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Attorneys at Law



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Disclosing Contractors in the Flipping Sale

by Anna G. Kudla

If the massive ratings from HGTV shows such as Flip or Flop and Fixer Upper in the last several years did not grab your attention, then perhaps the insanely skyrocketing housing prices did. The post-COVID housing price surge flushed out even the most conservative entrepreneur in every neighborhood. If you're a homeowner looking to renovate before the sellers' market descends into a deep dive, the following article briefly discusses common issues to consider and changes to the law that may impact your flipping decisions.

1. New Disclosure Requirements for Flippers

As of January 1, 2024, California Civil Code § 1102.6h requires "Flippers" of one to four residential properties to disclose recent repairs and renovations to the property in addition to all other existing disclosures. This new law applies to properties that are resold within 18 months of closing. The law applies to all transactions in which the seller accepts an offer on or after July 1, 2024. This disclosure falls under the Transfer Disclosure Statement law; it has the same exemptions; and it is subject to the same cancellation rights as previously existing disclosures. Further, the Seller's written disclosure of room additions or structural modifications must be accompanied by permits if obtained, and/or the Seller will need to disclose the contractor who performed the work and must identify in detail what work was performed. Specifically, when cost and labor are over \$500, the Seller must identify the name of each contractor and his/her contact information. If the disclosure statement is not given to the buyer, then the sales transaction is still valid, but any person who willfully or negligently fails to comply could be held accountable for any actual damages suffered.

2. Contracting with a Contractor

Once an owner decides to take down a wall or pull off a kitchen cabinet, they better be prepared for the unknown. Otherwise, that open space concept might just bring down the roof or break open the asbestos. To ensure your finances bounce back after investing in reconstruction, consider hiring a reputable and properly insured contractor.

Only Licensed Contractors: Contractors have to be licensed in California to ensure individuals and businesses are professionally qualified and operate ethically. The California Contractors State License Board, commonly referred to as the CSLB, regulates construction trades in connection with home improvements. The word “contractor” is synonymous with “builder,” and is defined by Bus. & Prof. Code, § 7026, in relevant part, as any person who undertakes, or offers to undertake, construct to improve or demolish any building, structure, or improvement. Residential remodeling contractors are not allowed to contract for projects that make structural changes. Structural engineers and architects are required to draw plans to be approved by the city. Your contractor can assist with getting the proper building permits to conduct the work. Keep in mind that any person who acts as a contractor without the proper licenses is subject to criminal and civil penalties.

Written Agreements: Home Improvement Contracts valued over \$500, are to be in writing and are highly regulated. Home improvement is defined in Bus. & Prof. Code § 7151 as anything having to do with repairing, remodeling, altering, converting, or modernizing a residential property, including the installation of a solar energy system or a spa. Each construction agreement and advertisement has to provide proper notice to the homeowner in a specific font size, identify the contractor’s license number, and contain specific language regarding the CSLB consumer protection agency.

Avoid Mechanics Lien: Owners must also be aware of payment requirements and mechanics liens. In some instances, the owner may not directly contract with subcontractors and material suppliers, but making sure they get paid is important because those parties can record mechanics liens on the property to secure payment from the contractor. Before the owner disburses funds to the contractor without knowledge of whether the subcontractor or material supplier has received payment, the Legislature has prescribed statutory forms for the release of liens, and if the statutory form is used and executed, the subcontractor or material supplier is bound by the release language and the owner may rely on it.

Insurance: The most encountered form of liability insurance in construction litigation is a “Commercial General Liability Policy.” Owners should insist the contractor name them as an additional insurer on their existing general liability policy. If the contractor refuses, that is a red flag that should not be ignored.

Disclaimer: The information provided is commentary and is intended for general informational purposes only. It should not be considered professional advice or a substitute for seeking professional guidance. Readers should consult with an attorney for specific advice related to their situation.



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Anna G. Kudla is Senior Counsel at Hart Kienle Pentecost, where she provides comprehensive guidance in civil litigation. She represents brokers, sellers and buyers, appraisers, contractors, business owners, and professional athletes in contract negotiations, commission disputes, administrative hearings, mediation, litigation, and arbitration. To schedule a consultation with Ms. Kudla, contact Hart Kienle Pentecost at 714-432-8700 or email akudla@hkplawfirm.com. To learn more about Hart Kienle Pentecost, visit our website at www.hkplawfirm.com.