

DON'T FORGET THE REAL ESTATE INSPECTION

In Indiana, any person selling a home must fill out a Residential Real Estate Disclosure Form. This form requires that the seller identify any defects in the home of which he or she is aware. One of the purposes behind this law is to protect individuals purchasing residential real estate from the doctrine of *caveat emptor*, or “let the buyer beware.” Under *caveat emptor*, the seller of a home was, with few exceptions, not required to disclose any facts about the condition of the property. This doctrine limited the ability of the buyer to recover against the seller for defects on the property.

Now, individuals selling residential property must fill out and deliver a disclosure form to the buyer. The form contains a list of common features found in residential properties and the seller must check whether each item is defective, not defective, or state they do not know about the condition of the item. The form also contains several questions about the condition of the property.

Importantly, the disclosure form is not a warranty and may not be used as a substitute for any inspections the buyer may later obtain. See Ind. Code § 32-21-5-9. The seller’s liability is limited in two ways. First, the seller will only be liable for an omission in the disclosure form if they were actually aware the defect existed at the time they completed the form. Second, the seller will not be liable where they relied on a statement from an expert that no defect existed. Ind. Code § 32-21-5-11.

Indiana courts, however, appear to have limited the protection provided by the disclosure form. In a number of cases, the courts have held that in an action for fraud, a buyer cannot rely solely on the representations of a seller, including those in the disclosure form, where the buyer had a reasonable opportunity to inspect the home. According to one court, “[a] purchaser of property has no right to rely upon the representations of the vendor of the property as to its quality, where he has a reasonable opportunity of examining the property and judging for himself as to its qualities.”¹

That sentiment was echoed in McCutchan v. Blanck.² The practical implication is that when a buyer has the opportunity to inspect a home before the sale, failure to do so, or failure to conduct a thorough inspection, *may* relieve the seller from liability for fraud if they fail to disclose a defect in the disclosure form. In McCutchan, the court indicated the buyer could not sustain an action for fraud based on the disclosure form against the seller where the buyer had the chance to conduct an inspection and either failed to do so, or did not conduct a thorough inspection.

The result is that while the use of disclosure forms provide additional protection to buyers when purchasing a home, the buyer should still conduct a thorough inspection of the property prior to the closing. According to the statutes and case law, the disclosure form is not a substitute for an inspection. Consequently, while the disclosure form provides additional protection to buyers, it is important not to rely on it exclusively.

¹ Kashman v. Haas, 766 N.E.2d 417, 422 (Ind. Ct. App. 2002).

² 846 N.E.2d 256, 265 (Ind. Ct. App. 2006).

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Field Code Changed

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