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## Buyers Must Beware When Purchasing Property

**Q: I'm thinking of buying a home, and my friend says a house purchase is a "buyer beware" situation. What does that mean?**

**A:** "Buyer beware," also known as the doctrine of *caveat emptor*, is an age-old doctrine. It means that, if you intend to buy property, you generally bear the responsibility for finding out about the property's condition before purchasing it. This doctrine appears to place the entire risk on the shoulders of the homebuyer, but only does so if 1) the condition of the property is open to

observation or discoverable upon reasonable inspection to the buyer; 2) the buyer had the opportunity to examine the property; and 3) there is no fraud or wrongdoing on the part of the seller.

**Q: What do I, as a buyer, have to do about a defect that may be found during a home inspection?**

**A:** A defect that is open, observable and can be discovered through inspection and inquiry is called a “patent defect.” You, as a buyer, are responsible for making efforts to obtain all information about such obvious defects or problems with the property. Also, you will be held responsible and liable for all defects that you could have discovered upon inspection, so make sure you make reasonable efforts to view and inspect the property before buying it.

For example, you may notice such “patent” obvious defects as large cracks in the concrete foundation of the home, a hole in the roof or rotten wood on the home’s front porch. If you decide to buy the home in spite of these obvious defects, you could not later seek damages or a remedy against the seller for the costs of repairing them. The burden is on you to notice these issues before buying the property.

**Q: What about defects that are not obvious?**

**A:** The home may have “latent,” defects that are known to the seller, but cannot be easily discovered by the buyer or may present a dangerous condition. They are hidden in nature. As an exception to the doctrine of the caveat emptor/buyer beware doctrine, sellers must disclose latent defects to the buyer. This requirement provides protection for the innocent buyer.

Latent defects are more complex than patent defects. For example, if a leaking roof can only be noticed when it rains, and an inspection shows no evidence of water damage, this would be a latent defect. Similarly, if a septic tank produces a bad smell occasionally, this would not be a readily observable problem. In such instances the burden falls on the seller. If the seller fails to disclose such issues, the buyer can seek a remedy, if necessary, in court.

It is very important to retain a licensed property inspector to inspect the property before purchase, and make the purchase agreement contingent upon the property passing inspection. An inspector has the knowledge, skills, and experience necessary to thoroughly evaluate the property and notice issues you may never discover until it is too late.

A seller is also liable for fraud or misrepresentations to the buyer. For instance, a seller cannot lie and tell the buyer the foundation is in great condition if the seller knows it is in need of repair or in danger of collapsing. Similarly, a seller cannot tell a buyer a roof has never had any leaks if the seller has replaced the ceiling’s drywall and paint to conceal the fact that the roof leaks every time

there's a severe storm.

**Q: What is an “as-is” clause?**

**A:** In certain circumstances, a seller does not have to disclose latent defects. If a real estate agreement contains an “as-is” clause, then the buyer assumes the risk that latent defects may exist. An “as is” clause relieves the seller of any duty to disclose, and means that the buyer cannot bring a lawsuit against the seller for any passive non-disclosure.

For example, in *Ferguson v. Cadle*, 2009-Ohio-4285, the court held that sellers had no liability under an “as is” home sale contract for failing to disclose the existence of a steel support structure that was installed in a basement wall after the wall had sustained water damage.

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*This “Law You Can Use” consumer information column was provided by the Ohio State Bar Association. It was prepared by Andrew L. Smith, a senior associate attorney in the Cincinnati office of Smith, Rolfes & Skavdahl Company, LPA.*

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