

Does It Pay To Hide The Ball When Selling Real Estate?

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In an era of readily accessible information and smart buyers, relying on a buyer to miss a property's flaws is often a losing strategy.

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No real estate is perfect. That statement becomes especially clear when a seller wants to sell. Buyers will seize upon every imperfection, issue, and little piece of hair on the asset as the basis for a price reduction.

Looking ahead to that process, a seller can choose from a few possible strategies.

As one strategy, the seller might seize on the ancient principle of *caveat emptor* – let the buyer beware. That strategy says the seller should disclose as little as possible—just whatever the buyer specifically requests and the seller can't avoid disclosing, if that—and resist any disclosure as much as possible. The seller should let the buyer kick the tires, do whatever investigations it can, and figure out any deficiencies of the property. Maybe the buyer will miss some!

As a second strategy, the seller might decide that in 2023 buyers of real estate don't miss much. They know how to mine the Internet and other sources for third-party information on a property. They have competent inspectors, lease reviewers, and other consultants. If a seller takes that approach, then the seller might offer buyers a complete "data dump"—every possible bit of documentation about the property—recognizing that the seller has nothing to hide. Even if the seller did have something to hide, the buyer would probably find it, so why bother? And why go through the process of making the buyer ask for things? Just provide everything. Still, the buyer might miss any deficiencies, and that would be a good thing for pricing.

As a third strategy, the seller might go out of its way to identify issues and weak points that a careful buyer will probably find in its investigation. In 2023, almost every buyer of any substantial commercial real estate is a careful buyer. They aren't buying on the back of an envelope or in between phone calls. Whatever deficiencies exist, a prospective buyer will almost certainly identify. With that in mind, a seller might not try to hide or bury its weak points and hope that the buyer doesn't find them or take them seriously. Instead, a seller might go in the opposite direction and affirmatively disclose them in a direct way. This way, those weak points won't come up as surprises or smoking guns. They won't give the buyer new leverage once the problems are discovered, or an excuse for a price retrade at the end of the due diligence period. The buyer will have to find some other excuse instead.

On the other hand, if the seller had said nothing the buyer might have missed the problems entirely, because the seller either stonewalled the buyer or buried the buyer in documentation, the two other possibilities suggested earlier above.

In the context of a competitive sales process, if the seller discloses any issues or concerns about the property as part of the initial due diligence disclosures, each buyer has an incentive at the bidding stage to figure out how to live with those issues or concerns as much as possible. Yes, they might result in a reduction of the buyer's offer, but the buyer has every incentive to make that offer as appealing as possible. If the seller then plays its cards right, the buyer would have a hard time coming back and complaining about the issues and concerns that were disclosed.

Early disclosure by the seller also has the advantage of preserving the buyer's trust. If the buyer has to discover an issue by itself, the buyer will often lose trust in the seller, concluding that the seller was trying to hide something, trying to sell a Class A product that's really a Class B or C product. Once the buyer loses trust, all further negotiations and interactions will probably be much more painful, if they continue at all.

On balance, sellers ought to think seriously about disclosing problems and issues before buyers find them. Transactions usually tend to work out better that way. Ultimately, though, it's the seller's decision.

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