

Buyer Beware: What Homebuyers Should Know About Latent Defects

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With “home buying season” now firmly in the rearview mirror, first-time home buyers and repeat buyers alike are continuing to settle into their new homes. For first-time homebuyers, in particular, the task of purchasing a home can easily and understandably appear to be a daunting one—to say the least. Many first-time homebuyers have genuine fears about the home-buying process, and repeat home buyers may be increasingly untrustworthy after previous bad experiences. All of this, and more, can easily create a stressful endeavor. Yet the commonly known principle of “Buyer Beware” often casts a shadow of doubt over the entire home buying process.

The principle of Caveat Emptor or “Buyer Beware,” as it is colloquially known, is often characterized and maligned as a black-and-white doctrine, yet this is not always the case. Buyers often rely heavily on an inspector to provide a “green light” and/or identify faults in the property—but this process will often fail to detect hidden defects. Inspectors can only do so much during an inspection, and all too often, the “smoking gun” may be hidden from view or easily overlooked.

If an inspector does fail to identify a defect or fault in the property, “greenlighting” the buyer to purchase the home, latent or hidden defects often do not become apparent until after moving into the home. The concept of Buyer Beware would lead home buyers to believe that most, if not all, undiscovered defects in their new home is their sole responsibility and that a seller need not remediate any issues. However, that is not always the case.

In the event of fraud, a buyer may recover from a seller when the seller actively hid defects in the property or performed deceptive acts that induced the buyer to purchase the home. False assurances and misleading statements regarding the condition of plumbing, electrical, or HVAC systems can amount to fraud in the inducement, leaving the seller open to liability from the buyer. Painting over wood rot, covering water damage and mold with new flooring, and other affirmative acts of concealment open a seller up to liability and provide a lifeline to buyers. When a buyer relies on false or misleading statements in the purchase of their home, they may still be able to recover despite a buyer beware principle.

In addition to false or misleading statements, a seller who actively conceals material defects in the property in anticipation of sale will open the seller up to liability.