

THE CHOICE OF A LAWYER IS AN IMPORTANT DECISION AND SHOULD NOT BE BASED SOLELY UPON ADVERTISEMENTS.

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Concentrating in:

**Business and
Real Estate Law**

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2011 - Spring Is Almost Here

Thank you to all of my clients and referral sources for 2010. I am proud to have helped so many clients in diverse transactional areas, such as:

- Commercial Leasing and Sales
- Hospitality and Rental Property Purchasing
- Loan Modification / Loss Mitigation
- Business Planning
- Probate Administration

In 2011, The Jacob Law Firm will expand its practice to include *Mediation Services* and *Will Drafting*. I look forward to the opportunity continue to serve my clients and to some warmer weather.

Wishing you all the best,

Marc Jacob

Real Estate

Residential Home Disclosures

How important is the *Seller's Disclosure Statement*? Can being less than truthful or less than thorough give rise to legal liability?

These questions race through the heads of many home sellers, particularly in a tough market where one minor past problem can be the difference between selling your home and having it sit on the market for months.

What about the fact that Buyers have an opportunity to get their own inspector . . . do Sellers still need to disclose everything or does that get them off the hook?

The recent Missouri case of *Craycroft v. Carlton* tackles this very issue. In that case, the Buyers did several walk-throughs and hired their own home inspector. Neither Buyers nor their inspector saw evidence of basement moisture.

Within days after the Buyers moved in, rain flooded the basement and destroyed Buyers' belongings. The basement continued to flood over the next several years, until drainage tiles and sump pumps were installed.

Buyers sued and were awarded over \$22,000 in damages by the trial court.

Sellers appealed and the Appellate Court agreed. Although one who makes an independent investigation is generally barred from later claiming he was deceived by another's misrepresentation, the Court articulated three exceptions to this rule:

“When it comes to Seller Disclosure statements, honesty really is the best (and cheapest) policy.”

1. If the Buyer only makes a partial inspection and relies upon both the inspection and the disclosure;
2. **If Buyer lacks equal footing for learning the truth;** and
3. If the Seller makes a distinct and specific representation, Buyer may rely upon it.

In this case, the Sellers lived in the house through many rainstorms and knew about the flooding problems, whereas Buyers and their inspector only spent a few hours in the home. Buyers, therefore, lacked equal footing for learning the truth.

When it comes to Seller Disclosure statements, honesty really is the best (and cheapest) policy. If you have questions, consult your attorney.

Business

LLC Ownership

These days, it is simple to create your own Limited Liability Company (LLC). So simple, in fact, that people may fall victim to thinking that there are no real formalities required by law.

To the contrary, Missouri requires that every LLC have an Operating Agreement. The Operating Agreement sets forth the method of management,

“Without an Operating Agreement, you are violating Missouri law, and you are putting . . . yourself at risk.”

the ownership percentages, and the rights of the various LLC Members. Without an Operating Agreement, you are violating Missouri law, and you are putting your company and yourself at risk.

If you are a single member LLC, meaning that you

are the sole owner of the company, Missouri law **requires** that the Operating Agreement be in writing.

If you are a multiple member LLC, it is strongly advised that you put your Operating Agreement in writing and have it signed by all Members. This makes ownership and management issues much clearer and can help avoid future litigation.

The recent Missouri case of *Birkenmeier v. Keller Biomedical, LLC* illustrates the point. In that case, the Petitioner expended significant time, energy and money developing business relationships, plans and operations for an LLC. However, he was never made a party to the company's Operating Agreement, neither when the company was formed, nor at a later date. The Court ruled that the Petitioner was **not** an LLC member and, therefore, despite his substantial investment, had no ownership rights in the company.

Put your LLC Operating Agreement in writing and protect your rights.