

Caveat Emptor: “Buyer Beware”



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While the use of the Latin language is falling away from use, many of the old adages still remain true, especially in the legal profession. The Latin phrase “Caveat Emptor” translates to “let the buyer beware”. This phrase is often heard in resale residential real estate settings. While there is sometimes an avenue to sue the seller for deficiencies found in the home after the closing date, often times the old adage of “let the buyer beware” will prevail.

For example, the purchasers of a resale residential home have engaged a home inspector to inspect the property for a deficiencies prior to the purchase. The home inspection report says the home is good and does not have any deficiencies. However, when the purchasers move into the home after the closing date, they realize that there is a large crack in the foundation in the basement will have to be repaired. The purchaser is understandably upset that they have just bought a home, had a home inspection, and will still have to repair the basement. The

purchaser wants to recover the costs of the foundation repair from the seller or from the home inspector for failing to see the crack in the foundation.

The purchaser would not be able to sue the home inspector. Home inspectors are limited to what they can see in order to do their inspection. A home inspector cannot take down drywall to inspect the foundation if it is a finished basement. Nor can the home inspector move large items, such as wall units that are blocking the walls. While we always recommend a home inspection on every purchase, home inspectors are limited in what they can inspect.

In order for the purchaser to be able to sue the seller for a crack in the foundation found after the closing date, the purchaser would have to prove that the seller knew about the crack in the foundation and deliberately concealed it from the purchaser. If there is drywall over the foundation, the sellers themselves may not have been aware of the crack. During

the sellers’ possession of the home, the crack in the foundation may not have been large enough to cause water leaks that would have been an indicator for the sellers.

Assuming the sellers did know about the crack, the purchasers would still have to prove that the sellers knew about it which can be very difficult. The purchaser could look for evidence that the sellers had done previous repairs to the walls, which would help show that the sellers knew of a problem with the foundation in the area.

Even if the purchasers could prove that the sellers knew about the crack in the foundation and deliberately concealed it from the purchasers, the purchasers would then have to weigh the cost of fixing the crack against the cost of suing the sellers. The litigation process to sue the sellers can be costly and time-consuming. If the repair to the crack is under \$2,000, it may not be worth the purchaser’s time and effort to sue the sellers. The purchasers have to pay the court fees initially to start the litigation process in small claims court, the purchasers will have to take time off work to attend the court house on at least a couple of occasions and, if the purchasers are not comfortable representing themselves, they will also have to pay the legal fees for their lawyer. Even if the purchaser wins their matter in court, the costs they could recover would be limited to 15% of the amount claimed. For a claim of \$2,000.00, the purchaser’s costs would be capped at \$300.00 which would not cover the time lost from work or the legal fees for a lawyer.

The moral of this article is that the phrase “buyer beware” still applies. Purchasers should never buy a property at the top of their budget, in case they find unexpected deficiencies on closing that can lead to unexpected costs.

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