

Purchasing property: How to limit buyer's remorse, avoid unpleasant 'surprises'

After navigating the lengthy, complex process of buying a home, the last thing you need is to experience buyer's remorse, says Cobus Odendaal, CEO of Lew Geffen Sotheby's International Realty in Johannesburg and Randburg.



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“There are so many factors that require the buyer’s time and attention that it’s easy for something to fall through the cracks, but one issue that should not get lost in the shuffle is accurately determining and evaluating the condition of the house you are looking to buy,” says Odendaal.

“All too often, buyers discover unpleasant ‘surprises’ about their new homes within months or even weeks of moving in and even in cases where they do have recourse, it’s a stressful situation best avoided.”

Types of defects

Odendaal says that it’s important for buyers to understand the types of defects that there could be as well as disclosure obligations on the part of the seller.

There are two types of defects:

- Latent defects to the property are those which cannot be seen with the naked eye or after a fair inspection has been made; and
- Patent defects to the property are those which can be seen with the naked eye or can be established after a reasonable inspection of the property by the purchaser.

“The purchaser has a legal obligation to conduct a thorough inspection of the property before making the offer to determine the presence of patent defects to the property and address them in the offer to purchase.

“In the event that patent defects are not addressed in the offer to purchase, the seller has no legal obligation to attend to the repair thereof.

“The voetstoots clause is included in the majority of sale agreements and its purpose is to protect the seller against liability for any latent defects to the property unless the buyer can prove that the seller implicitly had prior knowledge thereof and attempted to conceal or hide the defect from the purchaser.”

Condition report

An additional layer of protection for both parties as well as the estate agent is the condition report which is essentially a document wherein the seller sets out the general quality of the property and lists all existing defects.

“The condition report usually makes reference to factors such as the condition of the roof, swimming pool, foundations and structure and electrical and plumbing systems, all of which can cause costly headaches down the line,” says Grahame Diedericks, manager principal in Midrand for the group.

“It should always be regarded as a red flag if a seller refuses to sign such a report and, if the buyer is still very keen to buy the home, he/she should commission an independent home inspection before making an offer to purchase.”



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Diedericks offers the following guidelines:

1. Obtain and review the condition report before submitting making an offer to purchase – over and above revealing the properties defects and enabling you to make an informed decision, it may also contain information relevant to what you would be willing to pay for the property.
2. Check the date on the report - sellers often complete the condition report when they first put their home on the market and, if a home has been on the market for a year or more, it may no longer be valid as an issue could easily have arisen within that time. If the report isn't current, ask the seller to complete a new one.
3. Be wary of “repaired” defects - sellers quite frequently disclose defects which they characterise as “repaired” and this may well be the case. However, it's prudent to follow up with the seller to ascertain what exactly was done to fix the prior defects, when it was repaired and by whom.

4. Share the report with your home inspector and/or attorney - this will allow your home inspector to pay particular attention to any identified current or prior defects and if the report discloses potential legal issues, such as boundary disputes, consider obtaining the advice of an attorney.

5. Ensure you understand the limitations of the condition report - by its nature, the report is limited by the honesty of the seller and, although you may have legal recourse if the seller misrepresents the condition of the property, it can be very costly and time consuming. The condition report is therefore not a substitute for a thorough inspection of the property.

“When buying an existing home, especially if it’s older than 10 years, a buyer’s best defence is an independent home inspection and, in many parts of the world, this is common practice,” says Odendaal.

“In the USA, for instance, eight out of ten home buyers commission a professional home inspection report before making an offer to purchase, whereas in South Africa, fewer than 5% of home buyers do so.”

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