nature of property defects the Plaintiff alleges were not identified].

Committee Comments

Under 60 O.S. 2011, § 833, a seller (as defined in id., § 832(2)) of residential real estate is required to deliver to a purchaser either a written property disclaimer statement or written property disclosure statement of whether the seller has actual knowledge of defects or information in relating to the real estate as well as various notices. The property disclaimer statement or property disclosure is required before acceptance of an offer to purchase the property. Id. § 834.

(Nov. 2014 Supp.)
Instruction No. 30.2

RESIDENTIAL REAL PROPERTY – DEFINITION OF DEFECT

A “defect” is a condition, malfunction or problem that would have a materially adverse effect on the monetary value of the property, or that would impair the health or safety of future occupants of the property.

Committee Comments

See 60 O.S. 2011 § 832(9). A disclosure of a property’s square footage is not required under the Residential Property Condition Disclosure Act, because it is not a “defect” as defined in § 832(9). Lopez v. Rollins, 2013 OK CIV APP 43, ¶ 11, 303 P.3d 911, 916. (Nov. 2014 Supp.)

Instruction No. 30.3

RESIDENTIAL REAL PROPERTY – ELEMENTS

Plaintiff [name] claims that Defendant [name] has failed to disclose a defect or defects in the residence that was actually known to Defendant [name] before the acceptance of the offer of Plaintiff [name] to purchase the residence. In order to recover on the claim for failure to disclose a defect or defects in the residence, Plaintiff [name] has the burden of proving the following elements by the greater weight of the evidence:

1. A material defect or defects existed in the residence;
2. Defendant [name] failed to disclose the defect or defects in the
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residence to Plaintiff [name] in a written disclosure statement [or an amended disclosure statement];

3. Defendant [name] had actual knowledge of the defect or defects before the acceptance of the offer to purchase the residence; and


(Nov. 2014 Supp.)

Instruction No. 30.4

RESIDENTIAL REAL PROPERTY – MEASURE OF DAMAGES

A seller who fails to disclose a defect or defects in a property disclosure statement is liable for damages to the purchaser. If you decide that Defendant [name] failed to disclose a defect or defects in a property disclosure statement, you must then fix the amount of damages that Plaintiff [name] may recover. This is the amount of money that will reasonably and fairly compensate [him/her] for the actual damages sustained as a result of the defect or defects, including the cost of repairing the defect or defects.

Committee Comments

Under 60 O.S. 2011 § 837(B), the exclusive remedy for failure to disclose a defect in a property disclosure statement is the “actual damages, including the cost of repairing the defect, suffered by the purchaser as a result of a defect existing in the property as of the date of acceptance by the seller of an offer to purchase.” White v. Lim, 2009 OK 79, ¶ 17, 224 P.3d 679, 685 (“Instructed by the Legislature's declared intent, we hold
that the mandatory, clear, and unmistakable language of 60 O.S. Supp. 2003 §837 limits the right of a purchaser to recover for failure to disclose known defects in residential property to those provided in the Disclosure Act.”

(Nov. 2014 Supp.)