Caveat Emptor, Buyer Boo-ware

Does Texas require the disclosure of spooky details in real estate transactions?

BY AMANDA C. BROWN

In a residential real estate market where most sellers agonize about interested buyers noticing outdated fixtures in the bathroom or patched areas of drywall, what should be done if the home harbors a more sinister secret? Do sellers have to divulge details of strange footsteps at night or doors that slam by themselves? Or that the current residents’ child has developed a strange fascination with watching static on the flat screen and frequently recounts conversations with ‘the TV people’? What about other disturbing events on the property that might cause buyers to shy away, such as murders or even natural deaths? The answer is—as with many issues concerning Texas law—it depends.
In accordance with Section 5.008 of the Texas Property Code, Texas, like most states, requires sellers to disclose material defects related to the condition of a property. These are typically structural or cosmetic in nature and negatively affect the value of the property, including anything from foundation issues to termite infestation. 1

A 2012 poll conducted by Huffington Post/YouGov found that 45 percent of American respondents believe in ghosts.2 It is fair to assume, then, that a fairly large contingent of the population might be interested, for one reason or another, in knowing if the house they are contemplating buying is considered “haunted.” However, while there is little doubt that alleged hauntings or deaths on a property—particularly grisly killings—can affect the value of a home, most states have deemed this information not to be material and have made any failure to disclose such facts by a seller or agent not actionable.

In Florida, for instance, the fact or the suspicion that a homicide, suicide, or death occurred on the property is not a material fact and does not have to be disclosed in a real estate transaction.3 In Massachusetts, the statutory language is broader—covering myriad spooky occurrences on a property—by declaring that the fact or suspicion that a property is “psychologically impacted” is not a material fact that must be disclosed in a real estate transaction.4 The statute defines “psychologically impacted” properties to include sites of felonies, suicides, or homicides, as well as those with “alleged parapsychological or supernatural phenomenon.”5

Realizing that some buyers can be squeamish about these topics, California requires disclosure of any deaths (natural or otherwise) that have occurred within three years of the date of a purchase offer.6 However, a California appellate court recognized a narrow exception to this rule. In Reed v. King, a homebuyer sued the sellers after discovering from neighbors—and already having purchased the home—that a woman and her four children had been murdered there 10 years earlier.7 The case was dismissed by the lower court for failure to state a claim, but the appellate court overturned the dismissal, recognizing that “the murder of innocents” has a great potential to disturb buyers to the point that they may be unable to reside in a home where such an act occurred.8 The crux of this case, however, was the fact that the plaintiff’s primary complaint had to do with the diminution in value resulting from the knowledge of the home’s history. The court held that, if the plaintiff could demonstrate that the murder had a significant effect on the home’s market value, “she is entitled to a favorable ruling on the issues of materiality and duty to disclose.”9 Notably, the court...
cautioned against potential future cases in which a buyer would be unable to plead or establish a quantifiable effect on market value.\textsuperscript{10}

Texas falls closely in line with the majority of states by recognizing that a seller or agent has no duty to disclose deaths that occurred because of natural causes, suicide, or an accident that was unrelated to the condition of the property.\textsuperscript{11} Any known murders must be disclosed, as they are considered facts material to a real estate transaction. In addition, the Texas statute also requires disclosure of deaths that were caused by a condition existing on the property, even if the condition was subsequently remedied. This provision was intended to inform buyers about deaths resulting from structural defects or other dangers inherent to a property. However, the plain language of the statute suggests that if a death on the property is believed to have been caused by a supernatural entity, the seller should probably disclose it to any potential buyers. (But, if you truly believe that a ghost was the cause of a death in the home, you probably have bigger concerns than whether the seller’s disclosure form is accurate.)

Despite clear statutory language relating to the disclosure of deaths that have occurred on a property, most states—including Texas—do not offer clear guidance regarding the disclosure of other eerie occurrences. However, one case out of New York indicates there may be limited circumstances where failing to disclose the paranormal nature of your property could be grounds for a contract rescission. In 1990, Jeffrey Stambovsky purchased a house in the sleepy Village of Nyack, a suburb about 20 miles north of Manhattan.\textsuperscript{12} This was also, coincidentally, the year the movie Ghost starring Patrick Swayze was released. Stambovsky, being a new resident of Nyack, had no way of knowing that the house had a rich history of alleged ghostly encounters.\textsuperscript{13} The former owner had reported poltergeist activity in the house to both Reader’s Digest and the local press, and the house was even described as haunted by a local walking tour.\textsuperscript{14} After purchasing the house and learning of its supernatural track record, Stambovsky filed suit, seeking rescission of the purchase contract.\textsuperscript{15} The Supreme Court of New York held that, “where a condition which has been created by the seller [emphasis added] materially impairs the value of the contract and is peculiarly within the knowledge of the seller or unlikely to be discovered by a prudent purchaser, exercising due care with respect to the subject transaction, nondisclosure constitutes a basis for rescission as a matter of equity.”\textsuperscript{16} Before you start inviting mediums or the Ghost Hunters to attend property inspections, however, it should be noted that the key fact in this case was that the seller had “deliberately fostered a public belief that her home was possessed” by poltergeists. The court determined that, having informed the public-at-large of the poltergeists’ presence, she owed no less of a duty to inform the buyer.\textsuperscript{17} Interestingly, this is also the reason the court held that, as a matter of law, the house was haunted.\textsuperscript{18}

Keeping your ghostly encounters under wraps may not entirely save you from disclosure, though. The National Association of Realtors Code of Ethics requires that all realtors “shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.” The Texas Real Estate Commission, likewise, states that realtors “have a special obligation … to avoid misrepresentation.”\textsuperscript{19} Accordingly, if a savvy buyer specifically asks about deaths or supernatural encounters on the property, the agent must disclose any known information.

If you are a buyer who has seen Poltergeist enough times to know that you want to be informed about any spooks, spirits, or specters that may not be moving out after closing, there are ways to obtain the information in addition to simply asking the seller or agent. Alternatively, you can conduct research at local libraries and museums or go to websites such as diedinhouse.com, which—for a fee—provides information about deaths that have occurred on properties throughout the United States.\textsuperscript{20} In addition, a simple Google search turns up dozens of sites dedicated to assisting people in determining whether their house is haunted, including lists of common indicators of spooky housemates. Finally, if you’re truly concerned about this issue and the required disclosures fail to put your mind at ease, there is a relatively sure-fire solution: new construction. Buy a house that no one has lived in—or died in. Just be sure you ask about the land on which it was built. \textit{TBJ}

\textbf{NOTES}

4. ALM OL ch. 93, § 114 (2014).
5. Id.
8. Id. at 267.
9. Id. at 268.
10. Id.
13. Id. at 255.
14. Id.
15. Id.
16. Id. at 259 (emphasis added).
17. Id. at 260.
18. Id. at 255.
21. See id.

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