

Commercial Property - USA

Psychological defects on residential real property left to *caveat emptor*

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Introduction

Applicable law may often require a seller of residential real property to disclose known material defects to prospective buyers. Although disclosure of material defects typically involves structural and other physical defects, some buyers may be more concerned about psychological and reputational defects. Recently in *Milliken v Jacono* (2012 PA Super 284) the Pennsylvania Superior Court considered whether the psychological damage to a residential property caused by the past occurrence of an in-home murder-suicide in the property was considered to be a material defect that should have been disclosed by the seller to the buyer.

Facts

A buyer and a seller entered into a purchase agreement for the sale of the seller's residential property in which a murder-suicide had previously occurred. Neither the purchase agreement nor the disclosure statement given by the seller to the buyer disclosed the murder-suicide as a known material defect. Shortly after purchasing the property, the buyer became aware of the murder-suicide and brought suit against the seller alleging that the seller had failed to disclose the defect.

The trial court held that the seller did not have an obligation to disclose the murder-suicide and granted the seller's motion for summary judgment.

Decision

On appeal, the buyer argued that the murder-suicide constituted a material defect because it had a significant adverse impact on the value of the property. The court indicated that under the Pennsylvania Real Estate Seller Disclosure Law, a 'material defect' is defined as "a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property". The buyer stated that the term 'material defect', as defined under the statute, required the seller to disclose the murder-suicide to a buyer of residential property. The Pennsylvania Superior Court disagreed and stated that the applicable Pennsylvania statute identified the particular classes of defect that are required to be disclosed to the buyer, all of which relate to either structural matters, legal impairments or the presence of hazardous materials. The appellate court further stated that the legislature plainly did not require disclosure of psychological damage to a residential property because the legislature had limited the required disclosures to the above-stated classes.

The appellate court listed three additional issues with the buyer's argument:

- The court focused on the issue of how far removed the seller had to be from the murder date for disclosure to be required. The court pointed out that psychological (reputational) damage inflicted on a residential property by the occurrence of events such as a murder will decrease over time as the memory of the murder fades from public knowledge. The court further held that requiring a seller to disclose such information could then force the seller to sell the residential property below market value, allowing the buyer to realise a windfall when the property value increases after the memory of the murder has faded. The court further pointed out that the passage of time has no similar curative effect on structural damage, legal impairment or hazardous materials.

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- The court questioned how a specific monetary value could be assigned to the psychological damage inflicted by a murder-suicide when the psychological effect would vary so greatly from one person to the next.
- The court held that requiring a murder-suicide to be disclosed would create a laundry list of other, more subjective items that would also need to be revealed. The court was not inclined to create such a slippery slope and reiterated that sellers should be required to disclose only material defects related to the physical structure of a residential property, legal impairments on the property and hazardous materials located thereon.

Comment

The Pennsylvania Superior Court's interpretation of the applicable Pennsylvania statute places on the buyer the responsibility to determine whether the residential property being purchased suffers from psychological defects or is any way stigmatised.

Other states, including Illinois and North Carolina, have enacted similar statutes with respect to the defects that a seller of residential property is obliged to disclose to potential buyers. For example, the Illinois Residential Real Property Disclosure Act⁽¹⁾ requires sellers of residential property to disclose material defects to buyers and defines the term 'material defect' as a condition that would have a substantial adverse effect on the value of the residential real property or that would significantly impair the health or safety of future occupants. While the definition of the term 'material defect', under the applicable Illinois statute, states that any defect that substantially affects the value of the property must be disclosed, the statute is very specific with respect to objective matters that must be disclosed. Under the Illinois statute, sellers of residential property in Illinois must make disclosure of a specific list of 22 items, all of which are related to structural matters, legal impairments or hazardous materials. Perhaps more telling, the Illinois Real Estate Licence Act of 2000⁽²⁾ solidifies the state's position on disclosure of non-physical defects of residential real property by removing liability from real estate licensees for failing to disclose "that the property was the site of an act or occurrence that had no effect on the physical condition of the property or its environment or the structures located thereon". Similarly, North Carolina's Residential Property Disclosure Act⁽³⁾ requires a seller of residential property to disclose structural and legal defects, but does not specifically address psychological defects affecting a residential property.

Certain other states, including New York and Texas, have gone one step further and enacted statutes specifically excluding certain psychological defects from matters that a seller of residential property is required to disclose to buyers. Under the applicable New York statute,⁽⁴⁾ for example, "it is not a material defect... that the property is, or is suspected to have been, the site of a homicide, suicide or other death by accidental or natural causes, or any crime punishable as a felony". While New York law allows the buyer to submit a written inquiry to the seller of residential property for such information, the seller is not obligated to respond to the inquiry. Similar to New York, the applicable Texas statute⁽⁵⁾ provides that a seller of residential property is not obliged to disclose "information related to whether a death by natural causes, suicide, or accident unrelated to the condition of the property occurred on the property". However, the statute fails to address disclosure of a death by crime.

In contrast, under the applicable California statute⁽⁶⁾ a seller of residential property is obliged to disclose an occupant's death on the real property or the manner of death if the death occurred within three years of the date the buyer offers to purchase the real property.

Although applicable law will often require sellers of residential real property to disclose physical defects with respect to the property, as the court in *Milliken* held, psychological defects are generally left to *caveat emptor*.

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Endnotes

(1) 765 Ill Comp Stat 77 (2012).

(2) 225 Ill Comp Stat 454 (2012).

(3) NC Gen Stat § 47E (2012)

(4) NY Real Prop Law § 443-a (McKinney 2012).

(5) Tex Prop Code Ann § 5.008 (West 2012).

(6) Cal Civ Code § 1710.2 (West 2012).

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