

Beware Sellers . . . Caveat Emptor May Not Be All You Believe it to Be!

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By Thomas W. Repczynski

When it comes to buying residential real estate in Virginia, the doctrine of *caveat emptor*, or “buyer beware,” may not be as onerous as you think. I’ve had numerous potential clients come to me with horror stories of post-purchase discoveries or mishaps occurring shortly after buying a property. Appliances are breaking down, ceilings are collapsing, and water in the basement! – just to name a few. Generally speaking, there’s not a whole lot one can do about it other than get the problem fixed! If you’re smart, you’ve paid for a good homeowner’s insurance (always get an HO policy! and have it in effect the moment you take the title – if not sooner!). If you’re doubly smart, you insisted upon having a pre-purchase inspection (and bordering on brilliant if you did your homework and checked the credentials of your inspector!). You’re atop the smarts pyramid if, in addition to all that, you also managed to sign an agreement with your inspector in which you refused to limit your damages to whatever comparative pittance you might have paid the inspector (g’luck with that one!). Congratulations are still in order if you at least insisted on accompanying the inspector and insisted further that everything gets inspected as thoroughly as possible for the money (to each their own as to how far to take this one, but I suggest you consider the following before you decide the extent to which you take heed

Believe it or not, not every home seller is completely above board when it comes to disclosing shortcomings. This may shock you, but some share less than the full truth about the foibles and/or outright problems with their soon-to-be-someone-else’s-money-pit of a home. In fact, some people lie! NO?! Yes.

It’s one thing to be less than completely forthcoming; it is quite another to hide, mislead, deflect, cover-up, and/or outright deny problems that exist. “Have these pipes ever caused you any problems? Have you ever had any water issues in the basement? Any known cracks in the foundation? How’s the roof? Has the place ever been struck by lightning to your knowledge?” How a seller responds to these inquiries may very well provide a future legal cause of action against them, even if they have seen fit to try to protect themselves as sellers with anything and everything from a “*caveat emptor*” contract condition to an “as is, where is” clause, and a disavowal of any buyer’s reliance on absolutely anything the seller might have said prior to finalizing the deal. In fact, you can take it up another notch (turn the volume up to eleven, if you will!) and find that you might still have a claim against the sellers even if, after signing a contract with all of these seller protections, you only closed on the deal after having a professional inspector look to find any problems and fail to discover anything.

Now, in the event of a major “miss” from your inspector, you might certainly want to get your money back for a negligent inspection, for sure! (And, hopefully, you were savvy enough in advance to have negotiated out of your typical “money back” liability cap on the inspection contract). The key to whether you have any reasonable expectation of recovery from the sellers is if they committed fraud in the process. You see, it’s one thing not to discover problems when you are actively looking for them; it’s another thing entirely when a seller purposefully covers them up and/or affirmatively takes steps to prevent the discovery of the problem altogether. In this regard, I was recently surprised to learn that such cover-up actions can themselves satisfy the “misstatement” element required to establish an actionable fraud claim. In other words, a seller need not

affirmatively lie about a problem if acts to “put you off your guard,” i.e., to prevent you from discovering the true nature of the condition.

Consider in this regard examples such as damage from an active water leak that gets covered up, painted over, re-plastered, etc.; a “new” roof that was cheaply/improperly installed (with no underlayment by unskilled day laborers); denied access to a problem area (a locked entrance to a boiler room where the allegedly/assuredly “brand new” boiler is located); or, perhaps, a covered-up, foundation wall crack (for instance, with water-absorbent, sawdust packed in the newly-walled over “renovations” – yup, it’s been done!). All of these present possible major problems and potentially unmanageable expenses (not to mention frustration and aggravation!) after the purchase. Should you even bother asking the sellers if any of these potential deal-breakers exist? Undoubtedly, yes. Perhaps they respond truthfully when asked. You won’t know if you don’t try. Alternatively, perhaps they lie and deny it. What then? Trust but verify! But if you do get taken for a ride, you may not be a defenseless victim. Fraudulently inducing someone into a real estate purchase may not only be actionable in particular circumstances, it might also include with it the recovery of legal fees – often the difference between being made whole with a successful case and not being able to afford to bring the case in the first place.

So, *caveat emptor*, for sure . . . but to those would-be fraudsters thinking they can hide safely behind this good-faith seller’s protection, I say, “*caveat venditor!*” And to those believing themselves victimized, I say document the seemingly fraudulent statements and actions and have a qualified legal professional look before you opt to do nothing.