

**C**

Baldwin's Ohio Revised Code Annotated [Currentness](#)

Title LIII. Real Property

▢ [Chapter 5302](#). Statutory Forms of Land Conveyance ([Refs & Annos](#))

▢ Property Disclosure Forms

→ **5302.30 Property disclosure form for transfer of residential real property**

(A) As used in this section:

(1) “Good faith” means honesty in fact in a transaction involving the transfer of residential real property.

(2) “Land installment contract” has the same meaning as in [section 5313.01 of the Revised Code](#).

(3) “Political subdivision” and “state” have the same meanings as in [section 2744.01 of the Revised Code](#).

(4) “Residential real property” means real property that is improved by a building or other structure that has one to four dwelling units.

(B)(1) Except as provided in division (B)(2) of this section, this section applies to any transfer of residential real property that occurs on or after July 1, 1993, by sale, land installment contract, lease with option to purchase, exchange, or lease for a term of ninety-nine years and renewable forever. For purposes of this section, a transfer occurs when the initial contract for transfer is executed, regardless of when legal title is transferred, and references in this section to transfer offers and transfer agreements refer to offers and agreements in respect of the initial contract for transfer.

(2) This section does not apply to any transfer of residential real property that is any of the following:

(a) A transfer pursuant to court order, including, but not limited to, a transfer ordered by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between persons;

(b) A transfer to a mortgagee by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

- (c) A transfer to a beneficiary of a deed of trust by a trustor in default;
  - (d) A transfer by a foreclosure sale that follows a default in the satisfaction of an obligation secured by a mortgage;
  - (e) A transfer by a sale under a power of sale following a default in the satisfaction of an obligation that is secured by a deed of trust or another instrument containing a power of sale;
  - (f) A transfer by a mortgagee, or a beneficiary under a deed of trust, who has acquired the residential real property at a sale conducted pursuant to a power of sale under a mortgage or a deed of trust or who has acquired the residential real property by a deed in lieu of foreclosure;
  - (g) A transfer by a fiduciary in the course of the administration of a decedent's estate, a guardianship, a conservatorship, or a trust;
  - (h) A transfer from one co-owner to one or more other co-owners;
  - (i) A transfer made to the transferor's spouse or to one or more persons in the lineal line of consanguinity of one or more of the transferors;
  - (j) A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of a property settlement agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;
  - (k) A transfer to or from the state, a political subdivision of the state, or another governmental entity;
  - (l) A transfer that involves newly constructed residential real property that previously has not been inhabited;
  - (m) A transfer to a transferee who has occupied the property as a personal residence for one or more years immediately prior to the transfer;
  - (n) A transfer from a transferor who both has not occupied the property as a personal residence within one year immediately prior to the transfer and has acquired the property through inheritance or devise.
- (C) Except as provided in division (B)(2) of this section and subject to divisions (E) and (F) of this section, every person who intends to transfer any residential real property on or after July 1, 1993, by sale, land installment contract, lease with option to purchase, exchange, or lease for a term of ninety-nine years and renewable

forever shall complete all applicable items in a property disclosure form prescribed under division (D) of this section and shall deliver in accordance with division (I) of this section a signed and dated copy of the completed form to each prospective transferee or prospective transferee's agent as soon as is practicable.

(D)(1) Prior to July 1, 1993, the director of commerce, by rule adopted in accordance with Chapter 119. of the Revised Code, shall prescribe the disclosure form to be completed by transferors. The form prescribed by the director shall be designed to permit the transferor to disclose material matters relating to the physical condition of the property to be transferred, including, but not limited to, the source of water supply to the property; the nature of the sewer system serving the property; the condition of the structure of the property, including the roof, foundation, walls, and floors; the presence of hazardous materials or substances, including lead-based paint, asbestos, urea-formaldehyde foam insulation, and radon gas; and any material defects in the property that are within the actual knowledge of the transferor.

The form also shall set forth a statement of the purpose of the form, including statements substantially similar to the following: that the form constitutes a statement of the conditions of the property and of information concerning the property actually known by the transferor; that, unless the transferee is otherwise advised in writing, the transferor, other than having lived at or owning the property, possesses no greater knowledge than that which could be obtained by a careful inspection of the property by a potential transferee; that the statement is not a warranty of any kind by the transferor or by any agent or subagent representing the transferor in this transaction; that the statement is not a substitute for any inspections; that the transferee is encouraged to obtain the transferee's own professional inspection; that the representations are made by the transferor and are not the representations of the transferor's agent or subagent; and that the form and the representations contained therein are provided by the transferor exclusively to potential transferees in a transfer made by the transferor, and are not made to transferees in any subsequent transfers.

The form shall include instructions to the transferor for completing the form, space in which the transferor or transferors shall sign and date the form, and space in which the transferee or transferees shall sign and date the form acknowledging receipt of a copy of the form and stating that the transferee or transferees understand the purpose of the form as stated thereon.

(2) Not later than January 1, 2006, the director shall revise the disclosure form to include a statement that information on the operation and maintenance of the type of sewage treatment system serving the property is available from the department of health or the board of health of the health district in which the property is located.

As used in this section, "sewage treatment system" has the same meaning as in [section 3718.01 of the Revised Code](#).

(E)(1) Each disclosure of an item of information that is required to be made in the property disclosure form prescribed under division (D) of this section in connection with particular residential real property and each act that

may be performed in making any disclosure of an item of information shall be made or performed in good faith.

(2) If an item of information is unknown to the transferor of residential real property at the time the item is required to be disclosed in the property disclosure form and if the approximation is not used for the purpose of circumventing or otherwise evading divisions (C) and (D) of this section, the transferor may make a good faith approximation of the item of information.

(F)(1) A transferor of residential real property is not liable in damages in a civil action for injury, death, or loss to person or property that allegedly arises from any error in, inaccuracy of, or omission of any item of information required to be disclosed in the property disclosure form if the error, inaccuracy, or omission was not within the transferor's actual knowledge.

(2) If any item of information that is disclosed in the property disclosure form is rendered inaccurate after the delivery of the form to the transferee of residential real property or the transferee's agent as a result of any act, occurrence, or agreement, the subsequent inaccuracy does not cause, and shall not be construed as causing, the transferor of the residential real property to be in noncompliance with the requirements of divisions (C) and (D) of this section.

(G) Any disclosure of an item of information in the property disclosure form prescribed under division (D) of this section may be amended in writing by the transferor of residential real property at any time following the delivery of the form in accordance with divisions (C) and (I) of this section. The amendment shall be subject to this section.

(H) Except as provided in division (B)(2) of this section, every prospective transferee of residential real property who receives in accordance with division (C) of this section a signed and dated copy of a completed property disclosure form as prescribed under division (D) of this section shall acknowledge receipt of the form by doing both of the following:

(1) Signing and dating a copy of the form;

(2) Delivering a signed and dated copy of the form to the transferor or the transferor's agent or subagent.

(I) The transferor's delivery under division (C) of this section of a property disclosure form as prescribed under division (D) of this section and the prospective transferee's delivery under division (H) of this section of an acknowledgment of receipt of that form shall be made by personal delivery to the other party or the other party's agent or subagent, by ordinary mail or certified mail, return receipt requested, or by facsimile transmission. For the purposes of the delivery requirements of this section, the delivery of a property disclosure form to a prospective co-transferee of residential real property or a prospective co-transferee's agent shall be considered delivery to the other prospective transferees unless otherwise provided by contract.

(J) The specification of items of information that must be disclosed in the property disclosure form as prescribed under division (D)(1) of this section does not limit or abridge, and shall not be construed as limiting or abridging, any obligation to disclose an item of information that is created by any other provision of the Revised Code or the common law of this state or that may exist in order to preclude fraud, either by misrepresentation, concealment, or nondisclosure in a transaction involving the transfer of residential real property. The disclosure requirements of this section do not bar, and shall not be construed as barring, the application of any legal or equitable defense that a transferor of residential real property may assert in a civil action commenced against the transferor by a prospective or actual transferee of that property.

(K)(1) Except as provided in division (K)(2) of this section, but subject to divisions (J) and (L) of this section, a transfer of residential real property that is subject to this section shall not be invalidated because of the failure of the transferor to provide to the transferee in accordance with division (C) of this section a completed property disclosure form as prescribed under division (D) of this section.

(2) Subject to division (K)(3)(c) of this section, if a transferee of residential real property that is subject to this section receives a property disclosure form or an amendment of that form as described in division (G) of this section after the transferee has entered into a transfer agreement with respect to the property, the transferee, after receipt of the form or amendment, may rescind the transfer agreement in a written, signed, and dated document that is delivered to the transferor or the transferor's agent or subagent in accordance with divisions (K)(3)(a) and (b) of this section, without incurring any legal liability to the transferor because of the rescission, including, but not limited to, a civil action for specific performance of the transfer agreement. Upon the rescission of the transfer agreement, the transferee is entitled to the return of, and the transferor shall return, any deposits made by the transferee in connection with the proposed transfer of the residential real property.

(3)(a) Subject to division (K)(3)(b) of this section, a rescission of a transfer agreement under division (K)(2) of this section only may occur if the transferee's written, signed, and dated document of rescission is delivered to the transferor or the transferor's agent or subagent within three business days following the date on which the transferee or the transferee's agent receives the property disclosure form prescribed under division (D) of this section or the amendment of that form as described in division (G) of this section.

(b) A transferee may not rescind a transfer agreement under division (K)(2) of this section unless the transferee rescinds the transfer agreement by the earlier of the date that is thirty days after the date upon which the transferor accepted the transferee's transfer offer or the date of the closing of the transfer of the residential real property.

(c) A transferee of residential real property may waive the right of rescission of a transfer agreement described in division (K)(2) of this section.

(d) A rescission of a transfer agreement is not permissible under division (K)(2) of this section if a transferee of residential real property that is subject to this section receives a property disclosure form as prescribed under di-

vision (D) of this section or an amendment of that form as described in division (G) of this section prior to the transferee's submission to the transferor or the transferor's agent or subagent of a transfer offer and the transferee's entry into a transfer agreement with respect to the property.

(4) If a transferee of residential real property subject to this section does not receive a property disclosure form from the transferor after the transferee has submitted to the transferor or the transferor's agent or subagent a transfer offer and has entered into a transfer agreement with respect to the property, the transferee may rescind the transfer agreement in a written, signed, and dated document that is delivered to the transferor or the transferor's agent or subagent in accordance with division (K)(4) of this section without incurring any legal liability to the transferor because of the rescission, including, but not limited to, a civil action for specific performance of the transfer agreement. Upon the rescission of the transfer agreement, the transferee is entitled to the return of, and the transferor shall return, any deposits made by the transferee in connection with the proposed transfer of the residential real property. A transferee may not rescind a transfer agreement under division (K)(4) of this section unless the transferee rescinds the transfer agreement by the earlier of the date that is thirty days after the date upon which the transferor accepted the transferee's transfer offer or the date of the closing of the transfer of the residential real property.

(L) The right of rescission of a transfer agreement described in division (K)(2) of this section or the absence of that right does not affect, and shall not be construed as affecting, any other legal causes of action or other remedies that a transferee or prospective transferee of residential real property may possess against the transferor of that property.

#### CREDIT(S)

(2004 H 231, eff. 5-6-05; 1992 S 304, eff. 3-19-93)

#### HISTORICAL AND STATUTORY NOTES

**Amendment Note:** 2004 H 231 designated division (D)(1); added division (D)(2); inserted "(1)" in the first sentence of division (J); inserted "division (K)(4) of" twice in division (K)(4); substituted "section" for "paragraph" in division (K)(4); made changes to reflect gender neutral language throughout; and made other nonsubstantive changes.

#### CROSS REFERENCES

Erosion hazards, notice to purchasers, [1506.06](#)

#### OHIO ADMINISTRATIVE CODE REFERENCES

Residential property disclosure form, [OAC 1301:1-4-10](#)

## LIBRARY REFERENCES

Consumer [Protection](#)  8.

Westlaw Topic No. 92H.

[C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 237, 238.](#)

## RESEARCH REFERENCES

## Encyclopedias

[93 Am. Jur. Proof of Facts 3d 293](#), Real Estate Purchaser's Recovery of Damages for Seller's Nondisclosure of Dangerous Condition of Land.

[OH Jur. 3d Brokers § 139](#), Fraud.

[OH Jur. 3d Fraud & Deceit § 34](#), Quality, Condition, and Character of Land.

[OH Jur. 3d Fraud & Deceit § 48](#), Duty to Speak--As Between Vendor and Vendee, or Seller and Purchaser.

[OH Jur. 3d Fraud & Deceit § 99](#), Generally--Real Estate Transactions; Duty to Inspect.

[OH Jur. 3d Fraud & Deceit § 145](#), Caveat Emptor and "As Is" Clauses.

[OH Jur. 3d Fraud & Deceit § 195](#), Reliance Upon Representation.

[OH Jur. 3d Real Property Sales & Exchanges § 25](#), Fraud.

[OH Jur. 3d Real Property Sales & Exchanges § 95](#), Generally; Rule of Caveat Emptor.

[FormsOhio Forms Legal and Business § 1:24](#), Transaction Information--Client is Seller.

[Ohio Forms Legal and Business § 1:25](#), Transaction Information--Client is Buyer.

[Ohio Forms Legal and Business § 1:28](#), Disclosure Requirement.

[Ohio Forms Legal and Business § 1:38](#), Residential Property Disclosure Form.

[Ohio Forms Legal and Business § 1B:7](#), Disclosure Requirement.

[Ohio Forms Legal and Business § 1C:6](#), Disclosure Requirement.

[Ohio Forms Legal and Business § 2:16](#), Disclosure Requirement.

Treatises and Practice Aids

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 41:5](#), Sales--Remedies--Caveat Emptor--Requirements--Opportunity for Inspection.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 41:7](#), Sales--Remedies--Caveat Emptor--Fraudulent Misrepresentation.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 41:8](#), Sales--Remedies--Caveat Emptor--Fraudulent Concealment or Fraudulent Non-Disclosure.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:10](#), Sales--Performance--Seller Disclosure--Real Estate Covered.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:11](#), Sales--Performance--Seller Disclosure--Disclosure Form.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:12](#), Sales--Performance--Seller Disclosure--Good Faith and Actual Knowledge.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:13](#), Sales--Performance--Seller Disclosure--Changes and Amendments.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:14](#), Sales--Performance--Seller Disclosure--Delivery and Receipt.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:15](#), Sales--Performance--Seller Disclosure--Effects of Non-Compliance.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:16](#), Sales--Performance--Seller Disclosure--Miscellaneous.

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 40:21, Sales--Commercial Property.](#)

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 41:11, Sales--Remedies--Remedies of Defrauded Buyer--Rescission.](#)

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 44:16, Seller Disclosure.](#)

[Kuehnle and Levey, Ohio Real Estate Law and Practice § 56:188, Sales--Land Installment Contract.](#)

#### LAW REVIEW AND JOURNAL COMMENTARIES

Can the inspection leg of the construction industry help prevent mold in the future? Michael F. Copley (Ed. Note: The dangers and possible remedies for indoor mold growth are discussed.), 3 Code News 29 (May/June 2003).

Caveat Emptor and the Leaky Basement, Stanley B. Kent. 70 Clev B J 48 (November 1998).

Common Real Estate Issues for Estate Planners. David. W. Woodburn, 18 Prob. L.J. Ohio 150, (January/February 2008).

Lead-Based Paint Disclosure Now Required, Rob M. Kochis (Ed. note: The Residential Lead Paint Hazard Reduction Act of 1992, 42 USCA 4852d, and 24 CFR Part 35, Subpart H, 35.80 et seq. are discussed.) 67 Clev B J 22 (September 1996).

Residential real estate condition disclosure legislation, Robert M. Washburn. [44 DePaul L Rev 381 \(1995\).](#)

Seller And Buyer Beware--Ohio's New Seller Disclosure Law, David S. Sidor. 7 Ohio Law 8 (May/June 1993).

A Seller Can't Hide Behind "As Is" Clause--Irrespective of how well-drafted they are, such provisions do not obviate the seller's obligation to disclose known latent defects, Bryan Mashian and Shirley S. Lu. 19 Nat'l L J B9 (October 21, 1996).

#### NOTES OF DECISIONS

In general [6](#)

Agent's liability [4](#)

"As is" sale clause [2](#)

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Bankruptcy of seller, effect [9](#)

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## Private home inspections, liability 7

### 1. Fraudulent misrepresentation

Evidence was insufficient to establish that sellers of home concealed termite problem in home from purchasers, in purchasers' fraudulent concealment claim against sellers, seller's agent, and others; sellers had no actual knowledge of the presence of termites in home when they completed disclosure form stating there was no termite problem, sellers learned of the termite problem after purchasers' agent hired an inspector who discovered the termites, and the knowledge of purchasers' agent was imputed to purchasers. [Cliff v. Loudenslager \(Ohio App. 12 Dist., Clermont, 11-06-2006\) No. CA2006-01-002, 2006-Ohio-5844, 2006 WL 3186541, Unreported, appeal not allowed 113 Ohio St.3d 1442, 863 N.E.2d 658, 2007-Ohio-1266. Fraud ↪ 16](#)


Statement allegedly made by sellers' agent, that purchasers were "getting a wonderful house," did not constitute a positive representation that there were no termites in house, for the purpose of purchasers' fraudulent misrepresentation claim against sellers, agent, and others after purchasers discovered the presence of termites in home; the statement was subjective and could not be verified as truthfully or falsely made, there was no evidence that statement was made with the intent to mislead purchasers into relying upon it, there was no evidence that purchasers relied on the statement in deciding to purchase home, and the statement was made under the belief that purchasers knew of the termite problem since purchasers agent had informed sellers agent of the problem after an inspector hired by purchasers agent discovered the termites. [Cliff v. Loudenslager \(Ohio App. 12 Dist., Clermont, 11-06-2006\) No. CA2006-01-002, 2006-Ohio-5844, 2006 WL 3186541, Unreported, appeal not allowed 113 Ohio St.3d 1442, 863 N.E.2d 658, 2007-Ohio-1266. Brokers ↪ 102; Fraud ↪ 4; Fraud ↪ 11\(1\); Fraud ↪ 20](#)


Failure of real estate agent to deliver home inspection addendum to purchasers, which addendum described water and insect damage to the home, did not constitute a concealment of material facts, as would allow for a finding of fraudulent misrepresentation, where the addendum contained information already available to the purchasers. [Weiker v. A.A. Green Realty, Inc. \(Ohio App. 6 Dist., Wood, 04-14-2006\) No. WD-05-081, 2006-Ohio-1860, 2006 WL 964718, Unreported. Brokers ↪ 34](#)


Trial court error, if any, in concluding that purchasers' reliance upon vendors' statements was not justified, as far as such conclusion related to purchasers' fraud and fraudulent misrepresentation claims against vendors, was harmless, where trial court also concluded that purchasers did not satisfy any element of their fraud-based claims. [Brothers v. Morrone-O'Keefe Dev. Co. \(Ohio App. 10 Dist., Franklin, 03-09-2006\) No. 05AP-161, 2006-Ohio-1160, 2006 WL 620894, Unreported. Appeal And Error ↪ 1071.1\(7\)](#)


Purchasers who discovered live termites in house after taking possession failed to establish justifiable reliance on any misrepresentations by vendors regarding extent of termite infestation, where purchasers were put on notice during negotiations that termites had previously infested home and caused damage, home inspector observed termite damage and recommended further investigation, and thus vendors were not liable on purchasers' claims for fraud and misrepresentation. [Niermeyer v. Cook's Termite & Pest Control, Inc. \(Ohio App. 10 Dist., Frank-](#)

lin, 02-14-2006) No. 05AP-21, 2006-Ohio-640, 2006 WL 330099, Unreported. Fraud  23

Purchasers of residence who brought successful action against vendors arising out of vendors' failure to disclose flooding problems and mold affecting the property were not entitled to rescission of the purchase as a remedy; purchasers received and reviewed a residential property disclosure form prior to executing the purchase agreement, and purchasers had an adequate remedy at law in the form of damages. [Zappitelli v. Miller \(Ohio App. 8 Dist., Cuyahoga, 01-26-2006\) No. 85895, 2006-Ohio-279, 2006 WL 178558](#), Unreported, appeal allowed 110 Ohio St.3d 1437, 852 N.E.2d 186, 2006-Ohio-3862, reversed 114 Ohio St.3d 102, 868 N.E.2d 968, 2007-Ohio-3251. Vendor And Purchaser  36(2)

Jury's award of \$134,500 in damages to purchasers of residence in their action against vendors arising out of the failure to disclose flooding problems and mold affecting the property was not influenced by passion or prejudice; purchasers paid more than half a million dollars on the property, and damages awarded were justified by the decrease in property's value and the cost to correct the situation. [Zappitelli v. Miller \(Ohio App. 8 Dist., Cuyahoga, 01-26-2006\) No. 85895, 2006-Ohio-279, 2006 WL 178558](#), Unreported, appeal allowed 110 Ohio St.3d 1437, 852 N.E.2d 186, 2006-Ohio-3862, reversed 114 Ohio St.3d 102, 868 N.E.2d 968, 2007-Ohio-3251. Fraud  62

Sufficient evidence supported jury's award of \$134,500 in damages to purchasers of residence in their action against vendors arising out of the failure to disclose flooding problems and mold affecting the property; purchasers demonstrated out-of-pocket expenses, maintenance costs, repair costs, attorney fees, and diminution in value of the residence. [Zappitelli v. Miller \(Ohio App. 8 Dist., Cuyahoga, 01-26-2006\) No. 85895, 2006-Ohio-279, 2006 WL 178558](#), Unreported, appeal allowed 110 Ohio St.3d 1437, 852 N.E.2d 186, 2006-Ohio-3862, reversed 114 Ohio St.3d 102, 868 N.E.2d 968, 2007-Ohio-3251. Fraud  62

Sufficient evidence supported trial court's award of judgment to purchasers of residence in their action against vendors for money damages, among other relief, arising out of vendors' failure to disclose flooding problems and mold affecting the property; neighbors testified that the flooding was common knowledge in the neighborhood, and a previous sale of the property was rescinded because of mold. [Zappitelli v. Miller \(Ohio App. 8 Dist., Cuyahoga, 01-26-2006\) No. 85895, 2006-Ohio-279, 2006 WL 178558](#), Unreported, appeal allowed 110 Ohio St.3d 1437, 852 N.E.2d 186, 2006-Ohio-3862, reversed 114 Ohio St.3d 102, 868 N.E.2d 968, 2007-Ohio-3251. Fraud  58(1)

Purchasers were not justified in relying on real estate agent's representation as to square footage of purchased house, and thus failed to establish negligent or fraudulent misrepresentation by real estate agent; although size of the house, represented in the feature sheet, multiple listing service (MLS) printout, and tax records as 1,991 square feet rather than 1,445, was misstated, purchasers inspected the house three times, presented no evidence to show they relied on the errors, and had the opportunity to discover the home's size themselves, and the feature sheet contained a disclaimer for any errors and tax records included footage for a garage. [Abbott v. Loss Realty Group \(Ohio App. 6 Dist., Lucas, 11-04-2005\) No. L-05-1107, 2005-Ohio-5876, 2005 WL 2933757](#), Unrepor-

ted. [Brokers](#) 102

Vendors' representations that basement, sewer system, drainage, and other material items in home were fully functional did not constitute a breach of contract based on fraudulent inducement; there was no evidence that vendors knew otherwise. [Reeder v. Frey \(Ohio App. 8 Dist., Cuyahoga, 11-03-2005\) No. 85932, 2005-Ohio-5853, 2005 WL 2885962, Unreported.](#) [Vendor And Purchaser](#) 343(1)

Purchaser failed to present evidence that she justifiably relied upon vendors' representations concerning condition of home, and thus purchaser could not prevail on claim for fraud; purchase agreement was contingent upon home inspection, which was performed two days after parties signed agreement. [Reeder v. Frey \(Ohio App. 8 Dist., Cuyahoga, 11-03-2005\) No. 85932, 2005-Ohio-5853, 2005 WL 2885962, Unreported.](#) [Fraud](#) 23

Vendors did not fraudulently misrepresent or conceal condition of home during sale to purchaser; vendors disclosed sewer problem in residential property disclosure form, vendors believed that sewer problem had been repaired, and vendors had no other communication with purchaser prior to entering into sales agreement. [Reeder v. Frey \(Ohio App. 8 Dist., Cuyahoga, 11-03-2005\) No. 85932, 2005-Ohio-5853, 2005 WL 2885962, Unreported.](#) [Fraud](#) 9; [Fraud](#) 16

Lot purchaser's complaint against his real estate agent and agency for fraudulent misrepresentation failed to state the place of the alleged false representations or identify the individual who gave the false representation, and thus was insufficient to set forth an actionable fraudulent misrepresentation claim. [Schmiedebusch v. Rako Realty, Inc. \(Ohio App. 5 Dist., Delaware, 09-16-2005\) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported.](#) [Pleading](#) 18

Lot purchaser's reliance on listing by listing agent and vendor was not justified, such that purchaser could prevail on fraud or misrepresentation action against them, even if photograph used in listing made it appear that lot for sale was actually two adjacent lots, as true identity of the lot and its size were easily discoverable; actual size of the lot for sale was a matter readily discoverable by purchaser, listing agent and vendor provided plat of the area upon inquiry by purchaser's agent and prior to closing on the property, plat showed the lots and addresses of the property involved, listing contained an accurate description of the lot for sale, and an accurate description of the land area was presented in the relevant documents at closing. [Schmiedebusch v. Rako Realty, Inc. \(Ohio App. 5 Dist., Delaware, 09-16-2005\) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported.](#) [Brokers](#) 102; [Fraud](#) 22(1)

Purchasers did not establish that vendor negligently misrepresented information relating to the square footage of the house; vendor's uncontroverted evidence that he relied upon measurements made by the county auditor showed that he did not act negligently in representing the square footage of the house to purchasers. [Li v. Stanek \(Ohio App. 8 Dist., Cuyahoga, 08-11-2005\) No. 85553, 2005-Ohio-4168, 2005 WL 1926500, Unreported.](#) [Fraud](#) 58(1)

Purchasers did not establish that vendor fraudulently misrepresented information relating to the square footage of house, absent evidence that vendor made intentionally false representations; there was no evidence to show the actual square footage of the house and that vendor knew the actual square footage and misrepresented that fact. [Li v. Stanek \(Ohio App. 8 Dist., Cuyahoga, 08-11-2005\) No. 85553, 2005-Ohio-4168, 2005 WL 1926500, Unreported. Fraud ↪ 58\(2\)](#)


Vendors and real estate agents had no duty to inform purchasers that county was contemplating an assessment for water and sewer improvements and, thus, were not liable to purchasers for fraud, even though vendors signed petitions for water and sewer improvements, attended meeting of county commissioners to discuss improvements, and executed residential property disclosure form stating that they possessed no greater knowledge concerning the property “than that which could be obtained by careful inspection of the property by a potential purchaser,” where purchase occurred two months before county sent notice of final meeting regarding approval of assessment. [Maser v. Teague \(Ohio App. 5 Dist., Stark, 12-20-2004\) No. 2004CA00039, 2004-Ohio-6986, 2004 WL 2955224, Unreported. Brokers ↪ 102; Fraud ↪ 17](#)



Home purchasers failed to establish fraud claim against home vendors; although purchasers claimed vendors failed to disclose that basement walls bulged and that house had water problems in basement, vendors disclosed that foundation wall had collapsed during construction, there was no evidence that vendors had knowledge that basement walls bulged at time of sale, and purchaser testified that he and his family had never seen water in basement. [Getz v. Taylor \(Ohio App. 5 Dist., Fairfield, 10-04-2004\) No. 03 CA 99, 2004-Ohio-5506, 2004 WL 2315170, Unreported. Fraud ↪ 13\(2\)](#)


Real property purchasers failed to establish fraudulent misrepresentation claim against real estate agent and agency that represented vendors, where purchasers hired independent inspector to examine property, purchase agreement was contingent on inspection rather than any alleged representations by agent and/or agency, and flooding of property was not only known to vendors and agent/agency, but was ascertainable from other sources such as public record indicating part of property was in flood zone. [Ruggles v. Realtors \(Ohio App. 9 Dist., Lorain, 09-01-2004\) No. 03CA008411, 2004-Ohio-4580, 2004 WL 1933215, Unreported. Brokers ↪ 102](#)


Real property purchasers failed to establish fraudulent inducement claim against vendors; although purchasers alleged vendors induced purchasers to buy property on which to build horse barn by failing to disclose true nature of flooding of creek adjacent to property, purchase agreement did not indicate that purchase was conditioned on purchasers being able to build horse barn on property, purchasers averred that they were not impeded in investigating property for flooding, and flood hazard map created by federal agency, which indicated part of property was in flood zone, was public record. [Ruggles v. Realtors \(Ohio App. 9 Dist., Lorain, 09-01-2004\) No. 03CA008411, 2004-Ohio-4580, 2004 WL 1933215, Unreported. Fraud ↪ 23](#)


When purchaser viewed the basement of home, there was nothing to indicate the possibility of a more serious water problem beyond that which had been disclosed by vendor on disclosure form, namely slight dampness on the south wall of basement, and under these circumstances, purchaser was not alerted to a possible defect requir-

ing further inquiry in connection with purchaser's fraudulent misrepresentation claim against vendor, who allegedly misrepresented and concealed water problems in the basement of home; once purchaser was alerted to possible defect, she could not simply sit back and then raise her lack of expertise when a problem arose, and aware of possible problem, purchaser had duty to either make further inquiry of vendor, who was under duty not to engage in fraud, or seek advice of someone with sufficient knowledge to appraise the defect. [Klasa v. Rogers \(Ohio App. 8 Dist., Cuyahoga, 08-26-2004\) No. 83374, 2004-Ohio-4490, 2004 WL 1902539, Unreported. Fraud](#)  22(1)

Evidence was sufficient to support finding that vendors of land containing pond had engaged in fraudulent misrepresentation and concealment of fact that pond on land was leaking and would not hold water; in addition to parties's testimony, geotechnical engineer gave expert testimony that materials used to construct dam were not suitable, that there was low probability dam ever held water, and that leak through dam was not necessarily visible on surface, neighbor testified there was continuous leakage on his property since pond was built and that vendors were constantly pumping water into pond, and father of neighbor testified he was often at son's property and that he had only seen pond full once. [Cox v. Storsin \(Ohio App. 5 Dist., Stark, 07-12-2004\) No. 2003CA00263, 2004-Ohio-3714, 2004 WL 1563434, Unreported. Evidence](#)  571(6); [Fraud](#)  58(2)

Purchaser established fraud claim against vendors by demonstrating that water leakage problem existed prior to her purchase of house, that she did not notice water leakage problem prior to purchase, and that she relied upon vendors' misrepresentations regarding water leakage problem; contractor testified that vendors consulted him about precise water leakage problem purchaser experienced after her purchase of house, purchaser testified that she did not observe any evidence of water leakage when she inspected house, and purchaser testified that she relied upon vendors' misrepresentations. [Patton v. Moore \(Ohio App. 4 Dist., Scioto, 06-07-2004\) No. 03CA2902, 2004-Ohio-3629, 2004 WL 1531936, Unreported. Fraud](#)  27

Holding individual who, pursuant to power of attorney, signed property disclosure form for home vendors liable to purchaser for cost of replacement air conditioner was against manifest weight of evidence; there was no evidence that individual had actual knowledge that air conditioner did not work and trial court's judgment entry, providing that it was not saying that individual knowingly concealed information, suggested that court was satisfied that individual had no actual knowledge of air conditioner's status. [Reiter v. Davidson \(Ohio App. 3 Dist., Seneca, 06-01-2004\) No. 13-03-77, 2004-Ohio-2800, 2004 WL 1192431, Unreported. Antitrust And Trade Regulation](#)  369

Home purchasers failed to establish fraudulent misrepresentation claim against home vendors related to water problems in home; although disclosure form completed by vendors indicated that there were no known water problems and flooding occurred shortly after purchasers took possession of home, only evidence proffered by purchasers was affidavit in which purchaser claimed that vendors must have known about water problems. [Di-Cillo v. Prindle \(Ohio App. 9 Dist., Summit, 05-12-2004\) No. 21618, 2004-Ohio-2366, 2004 WL 1057630, Unreported. Fraud](#)  58(2)

Evidence of damages from vendor's alleged fraudulent inducement and negligent misrepresentation concerning concealed landfill on property was sufficient to submit damages issue to jury; vendor testified he would not have purchased property if he knew of landfill, vendor testified that location of structures on property violated environmental regulations and virtually prohibited resale of property, and purchaser testified as to actual expenses incurred and potential cost to remove landfill. [Clemente v. Gardner \(Ohio App. 5 Dist., Licking, 04-26-2004\) No. 2002CA00120, 2004-Ohio-2254, 2004 WL 953700](#), Unreported. [Fraud](#) 64(1)

Parol evidence rule did not prohibit purchasers from introducing evidence that vendor fraudulently induced them into entering into real estate purchase contracts to purchase land containing concealed landfill. [Clemente v. Gardner \(Ohio App. 5 Dist., Licking, 04-26-2004\) No. 2002CA00120, 2004-Ohio-2254, 2004 WL 953700](#), Unreported. [Evidence](#) 434(11)

Purchaser of condominium unit could not establish justifiable reliance element of fraud, for purposes of maintaining fraud action against vendor of unit for undisclosed structural damage to unit; purchase agreement stated that vendor had no knowledge of condition of house, and purchaser's signature on agreement was acknowledgment of vendor's lack of knowledge, vendor made no statements as to condition of house on property disclosure form, and purchaser could point to no other affirmative statements or representations by vendor. [Majoy v. Hord \(Ohio App. 6 Dist., Erie, 04-23-2004\) No. E-03-037, 2004-Ohio-2049, 2004 WL 870430](#), Unreported. [Fraud](#) 20; [Fraud](#) 36

Purchaser of condominium unit failed to show actual knowledge by unit vendor of structural defect in unit caused by water and termite damage, and thus purchaser could not state cause of action for fraudulent concealment; although vendor had duty to disclose structural damage, vendors did not fill out any spaces on property disclosure form, except for typed clause indicating that vendor had never resided in unit and had no knowledge as to condition of unit. [Majoy v. Hord \(Ohio App. 6 Dist., Erie, 04-23-2004\) No. E-03-037, 2004-Ohio-2049, 2004 WL 870430](#), Unreported. [Fraud](#) 16; [Fraud](#) 17

Purchaser of land, whose application for building permit was denied, could not establish fraudulent misrepresentation or fraudulent concealment by vendors; although purchaser asserted vendors falsely declared that land was suitable for building single family residence, purchaser testified that he researched and verified vendors' declaration prior to purchasing land. [State ex rel. Nunnally v. Village of Oakwood \(Ohio App. 8 Dist., Cuyahoga, 04-01-2004\) No. 83326, 2004-Ohio-1679, 2004 WL 637788](#), Unreported, appeal not allowed [103 Ohio St.3d 1427, 814 N.E.2d 490, 2004-Ohio-4524](#). [Fraud](#) 20

Even if vendors, listing real estate broker, and listing real estate agent had properly presented res judicata defense in motion for summary judgment rather than motion to dismiss, purchasers' prior Municipal Court action regarding failure to disclose location of home's septic tank did not bar purchasers' subsequent fraud action in Court of Common Pleas regarding misrepresentation concerning condition of septic tank and system; claims in prior and subsequent actions did not arise from a common nucleus of operative facts, and fraud claim had not accrued when Municipal Court action was filed. (Per Timothy E. McMonagle, J., with one Judge concurring in

judgment only, and one Judge concurring specially.) [Ardary v. Stepien \(Ohio App. 8 Dist., Cuyahoga, 02-12-2004\) No. 82950, 2004-Ohio-630, 2004 WL 253491, Unreported. Judgment ↪ 585\(3\)](#)

Vendor of condominium unit fraudulently misrepresented on residential property disclosure form that there were no problems with heating, ventilation, and air conditioning (HVAC) unit; vendor had spoken regarding noise problems with HVAC unit, condominium owners' association sent vendor a letter advising vendor of noise problems and requesting that unit be repaired immediately, and vendor did not have unit repaired before signing form. [McClintock v. Fluellen \(Ohio App. 8 Dist., Cuyahoga, 01-08-2004\) No. 82795, 2004-Ohio-58, 2004 WL 35782, Unreported. Fraud ↪ 13\(1\); Fraud ↪ 13\(2\)](#)

Genuine issue of material fact as to whether home vendors applied masonry compound, latex caulk, and white paint on basement wall in an attempt to conceal water seepage from purchasers precluded summary judgment for vendors, as to purchasers' fraudulent concealment claim. [Kimball v. Duy \(Ohio App. 11 Dist., Lake, 12-27-2002\) No. 2002-L-046, 2002-Ohio-7279, 2002 WL 31886713, Unreported. Judgment ↪ 181\(29\)](#)

Home purchasers could not have justifiably relied, as element of fraudulent misrepresentation, on any representations of vendors regarding lack of water seepage in basement, where the real estate purchase agreement was contingent upon completion of inspection that was acceptable to purchasers. [Kimball v. Duy \(Ohio App. 11 Dist., Lake, 12-27-2002\) No. 2002-L-046, 2002-Ohio-7279, 2002 WL 31886713, Unreported. Fraud ↪ 23](#)

Genuine issue of material fact as to whether purchasers' real estate agent breached duty to purchasers by attempting to conceal fact that capped gas well's existence was not revealed by requesting that purchasers sign a post-closing addendum which indicated that purchasers knew of well, and that agent never informed them of their right to receive residential property disclosure form, precluded summary judgment for agent in purchasers' action against agent and vendors. [Bedwell v. Schmitt \(Ohio App. 11 Dist., Portage, 12-13-2002\) No. 2001-P-0136, 2002-Ohio-6909, 2002 WL 31813019, Unreported, appeal not allowed 98 Ohio St.3d 1540, 786 N.E.2d 902, 2003-Ohio-1946. Judgment ↪ 181\(18\)](#)

Allegations that homeowners' association made knowing misrepresentations when it approved purchasers' plan to construct a residence on a lot in spite of a sewer easement on the property was insufficient to state a claim against the association of fraud, given that existence of sewer easement was a matter of record and was discoverable upon reasonable inspection. [McMullian v. Borean \(Ohio App. 6 Dist., 07-28-2006\) 167 Ohio App.3d 777, 857 N.E.2d 180, 2006-Ohio-3867. Fraud ↪ 22\(1\)](#)

Vendors' disclosure to purchaser that septic system was not up to code and that there was problem with leach field negated any reasonable reliance that purchaser might have had on vendors' allegedly fraudulent misrepresentations concerning existence of leach field; once problem with septic system was disclosed, extent of problem was discoverable upon reasonable inspection, and purchaser did not avail herself of opportunity to have inspection performed. [Loomis v. Troknya \(Ohio App. 6 Dist., 02-17-2006\) 165 Ohio App.3d 300, 846 N.E.2d 101, 2006-Ohio-731. Fraud ↪ 22\(1\)](#)

Testimony of contractor who had done some repairs to crawl space underneath house, that vendors should have known the crawl space had moisture problems, did not establish that vendors had actual knowledge of moisture problems or that vendors purposely misrepresented or concealed moisture problems, in purchasers' action for fraudulent misrepresentation, fraudulent concealment, and fraudulent inducement. [Clark v. Allen \(Ohio App. 12 Dist., 09-02-2003\) 154 Ohio App.3d 200, 796 N.E.2d 965, 2003-Ohio-4617](#). Fraud ↪ 58(2)


Evidence that toe strip at bottom of baseboard in master bedroom concealed separation between baseboard and subfloor that allowed one to see into crawl space underneath house, that someone had applied yellow foam behind baseboard, that new linoleum in utility room was not glued to floor, and that entire subfloor underneath new linoleum in utility room was wet and rotted, did not establish that vendors fraudulently concealed moisture in crawl space; one vendor testified that toe strip was installed in master bedroom several years before sale of house, that toe strip was installed because it looked better with it, that she had never seen the foam and did not know how it ended up behind baseboard, that linoleum in utility room was replaced six years before sale because puppy had chewed the old linoleum, and that the new linoleum did not need to be glued as it was held down by washer and other items in utility room. [Clark v. Allen \(Ohio App. 12 Dist., 09-02-2003\) 154 Ohio App.3d 200, 796 N.E.2d 965, 2003-Ohio-4617](#). Fraud ↪ 16


Trial court's statements, in its findings, that “the crawl space problem [was] a patent defect” and that “[i]t might be reasonably argued that the crawl space problem was in fact a latent defect” were not inconsistent, and thus, reversal of the judgment for home vendors was not warranted, in purchasers' action for fraudulent misrepresentation; trial court was merely making an “in the alternative” argument, and trial court stated that even if crawl space problem was latent defect, purchasers' fraudulent misrepresentation claim failed because vendors did not know about the problem. [Clark v. Allen \(Ohio App. 12 Dist., 09-02-2003\) 154 Ohio App.3d 200, 796 N.E.2d 965, 2003-Ohio-4617](#). Fraud ↪ 66


Evidence established that home vendors did not know about serious rotting of beams and dampness in crawl space underneath house, in action for fraudulent misrepresentation, fraudulent concealment, and fraudulent inducement; upon learning, two years before sale, about fungi and moisture in crawl space, vendors had hired contractor to spray wood surfaces and install three air vents, vendors thereafter did not notice any problems with floors and ladders stored in crawl space were never wet, and one vendor testified she checked “yes” on disclosure form, in response to question about whether vendors knew of defects in crawl space, not because she knew of current problems but as means of notifying potential purchasers that some work had been done in crawl space in the past. [Clark v. Allen \(Ohio App. 12 Dist., 09-02-2003\) 154 Ohio App.3d 200, 796 N.E.2d 965, 2003-Ohio-4617](#). Fraud ↪ 13(2)


Trial court erroneously decided the purchaser's fraud claim that was no longer before the court following the purchaser's election to proceed on rescission claim against vendor. [Allison v. Cook \(Ohio App. 12 Dist., 10-16-2000\) 139 Ohio App.3d 473, 744 N.E.2d 254](#). Election Of Remedies ↪ 14


Finding that vendors fraudulently concealed fuel oil contamination on basement wall from purchasers of home



was supported by evidence that contamination was obscured when purchasers viewed home with their agent because door to an adjacent laundry room was open and furniture was piled against wall, and by purchasers' testimony that they relied on residential disclosure form that failed to indicate the contamination problem. [Padgett v. Sanders \(Ohio App. 12 Dist., 09-28-1998\) 130 Ohio App.3d 117, 719 N.E.2d 636. Fraud](#)  58(1)

Refusal to award punitive damages to purchasers of home from whom vendors fraudulently concealed fuel oil contamination on basement wall was not abuse of discretion, in absence of evidence that vendors consciously disregarded a risk to purchasers' health or safety. [Padgett v. Sanders \(Ohio App. 12 Dist., 09-28-1998\) 130 Ohio App.3d 117, 719 N.E.2d 636. Fraud](#)  61

Award of \$3,250 in compensatory damages to purchasers of home was reasonable in fraudulent concealment action brought in connection with fuel oil contamination on basement wall; award was based on environmental contractor's testimony concerning health hazard posed by contamination, the possibility of cleaning the contamination by removing soil near underground storage tank, and his professional assessment of reasonable clean-up costs. [Padgett v. Sanders \(Ohio App. 12 Dist., 09-28-1998\) 130 Ohio App.3d 117, 719 N.E.2d 636. Fraud](#)  62

Vendor who gave fresh paint job to basement of house prior to sale and wrote on residential property disclosure form that there was "some moisture" in basement during heavy rains did not fraudulently conceal extent of the water problem, although purchasers allegedly experienced severe water problems in basement immediately after moving in that did not occur only in heavy rains, absent evidence that vendor knew that the statement on the disclosure form was false. [Felker v. Schwenke \(Ohio App. 8 Dist., 08-17-1998\) 129 Ohio App.3d 427, 717 N.E.2d 1165. Fraud](#)  13(2)

Purchaser did not justifiably rely on vendor's alleged misrepresentation concerning extent of water leakage in basement, and thus was precluded, as matter of law, from maintaining fraudulent misrepresentation claim, where two home inspectors each told purchaser to inquire into drainage system as it related to basement. [Cardi v. Gump \(Ohio App. 8 Dist., 06-05-1997\) 121 Ohio App.3d 16, 698 N.E.2d 1018. Fraud](#)  23

Vendors and broker did not fraudulently conceal existence of water problems in house, where vendors' disclosure statement indicated that there had been water problems in basement, but that they did not know of any current problems, conditions evidencing dampness in basement reported by purchasers' contractor were open, observable, and readily apparent upon inspection, there was no evidence that broker knew or should have known of any current water problems, and broker did not make any representation concerning property's condition. [Black v. Cosentino \(Ohio App. 9 Dist., 12-26-1996\) 117 Ohio App.3d 40, 689 N.E.2d 1001. Brokers](#)  102; [Fraud](#)  16

Vendors and broker did not fraudulently conceal Federal Housing Authority (FHA) inspection report, which indicated house needed numerous repairs, or that real reason for termination of purchasers' FHA loan application process was result of inspection; areas of concern in house were open and obvious, purchasers admitted they

were aware of many of those problems, and there was no evidence of fraud on part of vendors or broker, or that purchaser's employment status was not real reason for denial of loan. [Black v. Cosentino \(Ohio App. 9 Dist., 12-26-1996\) 117 Ohio App.3d 40, 689 N.E.2d 1001](#). [Brokers](#) 🔑 102; [Fraud](#) 🔑 16

Home purchaser did not justifiably rely on erroneous statements by real estate agent that sellers had no pets and that water seepage in basement was caused by drainage problem that had been remedied with repair of downspout, and thus purchaser could not recover on fraudulent misrepresentation claim; purchaser learned that pets were on premises after making purchase offer but did not request any accommodations on account of the pets before entering into sales agreement, and disclosure statement from sellers as well as home inspection report indicated that water seepage in basement was more serious problem than indicated by real estate agent. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265](#).

Finding of fraud by vendors in connection with sale of house was supported by evidence that vendor told purchaser that roof was in good condition, that vendors stated in written disclosure form that there were no latent defects, that roof had deteriorated over a period of years prior to the sale of the house, and that vendors had placed 30 to 40 "stick up" deodorants on the top floor. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10](#). [Fraud](#) 🔑 58(2)

Elements of fraudulent concealment are (1) actual concealment (2) of material fact (3) with knowledge of fact concealed (4) with intent to mislead another into relying upon such conduct (5) followed by actual reliance thereon by such other person having right to so rely (6) with injury resulting to such person because of such reliance. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653](#). [Fraud](#) 🔑 16

In her suit against vendor for fraudulent misrepresentation arising out of water-related defects in basement in house, purchaser's testimony that it would cost between \$4800 to \$6500 to fix basement was some evidence of damages, independent of excluded written offerings; purchaser offered two written estimates to repair basement, which were excluded as hearsay. [Noble v. Mandalin \(Ohio App. 11 Dist., 05-08-1995\) 104 Ohio App.3d 11, 660 N.E.2d 1231](#). [Fraud](#) 🔑 58(1)

Where there is fraud inducing purchase or exchange of real estate, repair or replacement cost is adequate measure of damages. [Noble v. Mandalin \(Ohio App. 11 Dist., 05-08-1995\) 104 Ohio App.3d 11, 660 N.E.2d 1231](#). [Fraud](#) 🔑 59(1)

In her suit against vendor for fraudulent misrepresentation arising out of water-related defects in basement in house, purchaser was not required to present testimony as to value of property with dry basement as opposed to value of property with wet basement; in cases involving allegations of fraud, proper measure of damages is cost of repair or replacement. [Noble v. Mandalin \(Ohio App. 11 Dist., 05-08-1995\) 104 Ohio App.3d 11, 660 N.E.2d 1231](#). [Fraud](#) 🔑 59(1)

Vendors' conduct of telling purchasers that, although fruit cellar leaked, rest of the basement was dry when in fact, basement flooded every time it rained and when lawn was watered was aggravated by malice or ill will such that punitive damages award in favor of purchasers was warranted; severity of flooding problem, vendors' knowledge of this problem prior to selling their house, repairing company's statement that problem occurred over time, and vendor's vacillation as to what constituted dry basement supported conclusion of malice or ill will. [Lance v. Bowe \(Ohio App. 9 Dist., 10-26-1994\) 98 Ohio App.3d 202, 648 N.E.2d 60. Damages ↪ 91.5\(3\)](#)

Evidence supported referee's determination that vendors made false statements about basement of their house; vendor originally stated that basement had no water problems and later revised that statement by telling purchasers that fruit cellar had problems with leaking water, but rest of the basement was dry, contrary to these statements, basement flooded every time it rained and when lawn was watered, although vendor assured purchasers that flooding would stop after downspouts were cleaned, flooding did not stop, vendor said that when she stated that basement was dry "it all depended upon what one meant by dry," and company which repaired basement indicated that problem which caused flooding occurred gradually. [Lance v. Bowe \(Ohio App. 9 Dist., 10-26-1994\) 98 Ohio App.3d 202, 648 N.E.2d 60. Fraud ↪ 58\(2\)](#)


Condominium developers' failure to disclose prior repairs to building's heating system pipes did not amount to fraudulent concealment, where purchase contracts placed risk upon purchasers as to existence of any defects; purchase agreement stated that purchasers were buying units in their "present condition." [Arbor Village Condominium Assn. v. Arbor Village Ltd., L.P. \(Ohio App. 10 Dist., 06-09-1994\) 95 Ohio App.3d 499, 642 N.E.2d 1124, motion to certify denied 71 Ohio St.3d 1406, 641 N.E.2d 204. Fraud ↪ 16](#)

In sale of real estate, there will be finding of fraudulent concealment when vendor does not reveal to purchasers sources of peril of which he or she knows and which are not discoverable by purchaser. [Arbor Village Condominium Assn. v. Arbor Village Ltd., L.P. \(Ohio App. 10 Dist., 06-09-1994\) 95 Ohio App.3d 499, 642 N.E.2d 1124, motion to certify denied 71 Ohio St.3d 1406, 641 N.E.2d 204. Fraud ↪ 16](#)

Purchaser demonstrated by clear and convincing evidence that vendors knowingly made representations about drainage system in basement of house that were material and false, and that representations were offered to mislead purchaser, to support claim of fraudulent concealment, where vendors represented in purchase contract that there was no basement leakage, despite undisputed evidence that they knew that drainage problems had caused basement flooding. [Schulz v. Sullivan \(Ohio App. 1 Dist., 12-22-1993\) 92 Ohio App.3d 205, 634 N.E.2d 680. Fraud ↪ 58\(2\); Fraud ↪ 58\(3\)](#)


While an "as is" clause bars claim for fraudulent nondisclosure, it does not preclude recovery for fraudulent misrepresentation. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734. Fraud ↪ 23](#)


Genuine issue of material fact existed as to whether vendor fraudulently misrepresented water seepage problem in basement where vendor was aware that more serious problem existed than she represented; inspector in-

formed vendor that more than one wall had seepage problem and that repairing entire basement would cost approximately \$6,000, but vendor represented in real estate contract that only water seepage in home was in area by sump pump that did not leave standing water. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734. Judgment](#)  181(33)

When the owner and realtor initially believe that the owner's two-family dwelling may be used as such after its sale to the purchaser, but later find that it may not, continued advertisement and representation of the property as a two-family dwelling and failure to disclose the effect of zoning restrictions against the postsale use of the property are evidence of affirmative misrepresentation and concealment of facts. [Lepera v. Fuson \(Hamilton 1992\) 83 Ohio App.3d 17, 613 N.E.2d 1060.](#)

The purchaser of what appears to be a two-family dwelling reasonably relies on the misrepresentations of the seller to that effect when the seller knows, yet fails to disclose that rezoning of the area renders postsales use of the property a zoning violation; caveat emptor does not apply. [Lepera v. Fuson \(Hamilton 1992\) 83 Ohio App.3d 17, 613 N.E.2d 1060.](#)

Vendor's insurer's refusal to replace roof could demonstrate falsity of its agent's alleged promise to prospective purchasers that insurer would replace roof if it leaked within five years for purposes of showing falsity element of claim for fraudulent misrepresentation under Ohio law. [Schreiber v. State Farm Ins. Co. \(S.D. Ohio, 07-06-2007\) 494 F.Supp.2d 758. Insurance](#)  1654

Vendors of real property were not liable to purchasers for misleading them regarding quality of repairs performed prior to sale; there was no suggestion that persons performing repairs were unqualified or that vendors had overstated their qualifications, and purchasers did not exercise option of deposing repair persons to expose their shortcomings. [Riggins v. Bechtold \(Ohio App. 1 Dist., Hamilton, 06-28-2002\) No. C-010541, 2002-Ohio-3291, 2002 WL 1391458, Unreported. Fraud](#)  13(1)

Homeowner who gets sick on two occasions while living in her home for one year and calls the gas company to check for carbon monoxide does not make a fraudulent misrepresentation or conceal a fact from a buyer regarding the furnace where (1) the gas company fails to detect carbon monoxide, (2) prior to purchasing the home buyers remark that it looked "well-taken care of and clean," (3) seller informs buyer that she had asked the gas company to inspect the furnace but does not advise them that she had called the gas company after she became ill, (4) new homeowners have the furnace inspected after becoming sick, and (5) inspection reveals two cracks in the heat exchanger which would result in an intermittent release of carbon monoxide and would not be detected by visual inspection. [Leonard v. Moore \(Ohio App. 4 Dist., Scioto, 12-26-2001\) No. 00CA2711, 2001-Ohio-2637, 2001 WL 1674106, Unreported.](#)

A home buyer who discovers water and raw sewage leaking into the basement has no case against the seller where (1) buyer is told by seller that water seeps into the basement, (2) buyer hires an inspector who states that the basement has water problems, and (3) despite notice that the house has a leaky basement buyer chooses to

purchase the house as is. [Peach v. Love \(Ohio App. 8 Dist., Cuyahoga, 07-12-2001\) No. 78608, 2001 WL 792719](#), Unreported.

Buyer's claim for fraud must fail in regard to inadequate water supply from the seller's well where (1) buyer should be alerted to the possibility that the water supply may be inadequate because no one had used the water in over a year, (2) tests from an independent service are positive for bacteria, and (3) buyer chooses not to take any steps to further investigate the flow-rate of the well. [Pickard v. Provens \(Ohio App. 9 Dist., Summit, 07-12-2000\) No. C.A.19408, 2000 WL 960949](#), Unreported.

Seller's failure to disclose that she had not lived on the property for several months or her failure to indicate that the "current" condition of the premises was "unknown" to her does not evidence any positive misrepresentation or concealment. [Jarus v. Williamson \(Ohio App. 8 Dist., Cuyahoga, 12-02-1999\) No. 75438, 1999 WL 1087486](#), Unreported.

A crawl space which can be accessed only through a latch located beneath tacked-down carpeting in a back bedroom closet is not so open and obvious that it invites inspection by a reasonably diligent purchaser and because of the difficulty of access to the crawl space, the location of a heavy wood stove, combined with the lack of structural support beneath the floor constitutes a latent defect; an owner who knows that the floor might sag beneath the stove and installs wood and cement blocks in the crawl space beneath the stove as support has actual knowledge of the defective condition and failure to disclose it on the residential property disclosure form is a material false representation knowingly made. [Hanson v. Rieser \(Ohio App. 10 Dist., Franklin, 11-09-1999\) No. 98AP-1390, 1999 WL 1009710](#), Unreported.

To demonstrate fraud where a defect is not latent, a purchaser must show an affirmative misrepresentation or a misstatement of material fact to preclude the application of caveat emptor; therefore, (1) when a home shows evidence of serious structural defects, (2) where many repairs to the home which may have revealed termite damage were made yet exiting documents make no reference of termites or termite damage, (3) the sellers state that they made no repairs themselves and were unaware of the existence of termite damage and this assertion has not been contested, (4) deteriorating wood beams in the basement were readily observable, (5) the buyer testified that he could smell decaying wood in the basement prior to purchase and (6) the buyers declined to have the property inspected prior to purchase; when significant structural damage due to termites is discovered post-sale, the seller is not at fault and summary judgment in the seller's favor is appropriate as the seller's duty to disclose material facts which are latent, not readily observable, or discoverable through a buyer's reasonable inspection has not been violated. [Seecharan v. Macy \(Ohio App. 8 Dist., Cuyahoga, 10-28-1999\) No. 75130, 1999 WL 980579](#), Unreported.

Evidence fails to support a determination that a seller who is a self-employed carpenter has knowledge of termite damage when he performs renovations on his house in absence of expert testimony pinpointing when the termite damage began or how long it had been present in the residence before buyers discover the damage three years after the renovations were performed. [Tankersley v. Lohrey \(Ohio App. 12 Dist., Butler, 05-10-1999\) No.](#)

[CA98-10-206, 1999 WL 296752](#), Unreported.

A seller's misrepresentation concerning water seepage in the basement is not willful and wanton where (1) the sales contract contains an "as is" clause, (2) in answer to the question on the property disclosure form concerning water leakage, seller writes "slight seepage when heavy rains" under the answer "no," (3) the real estate agent mentions the slight seepage problem to buyers who are not concerned because they believe that slight seepage only means a minor defect that could be easily repaired and because "it was a beautiful basement," and (4) as buyers move their possessions into the house on a rainy day they notice at least an inch of standing water in the basement. [Roman v. Gannett \(Ohio App. 9 Dist., Lorain, 10-28-1998\) No. 97CA006878, 1998 WL 751177](#), Unreported.

A licensed realtor and distributor of modular homes fraudulently conceals material facts from a prospective buyer when she (1) solicits the "as is" clause in a sales contract with knowledge that the construction of a deck was included in the building plans and requires a variance which was already denied, (2) inserts language in the contract making buyers responsible for construction of the deck, knowing that any further variance request would be opposed, and (3) has been in the real estate business for twenty-five years and has superior knowledge about the need for final inspection and a variance for the deck. [Griffin v T.D. Harris Co, Nos. 1998CA00033 and 1997CA00408, 1998 WL 525580 \(5th Dist Ct App, Stark, 8-3-98\)](#).

A purchaser who does not follow her own inspector's advice even though she had been placed on notice of a possible structural defect in the basement walls cannot complain that the real estate agent concealed a material fact that her own reasonable inspection already revealed pertaining to previous repair work to remedy problems with leakage in the basement. [Belluardo v Blankenship, No. 72601, 1998 WL 289397 \(8th Dist Ct App, Cuyahoga, 6-4-98\)](#).

An issue of fraud regarding a freshly painted area of a basement precludes summary judgment in favor of an owner who makes oral representations that there are no water problems in the basement and indicates the same on a disclosure form. [Paul v. Costello \(Ohio App. 8 Dist., Cuyahoga, 02-19-1998\) No. 72368, 1998 WL 72457](#), Unreported.

A purchaser could not justifiably rely on a seller's representation that water leakage was limited to an area within five feet of the fruit cellar where there is ample notice of potential water problems in the basement by way of (1) the disclosure form, (2) chipped and peeled floor paint, (3) wall panelling that is watermarked and swollen, and (4) discoloration and watermarks at the base of a vanity that rested on the basement floor. [Costaras v. Serle \(Ohio App. 9 Dist., Summit, 01-21-1998\) No. 18387, 1998 WL 46783](#), Unreported.

In the sale of a house situated on eroding land there is no fraudulent misrepresentation on the part of the seller which is a savings institution that has accepted the deed in lieu of foreclosure where it has the property inspected and includes in the purchase agreement the inspection report which discusses (1) the surface water runoff problem, (2) the slope behind the home and its potential for "massive slippage," and (3) the fact that if the problem is

not addressed soon the long-term potential could be devastating. [Spear v. Village of Moreland Hills \(Ohio App. 8 Dist., Cuyahoga, 01-15-1998\) No. 72007, 1998 WL 12369, Unreported, dismissed, appeal not allowed 82 Ohio St.3d 1412, 694 N.E.2d 75.](#)

A home seller's fraud and misrepresentation concerning a septic system and drainage problems do not constitute an accidental occurrence causing property damage and are outside the scope of coverage on a homeowner's insurance policy. [Weaver v. McGuire \(Ohio App. 2 Dist., Miami, 10-24-1997\) No. 97CA27, 1997 WL 666169, Unreported.](#)

Home sellers have not fraudulently concealed or misrepresented the condition of their home's HVAC system which causes illness and expense to the buyers where prior to the transfer of title the buyers (1) notice stale air and the odor of "furniture smell" within the home, (2) take no steps to identify the source or have the home inspected, and (3) fail to ask the sellers about any history of air quality problems they may have knowledge of. [Cifani v. Vana \(Ohio App. 8 Dist., Cuyahoga, 07-03-1997\) No. 71494, 1997 WL 379972, Unreported.](#)

A buyer's theory that sellers knew of the presence of cracked bricks in the chimney because the sellers had the chimney cleaned before sale of the property is based upon speculation and is insufficient to demonstrate a question of fact that the seller had knowledge of the defect. [Hulett v. West Shell Realtors \(Ohio App. 12 Dist., Clermont, 06-30-1997\) No. CA96-12-111, 1997 WL 366840, Unreported.](#)

Photographs of waterspotting, discoloration, and rusting taken three months after signing a purchase agreement when buyer was attempting to move into a home with a flooded basement are insufficient to show what the basement looked like at the time of buyer's inspection prior to purchase and therefore do not constitute competent, credible evidence that the defect was open and obvious; on the other hand, seller's acknowledgement that he previously tried to sue for damages resulting from the same problem and breach of his duty to disclose indicate that seller's concealment of the leakage problem was intended to mislead the buyer who is awarded damages of \$4200 to correct the problem. [Montgomery v. Proper \(Ohio App. 6 Dist., Huron, 02-14-1997\) No. H-96-019, 1997 WL 72114, Unreported.](#)

A seller engages in fraudulent representation in responding to an inquiry regarding dampness in the basement and staining on the walls by stating that decedent owner had dogs living in the basement for fifteen years and if she had known of water problems she would have corrected them and purchasers subsequently discover water problems in the basement costing \$11,000 to repair. [Schlecht v. Helton \(Ohio App. 8 Dist., Cuyahoga, 01-16-1997\) No. 70582, 1997 WL 15259, Unreported.](#)

Failure to disclose basement flooding does not constitute fraud where it is caused by an excess rainfall coupled with the limited capacity of a sump pump and drainage system and an inspection report prior to closing states that the conditions described by the sellers would not be noted as a "water penetration" problem; in addition, the doctrine of caveat emptor defeats the purchasers' claims of misrepresentation regarding "brick and vinyl" siding and "full storm" windows when the siding is vinyl coated fiberboard and the windows are thermo-pane. [Titus v.](#)

[Dietrich \(Ohio App. 5 Dist., Stark, 01-22-1996\) No. 95CA0256, 1996 WL 74088, Unreported.](#)

Triable issues of fact remain concerning fraudulent concealment of a sub-wall purportedly constructed for a work bench where (1) evidentiary materials relating to the wall hiding in the foundation are sparse, (2) buyer's reliance on seller's representations about the work bench in view of other obvious defects is a fact question, and (3) seller's evidentiary materials do not address the issue of the concealment. [Felty v. Kwitkowski \(Ohio App. 8 Dist., Cuyahoga, 11-02-1995\) No. 68530, 1995 WL 643780, Unreported.](#)

Concerning the issues of non-disclosure, misrepresentation, and concealment based upon fraud, a reasonable person could infer that the sellers knew or should have known of defects in a garage slab and a foundation slab where (1) numerous cracks in the garage, second floor and kitchen are covered by plastic, caulk, paint and wall-paper; (2) sellers have lived in the house fourteen years and had to have known about the cracks and what was done to cover them; (3) it can be inferred from the extensive nature of the cracks that the sellers covered the cracks to conceal them, not to repair them; and (4) purchasers relied on the sellers' statements that there were no structural defects in the house. [Harris v. Burger \(Ohio App. 8 Dist., Cuyahoga, 08-24-1995\) No. 68303, 1995 WL 502541, Unreported, appeal not allowed 74 Ohio St.3d 1513, 659 N.E.2d 1289.](#)


A vendor's representations concerning underground fuel tanks and pumps as working do not constitute fraudulent misrepresentation where (1) the vendor witnesses fuel being pumped out of the tanks, (2) he neither uses the pumps himself nor makes any inspection of the underground tanks, and (3) he has no knowledge the tanks leak; where the condition of the tanks is material to the transaction for the buyer, it is the buyer's duty to inspect and inquire about the condition of the tanks in a prudent, diligent manner. [Manning v. Hamamey \(Ohio App. 8 Dist., Cuyahoga, 07-27-1995\) No. 66082, 1995 WL 444440, Unreported.](#)


The doctrine of caveat emptor does not bar a vendees' action against vendors and their realtor for fraudulent nondisclosure of a nonoperative well, where (1) problems with a well system are not readily open to observation, (2) no problems with the water supply system were indicated on the vendors' property information checklist provided to the vendees, and (3) there was evidence submitted which tended to indicate that the malfunctioning of the well system was long-term and anyone living in the house would have been on notice of such problems. [Bigelow v. Gill-Lafferty \(Ohio App. 3 Dist., Crawford, 12-02-1994\) No. 3-94-17, 1994 WL 675078, Unreported.](#)


For purposes of fraud claim arising out of alleged failure to disclose defects in real estate transaction, party is under duty to speak if he or she fails to disclose material fact which may justifiably induce another party to refrain from acting, and nondisclosing party knows that failure to disclose information to other party will render prior statement untrue or misleading. [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Fraud ↩ 17](#)


“As is” disclaimer clause in real estate contract bars suit for passive nondisclosure, but does not protect vendor from positive misrepresentation or concealment. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d](#)

245, 623 N.E.2d 731. [Fraud](#)  36


Responding honestly to affirmative inquiry regarding condition of residence is lighter burden than voluntary disclosure of defect mandated by caveat emptor, particularly when knowledge of stigmatizing defect is within ready personal or actual knowledge of vendor at time of inquiry. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Vendor And Purchaser](#)  33

For misrepresentation to justify rescission of real estate contract, misrepresentation or nondisclosure of vendor must cause justifiable reliance on part of purchaser, and damage must result as consequence of fraudulent transaction. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Vendor And Purchaser](#)  107

Material issue of fact as to whether vendor misrepresented or failed to disclose material fact, whether purchaser relied on misrepresentation regarding safety of residence, whether purchaser was put on notice of potential problem, and whether purchaser reasonably conducted duty of inspection and further inquiry precluding summary judgment in action by purchaser against vendor for stigmatized property was presented by evidence that prior rape occurred in residence, that several other crimes occurred in close proximity to residence, that vendor knew crimes had occurred yet failed to disclose them to purchaser, and that purchaser questioned vendor regarding bars on basement windows and vendor replied that break-in occurred 16 years earlier. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Judgment](#)  185.3(18)

Summary judgment affidavits of home purchasers and pest control services inspector hired by purchasers were insufficient to provide any material evidence that vendors fraudulently misrepresented or concealed the condition of the house with regard to the bat infestation to purchasers from which they could rely on in purchasing the house; although the affidavits contained statements concerning the discovery of the bats and their belief that vendors should have been aware of the bats, they provided no statements that vendors fraudulently misrepresented or concealed the bat problem to purchasers. [Donnelly v. Taylor \(Ohio App. 9 Dist., Medina, 02-19-2003\) No. 02CA0033-M, 2003-Ohio-729, 2003 WL 356316, Unreported. Judgment](#)  185.3(18)

## 2. “As is” sale clause

Valid “as is” clause in purchase agreement for sale of house precluded purchaser from making negligence claim against vendor for passive non-disclosure of defects, given that clause clearly indicated that any defects not brought to the attention of the seller prior to expiration of the inspection period were waived by purchaser. [Williams v. Brown \(Ohio App. 5 Dist., Muskingum, 09-29-2005\) No. CT2004-0048, No. CT2004-0051, 2005-Ohio-5301, 2005 WL 2420379, Unreported. Fraud](#)  36

Home vendor did not fraudulently fail to disclose termite infestation, and thus could rely on “as is” clause in purchase agreement and caveat emptor doctrine as defenses to purchaser's breach of warranty and related tort claims; vendor's disclosure form had indicated prior termite infestation problem, but purchaser made no further

inquiry into problem. [Dito v. Wozniak \(Ohio App. 9 Dist., Lorain, 01-05-2005\) No. 04CA008499, 2005-Ohio-7, 2005 WL 19437, Unreported. Fraud ↪ 36; Vendor And Purchaser ↪ 345](#)

Under doctrine of caveat emptor, auctioneer was not liable to winning bidders at real estate auction for negligent misrepresentations allegedly made when answering bidder's questions about the septic system, where real estate was sold "as is." [Lewis v. Basinger \(Ohio App. 7 Dist., Mahoning, 11-22-2004\) No. 03 MA 223, 2004-Ohio-6377, 2004 WL 2726135, Unreported. Auctions And Auctioneers ↪ 9](#)


Vendor fraudulently represented and concealed the water problems in home's basement, and thus, the "as is" clause in the real estate contract did not protect vendor from liability; evidence showed the basement had an ongoing standing water problem that occurred during heavy rains, that vendor did not disclose a standing water problem, and that vendor had painted the basement walls, thereby giving the walls an "immaculate, white" appearance. [Klasa v. Rogers \(Ohio App. 8 Dist., Cuyahoga, 08-26-2004\) No. 83374, 2004-Ohio-4490, 2004 WL 1902539, Unreported. Fraud ↪ 36](#)


"As is" clause contained in written purchase agreement for sale of land did not preclude purchasers from bringing action for fraudulent misrepresentation or fraudulent concealment against vendors for vendors' failure to disclose that pond located on land was leaking. [Cox v. Storsin \(Ohio App. 5 Dist., Stark, 07-12-2004\) No. 2003CA00263, 2004-Ohio-3714, 2004 WL 1563434, Unreported. Fraud ↪ 36](#)


Vendor did not act fraudulently in padlocking home's garage door during sales period, and thus, doctrine of caveat emptor applied to bar purchaser's claim against vendor arising from the post-purchase discovery of need to replace garage of home that purchaser acquired "as-is"; although purchaser was unable to examine garage because no garage key was available at time of showings, vendor had given vendor's real estate agent a garage key that agent placed in lockbox, and agent never informed vendor that garage key was missing. [Moreland v. Ksiazek \(Ohio App. 8 Dist., Cuyahoga, 06-10-2004\) No. 83509, 2004-Ohio-2974, 2004 WL 1277187, Unreported. Fraud ↪ 22\(2\)](#)


Clause in real estate purchase contract stating that purchaser was relying on purchaser's examination of property "with reference to the condition, character, and size of land" was not an "as is" condition clause precluding purchasers' fraud and negligence claims against vendor due to concealed landfill on property, but rather was a form of integration clause concerning representations that may or may not have been made. [Clemente v. Gardner \(Ohio App. 5 Dist., Licking, 04-26-2004\) No. 2002CA00120, 2004-Ohio-2254, 2004 WL 953700, Unreported. Fraud ↪ 36](#)


"As is" clause, contained in inspection rider to condominium unit purchase agreement, precluded unit purchaser from maintaining action against vendors for fraudulent nondisclosure of structural damage to unit. [Majoy v. Hord \(Ohio App. 6 Dist., Erie, 04-23-2004\) No. E-03-037, 2004-Ohio-2049, 2004 WL 870430, Unreported. Fraud ↪ 36](#)


Rescission of residential real estate sales contract was not available remedy for purchaser who had received and signed residential property disclosure form prior to executing title transfer agreement; by signing property disclosure form, waiving right to further inspections of home, and subsequently entering into purchase agreement, purchaser bore risk of accepting property “as is,” and pipe separation that occurred after title transfer was not latent defect that vendors had duty to disclose. [Chamar v. Schivitz \(Ohio App. 11 Dist., Lake, 04-16-2004\) No. 2002-L-181, 2004-Ohio-1957, 2004 WL 834487, Unreported. Vendor And Purchaser](#)  113


Residential real estate purchaser's action against vendors for fraudulent nondisclosure was barred by “as is” clauses contained in purchase agreement; purchaser signed purchase agreement and acknowledged that she had examined property and was waiving option of having home inspection performed prior to completion of sale, pipe separation that led to water damage occurred after title transfer, and purchaser did not present sufficient evidence that vendors attempted to conceal any previous water problems. [Chamar v. Schivitz \(Ohio App. 11 Dist., Lake, 04-16-2004\) No. 2002-L-181, 2004-Ohio-1957, 2004 WL 834487, Unreported. Vendor And Purchaser](#)  37(7)


Real property sold “as is” is subject to the doctrine of caveat emptor. [Loomis v. Troknya \(Ohio App. 6 Dist., 02-17-2006\) 165 Ohio App.3d 300, 846 N.E.2d 101, 2006-Ohio-731. Vendor And Purchaser](#)  37(1)


In purchaser's action against vendors for negligent and intentional misrepresentation, evidence supported trial court's finding that purchase of residential property was “as is,” as would support applicability of doctrine of caveat emptor; evidence indicated that purchase agreement was executed by all parties, contained warning that it was a legal agreement, and stated in two separate places that sale was “as is.” [Loomis v. Troknya \(Ohio App. 6 Dist., 02-17-2006\) 165 Ohio App.3d 300, 846 N.E.2d 101, 2006-Ohio-731. Fraud](#)  36


Home purchasers could not recover against vendors for basement water problems, although vendors did not disclose problems, where sales contract contained “as is” clause, vendors did not make any affirmative false statements, purchasers had home inspection done, and purchasers stated in depositions they were aware of the prior water problems. [Funk v. Durant \(Ohio App. 5 Dist., 10-17-2003\) 155 Ohio App.3d 99, 799 N.E.2d 221, 2003-Ohio-5591. Fraud](#)  36


When a real estate buyer contractually agrees to accept real property “as is,” the seller is relieved of any duty to disclose that the property was in a defective condition. [Donnelly v. Taylor \(Ohio Com.Pl., 04-04-2002\) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461, affirmed 2003-Ohio-729, 2003 WL 356316. Fraud](#)  17


As between a purchaser and a vendor of real estate, absent either fraudulent misrepresentation or fraudulent concealment of a defective condition, the risk of nondisclosure is placed upon the purchasers where there is an “as is” provision in a real estate contract whether or not the defect is discoverable by a reasonable inspection. [Donnelly v. Taylor \(Ohio Com.Pl., 04-04-2002\) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461, affirmed 2003-Ohio-729, 2003 WL 356316. Fraud](#)  36


Fraud “trumps” an “as is” clause in a real estate contract and the purchasers may proceed with a lawsuit. [Donnelly v. Taylor \(Ohio Com.Pl., 04-04-2002\) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461](#), affirmed [2003-Ohio-729, 2003 WL 356316](#). Fraud  36


Vendors never talked to purchasers about the house until after its “as is” purchase and discovery of bats in the house, and could not show that vendors took steps to actively conceal the bats, and thus, vendors were not liable for misrepresentation to purchasers, even if they knew of existence of the bats. [Donnelly v. Taylor \(Ohio Com.Pl., 04-04-2002\) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461](#), affirmed [2003-Ohio-729, 2003 WL 356316](#). Fraud  36



“As is” clause in purchase agreement for house absolved vendor from liability for fraudulent nondisclosure in connection with alleged defects permitting water accumulation in basement, regardless of whether those defects were patent or latent. [Felker v. Schwenke \(Ohio App. 8 Dist., 08-17-1998\) 129 Ohio App.3d 427, 717 N.E.2d 1165](#). Fraud  36

“As is” clause in a purchase agreement does not prevent liability when vendor makes a fraudulent representation or concealment. [Felker v. Schwenke \(Ohio App. 8 Dist., 08-17-1998\) 129 Ohio App.3d 427, 717 N.E.2d 1165](#). Fraud  36

“Latent defect,” as exception to doctrine of caveat emptor, is one that could not have been detected by inspection. [Rogers v. Hill \(Ohio App. 4 Dist., 12-16-1998\) 124 Ohio App.3d 468, 706 N.E.2d 438](#). Vendor And Purchaser  37(1)


Purchasers who bought home pursuant to agreement stating that home was being sold “as is” did not rely on any alleged misrepresentations by vendor’s listing real estate broker, and thus could not recover on fraud claim after problems with water seepage in basement; purchasers had every opportunity to inspect property, and relied on their own inspection, and that of their expert, before purchasing property. [Eiland v. Coldwell Banker Hunter Realty \(Ohio App. 8 Dist., 08-25-1997\) 122 Ohio App.3d 446, 702 N.E.2d 116](#). Brokers  102


Where real estate purchase agreement clearly indicates that property is purchased as is, purchaser may not bring claim for fraudulent nondisclosure which arises from alleged water problems in basement. [Eiland v. Coldwell Banker Hunter Realty \(Ohio App. 8 Dist., 08-25-1997\) 122 Ohio App.3d 446, 702 N.E.2d 116](#). Fraud  36


“As is” clause in contract for sale of real estate cannot be relied upon to bar claim against vendor or broker for fraudulent misrepresentation or fraudulent concealment. [Black v. Cosentino \(Ohio App. 9 Dist., 12-26-1996\) 117 Ohio App.3d 40, 689 N.E.2d 1001](#). Brokers  102; Fraud  36

“As is” clause in contract for sale of real estate cannot be relied upon to bar a claim for fraudulent misrepresentation or fraudulent concealment. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115](#)


[Ohio App.3d 250, 685 N.E.2d 265.](#)


“As is” clause in real estate sales contract cannot be relied upon to bar claim for fraudulent concealment. [Ross v. Trego \(Ohio App. 9 Dist., 09-04-1996\) 113 Ohio App.3d 637, 681 N.E.2d 989.](#) Fraud  16


Purchaser of home failed to state claim against vendor for fraudulent concealment, even though purchaser presented affidavits stating that excessive humidity in home had to have existed for several years to result in extent of dry rot observed in walls and that dry rot and mildew stains would not have been discovered during normal home inspection; purchaser presented no statements that contradicted vendor's statements that she never knew of any defects, and purchaser failed to provide any evidence that vendor had purposely concealed condition of wood beneath plaster walls or had painted over mildew stains. [Ross v. Trego \(Ohio App. 9 Dist., 09-04-1996\) 113 Ohio App.3d 637, 681 N.E.2d 989.](#) Fraud  16

Generally, “as is” clause in real estate sales contract relieves vendor of any duty to disclose and places risk upon purchaser as to existence of defects. [Ross v. Trego \(Ohio App. 9 Dist., 09-04-1996\) 113 Ohio App.3d 637, 681 N.E.2d 989.](#) Fraud  17

“As is” clause in real estate sales contract relieves seller of any duty to disclose and places risk upon buyer as to discovery of existing defects. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653.](#) Fraud  17; Fraud  22(1)

While purchaser's claim of nondisclosure will not overcome “as is” clause in real estate sales contract, such clause does not bar claim by purchaser for “positive fraud,” i.e., fraud of commission rather than omission, such as fraudulent misrepresentation or fraudulent concealment. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653.](#) Fraud  36

Although “as is” clause in real estate sales contract relieved vendor of any duty to disclose known defects, and although finding that vendor made no representations or statements of any kind to purchaser concerning house foreclosed claim of fraudulent misrepresentation, material fact issue precluding summary judgment existed as to whether vendor fraudulently concealed any latent defects in house so that doctrine of caveat emptor would not preclude purchaser's recovery from vendor. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653.](#) Judgment  181(29)

Vendor could not be liable for fraudulent nondisclosure as a matter of law where real estate contract stated that property was to be accepted in “as is” condition. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734.](#) Fraud  16

When purchaser contractually agrees to accept real property “as is,” vendor is relieved of any duty to disclose that property was in defective condition. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734.](#)

### Vendor And Purchaser 36(2)

Sellers fraudulently misrepresent the condition of the basement where (1) buyers repeatedly ask whether the basement has water problems and the sellers repeatedly respond that it does not, (2) sellers know the representation is false, and (3) sellers' conduct of freshly painting the basement leads to a reasonable inference that they intended to mislead buyers into relying upon the false representation. [Evans v. Baker \(Ohio App. 4 Dist., Ross, 03-17-2000\) No. 99 CA 2502, 2000 WL 297411, Unreported.](#)

Seller's motion for summary judgment is granted in error where (1) sellers make representations in the purchase agreement and in the disclosure statement as to moisture in the basement, (2) repairs are made to the basement which conceal the defects, and (3) buyers reasonably rely on these representations or concealments to their detriment. [Campbell v. Mahoney \(Ohio App. 8 Dist., Cuyahoga, 11-04-1999\) No. 75162, 1999 WL 1000699, Unreported.](#)

An "as is" clause in a purchase agreement relieves sellers of their duty to disclose problems with a leaky roof; accordingly, the risk is placed upon the buyer to discover the problem where (1) the property is delivered in its present condition "as is," (2) buyer is put on notice by sellers that they had previous problems with moisture in the foyer and that the foyer ceiling roof had been repaired five years prior, and (3) buyer fails to have an inspection conducted on the premises as provided for in the purchase agreement. [Morningstar v. Smith \(Ohio App. 8 Dist., Cuyahoga, 08-22-1996\) No. 69939, 1996 WL 476458, Unreported.](#)

A real estate agent and property owner have a duty to disclose material facts on which a buyer would rely in forming a decision whether to purchase real estate, and an "as is" clause in a real estate contract does not protect the agent and owner from an action based upon positive misrepresentation or concealment when the agent tells the buyer that the basement is dry when he knows this to be untrue. [Schwebach v. Dorr \(Ohio App. 7 Dist., Columbiana, 06-29-1995\) No. 94-C-38, 1995 WL 387613, Unreported.](#)

Vendors were released from their duty to disclose any allegedly latent defects in dwelling by contract which stated that buyers purchased property "in its present physical condition." [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Fraud !\[\]\(51fa12e9938db9b91c0132320af2b84a\_img.jpg\) 17](#)

Contractual agreement to accept real property in "as is" condition relieves seller of any duty to disclose that property was sold in defective condition. [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Fraud !\[\]\(79590a370fd576bc4ea1423639c518eb\_img.jpg\) 17](#)

"In its present condition," as used in contract for purchase of real property, is synonymous with "as is." [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Fraud !\[\]\(7c3d2608a7a555c07f6aa454ffa411df\_img.jpg\) 36](#)

"As is" language in contract between vendor and purchaser cannot be relied on to relieve vendor of liability on

claim for fraudulent misrepresentation. [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Fraud ↪ 36](#)

### 3. Conditions of property subject to disclosure

Any oral representation, by real property vendor to purchaser, that vendor's access easement across another property would survive the conveyance, was not actionable as fraud, where a recorded deed, which disclosed that the easement was not assignable, was discoverable by purchaser. [Davis v. Montenery \(Ohio App. 7 Dist., 11-15-2007\) 2007-Ohio-6221, 2007 WL 4145989. Fraud ↪ 23](#)

Real property vendor was not liable to purchaser for fraud, relating to nonassignability of vendor's access easement across another property, in absence of a representation from vendor to purchaser that the easement would survive the conveyance. [Davis v. Montenery \(Ohio App. 7 Dist., 11-15-2007\) 2007-Ohio-6221, 2007 WL 4145989. Fraud ↪ 9](#)

Allegations that association failed to disclose an improper lot split by vendor in which a sewer easement prevented purchasers of one lot from building a residence approved by the association were insufficient to support negligence claim, given that lot split was a matter of record and was reflected in materials attached to purchasers' title insurance policy prior to closing. [McMullian v. Borean \(Ohio App. 6 Dist., 07-28-2006\) 167 Ohio App.3d 777, 857 N.E.2d 180, 2006-Ohio-3867. Fraud ↪ 23](#)

Even if association that owned property sold to purchaser knew that sewer easement on the property that prevented purchasers from constructing a residence was missing from title search, association's failure to disclose that fact was insufficient to support a claim of negligent misrepresentation. [McMullian v. Borean \(Ohio App. 6 Dist., 07-28-2006\) 167 Ohio App.3d 777, 857 N.E.2d 180, 2006-Ohio-3867. Fraud ↪ 18](#)

With respect to latent defects, Ohio follows the doctrine of caveat emptor if the defect in a house sold "as is" is one that is discoverable by a reasonable inspection, there is an unimpeded opportunity to inspect the premises, and there is no fraud by the sellers. [Donnelly v. Taylor \(Ohio Com.Pl., 04-04-2002\) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461, affirmed 2003-Ohio-729, 2003 WL 356316. Vendor And Purchaser ↪ 37\(4\)](#)

Water seepage in basement of house was not an "latent defect" which realty company had duty to disclose to purchaser; while purchaser claimed that hot, dry weather of summer prevented her from observing water in basement until after she moved in and experienced heavy rainstorm, she had notice of water problems from sellers' disclosure form and home inspection report. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

Odor from crawl space beneath family room, allegedly resulting from sellers' use of crawl space as litter box for pets, was not a "latent defect" which realty company was required to disclose to home purchaser; purchaser was aware of crawl space and was never denied access to it or told that she could not remove covering to inspect it

further, and inspector hired by purchaser was able to shine flashlight into crawl space and did not notice unusual odors or see evidence that it had been used as litter box. [Buchanan v. Geneva Chervenec Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

Stains on floor covering and wall from animal urine were not latent defects which realty company was required to disclose to home purchaser; stains were cosmetic imperfections, not material defects to structure or integral systems of home that mandated specific disclosure, and furthermore, purchaser could have easily peered behind couch that hid stain on wall or looked at carpeting more carefully. [Buchanan v. Geneva Chervenec Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

Vendor has duty to disclose material facts which are latent, i.e., not readily observable or discoverable through purchaser's reasonable inspection. [Buchanan v. Geneva Chervenec Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

For purposes of their fraud action, purchasers did not waive their right to claim reliance on vendors' representation that, although fruit cellar leaked, rest of basement of house was dry, despite fact that purchasers failed to list vendors' statement which they claimed to have relied upon in paragraph of purchase agreement stating "explain any statement(s) that you as buyer/seller have relied on that is/are not written or printed herein" and despite addendum indicating satisfaction of purchasers' right to inspect; clause in purchase agreement was part of the evidence to be used by vendors in defending fraud claim and purchasers' testimony had to be evaluated in light of such a contradictory writing, because seller's disclosure form advised of only limited wetness problem, purchasers could have reasonably surmised that such a written statement obviated the necessity to note in the purchase agreement the supporting oral statement about basement being otherwise dry, and addendum was merely evidentiary and not conclusory. [Lance v. Bowe \(Ohio App. 9 Dist., 10-26-1994\) 98 Ohio App.3d 202, 648 N.E.2d 60. Fraud ↪ 35](#)

Vendor has duty to disclose material facts which are latent, not readily observable or discoverable through purchaser's reasonable inspection. [Blake v. John Doe 1 \(Franklin 1993\) 89 Ohio App.3d 130, 623 N.E.2d 1229, motion overruled 67 Ohio St.3d 1507, 622 N.E.2d 654. Fraud ↪ 17](#)

Although unstable soil condition was latent defect which prior owners should have disclosed to their immediate purchasers, prior owners were not liable to subsequent purchasers, in absence of privity. [Blake v. John Doe 1 \(Franklin 1993\) 89 Ohio App.3d 130, 623 N.E.2d 1229, motion overruled 67 Ohio St.3d 1507, 622 N.E.2d 654. Fraud ↪ 29](#)

Fact that purchaser and vendor were single mothers with teenage daughters alone may be sufficient to make disclosure of prior rape which occurred in residence material fact with regard to sale of residence, or at least may be sufficient to demonstrate that vendor should have known that purchaser was peculiarly disposed to attach importance to subject of female-targeted crimes. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Fraud ↪ 18](#)

Latent nature of stigmatizing defect in home wherein renter's daughter was raped rendered defense of caveat emptor inapplicable when viewed in conjunction with potential misrepresentation or concealment on part of vendor regarding relative safety of home. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Vendor And Purchaser ↪ 37\(4\)](#)

Vendors of residential property were not liable to purchasers for nondisclosure of leakage problem in windows in sunroom; vendors had reset windows in response to earlier leakage problem and there was no evidence they were aware of new problems. [Riggins v. Bechtold \(Ohio App. 1 Dist., Hamilton, 06-28-2002\) No. C-010541, 2002-Ohio-3291, 2002 WL 1391458, Unreported. Fraud ↪ 13\(2\)](#)

Vendor did not have a duty to notify potential purchasers of pending sewer assessment, and thus vendor could not be found liable for fraud, even if sewer and water addition to property would be detrimental to its value. [Quinn v. Fry \(Ohio App. 5 Dist., Knox, 06-14-2002\) No. 02 CA 3, 2002-Ohio-3075, 2002 WL 1310421, Unreported. Fraud ↪ 17](#)

Vendors of residence had no duty to disclose leak and mold in kitchen of residence, and thus were not liable to purchaser for fraudulent concealment, despite presence of newspaper and aluminum foil under dropped ceiling in the kitchen near the leak and the mold, where there was no evidence that vendors knew of the leak or the mold, and the evidence showed that the newspaper and mold had been placed under the ceiling 40 or 50 years earlier by vendors' father. [Jordan v. Bordan \(Ohio App. 8 Dist., 10-23-2008\) No. 90758, 2008 -Ohio- 5490, 2008 WL 4681837, Unreported. Fraud ↪ 17](#)

Vendors of residence had no duty to disclose leak and mold in kitchen of residence, and thus were not liable to purchaser for fraudulent nondisclosure, where there was no evidence that vendors, who had not occupied the residence for many years, knew of the leak or the mold. [Jordan v. Bordan \(Ohio App. 8 Dist., 10-23-2008\) No. 90758, 2008 -Ohio- 5490, 2008 WL 4681837, Unreported. Fraud ↪ 17](#)

Former owner of house could not be held liable to purchaser for alleged defects in the house that were not disclosed to purchaser absent evidence that former owner made any representations to purchaser or that she occupied such a relationship to purchaser that she owed purchaser a duty to disclose. [Jordan v. Bordan \(Ohio App. 8 Dist., 10-23-2008\) No. 90758, 2008 -Ohio- 5490, 2008 WL 4681837, Unreported. Fraud ↪ 17](#)

Vendors disclosed any latent flooding defect in residential property disclosure form, precluding liability for fraud or breach of contract in action brought by purchaser after water came into home following heavy rainfall, though disclosure form used the term "water intrusion" rather than "flooding"; vendors disclosed that creek on property overflowed its banks during heavy rains and that water came into home during heavy rains. [Dodson v. Moore \(Ohio App. 5 Dist., 10-06-2008\) No. 2007-0052, 2008 -Ohio- 5333, 2008 WL 4572522, Unreported. Fraud ↪ 17; Vendor and Purchaser ↪ 36\(2\)](#)

Under Ohio law, the term “claim,” within the meaning of a real estate sales contract in which the vendor warranted and represented that it had “no knowledge of any claims or violation regarding the current condition or use of the Property,” did not encompass the vendor's failure to disclose an evaluation of the roof of the property, so as to place the vendor in breach of its obligations under the agreement; given the contractual context of the word, it appeared clear that it was intended to take on its more legal definition, which involved the assertion of some sort of right, title, privilege, or entitlement. [E-Poch Properties, LLC v. TRW Automotive U.S., LLC \(C.A.6 \(Ohio\), null, 07-07-2008\) No. 07-3472, 286 Fed.Appx. 276, 2008 WL 2660916, Unreported. Vendor and Purchaser](#) 🔑 36(2)

Home purchasers failed to establish claim for breach of contract against vendors when purchasers discovered that roof leaked seventeen days after moving into home; although purchase agreement addendum called for certain roof repairs to be completed, addendum was intended to correct a specific, observable defect, repairs specified in addendum were made by vendors, and there was no evidence linking such repairs to the leaks experienced after purchasers moved into the house. [Ripley v. McDevitt \(Ohio App. 7 Dist., Columbiana, 03-10-2006\) No. 05 CO 23, 2006-Ohio-1156, 2006 WL 621361, Unreported. Vendor And Purchaser](#) 🔑 343(1)

Potential buyer of house, who tripped on small object and fell while descending attic stairs, failed to establish that owner of house had actual or constructive knowledge of such object, even though owner allegedly had either actual or constructive knowledge that pigeons were roosting in attic, precluding buyer's recovery in personal injury action, where it was unclear what the small object was, where it came from, or how it got on the stairs; buyer offered no connection between the object and the pigeons or the object and the owner. [Johnson v. Duncan \(Ohio App. 8 Dist., Cuyahoga, 10-27-2005\) No. 86074, 2005-Ohio-5726, 2005 WL 2811893, Unreported. Negligence](#) 🔑 1110(2)

Potential buyer, who indicated that a small object under her foot caused her to fall while she was inspecting the attic, sufficiently identified the cause of her fall for purposes of her personal injury action against house owner, even though potential buyer could not specify what object caused her to fall. [Johnson v. Duncan \(Ohio App. 8 Dist., Cuyahoga, 10-27-2005\) No. 86074, 2005-Ohio-5726, 2005 WL 2811893, Unreported. Negligence](#) 🔑 1110(2)

Significant water entry into basement of residence did not constitute a material structural problem, and therefore, vendor's negative answer as to disclosure form question asking if there were material structural problems with the residence was not a misrepresentation; the question of water and the question of structural integrity were mutually exclusive issues, each of which were answered independently in the disclosure form. [Buzek v. Fife \(Ohio App. 9 Dist., Summit, 09-30-2005\) No. 22402, 2005-Ohio-5178, 2005 WL 2401113, Unreported. Fraud](#) 🔑 18

Vendor did not have a statutory duty to disclose existence of material defects in the premises to purchaser of home of vendor's late mother, where transfer of property was being done by vendor as executrix of her late mother's estate. [Moreland v. Ksiazek \(Ohio App. 8 Dist., Cuyahoga, 06-10-2004\) No. 83509, 2004-Ohio-2974,](#)

2004 WL 1277187, Unreported. [Fraud](#) 🔑 17

Trial court erred in home purchaser's action against individual who, pursuant to power of attorney, signed property disclosure form for vendors by holding individual liable for cost of replacement air conditioner based on finding that individual should have been aware that air conditioner was inoperable and disclosed such information, rather than based on finding that individual had actual knowledge that air conditioner was inoperable; statute addressing residential property disclosure form only requires disclosure of material matters relating to home's physical condition that are within vendors' actual knowledge. [Reiter v. Davidson \(Ohio App. 3 Dist., Seneca, 06-01-2004\) No. 13-03-77, 2004-Ohio-2800, 2004 WL 1192431, Unreported. Antitrust And Trade Regulation](#) 🔑 199

Vendors were not required to disclose to land purchasers in the Residential Property Disclosure Form that well had a low yield, where it was undisputed that well functioned properly, that it was approved by the county, and that it was not substantially lower yielding than other wells in the area, and well afforded family ability to shower, wash clothes, and wash dishes. [Witfoth v. Kiefer \(Ohio App. 6 Dist., Lucas, 12-12-2003\) No. L-02-1325, 2003-Ohio-6766, 2003 WL 22947478, Unreported. Antitrust And Trade Regulation](#) 🔑 199

Genuine issue of material fact as to whether home which sat atop capped gas well was exempted from residential property disclosure form requirement as new construction precluded summary judgment for vendors and real estate agents in purchasers' action against them. [Bedwell v. Schmitt \(Ohio App. 11 Dist., Portage, 12-13-2002\) No. 2001-P-0136, 2002-Ohio-6909, 2002 WL 31813019, Unreported, appeal not allowed 98 Ohio St.3d 1540, 786 N.E.2d 902, 2003-Ohio-1946. Judgment](#) 🔑 181(29)

Genuine issue of material fact as to whether house vendors breached duty to disclose to purchasers that house sat atop capped gas well precluded summary judgment for vendors and agent in purchasers' action against them. [Bedwell v. Schmitt \(Ohio App. 11 Dist., Portage, 12-13-2002\) No. 2001-P-0136, 2002-Ohio-6909, 2002 WL 31813019, Unreported, appeal not allowed 98 Ohio St.3d 1540, 786 N.E.2d 902, 2003-Ohio-1946. Judgment](#) 🔑 181(29)

Where a real estate property disclosure form admitting "current water leakage, water accumulation, excess dampness or other defect" is qualified by a statement that the "basement was waterproofed by Pioneer Waterproofing Co" which is a factual inaccuracy and is a condition of sale, fact issues precluding summary judgment for vendor are presented as to whether buyers were misled and whether they relied on the misrepresentation. [Ataya v. Becker \(Ohio App. 5 Dist., Stark, 01-28-1998\) No. 1997 CA 00191, 1998 WL 519437, Unreported.](#)



A home buyer fails to prove that a seller has knowledge of a defect with the home's foundation or that she knowingly conceals the fact that the home has sunken floors where (1) throughout the nineteen years she resides in the home, she never detects a change in the floor level, (2) she does not consider there to be a problem with the foundation, and (3) she knows that when entering the house one has to step down into it, a fact easily observable by any person entering her home, including a prospective purchaser or appraiser. [Davis v. Kempfer \(Ohio App.](#)


3 Dist., Union, 04-10-1996) No. 14-95-31, 1996 WL 170376, Unreported, appeal not allowed 77 Ohio St.3d 1422, 670 N.E.2d 1008.


Whether the seller of a home has made false and fraudulent representations regarding an inoperative well is a fact issue that precludes summary judgment in favor of the seller where no problems with the water supply are indicated in the property checklist and the well system is not readily open to observation. [Bigelow v. Gill-Lafferty](#) (Ohio App. 3 Dist., Crawford, 12-02-1994) No. 3-94-17, 1994 WL 675078, Unreported.

Where a claim for fraud and negligent inspection is brought by the purchaser of a home against the sellers for infestation of termites, judgment for the sellers is precluded where a fact question remains as to whether the inspection, as provided under the contract, should have required the termite inspector to obtain a ladder to inspect an area which the sellers assert is accessible without undue preparation or effort. [Francis v. Ashton](#) (Ohio App. 10 Dist., Franklin, 08-30-1994) No. 94APE03-437, 1994 WL 479497, Unreported.


#### 4. Agent's liability


Real estate agency was not liable to home purchaser on negligence and fraud claims in action brought by purchasers who discovered live termites in house after taking possession; agency representative advised purchasers that home had prior termite damage and had been previously treated, and purchasers did not rely on representative's statements in deciding to purchase the property, given that first purchase contract fell through because issue of termites was not resolved, and purchasers subsequently accepted house "as is" at reduced price. [Niermeyer v. Cook's Termite & Pest Control, Inc.](#) (Ohio App. 10 Dist., Franklin, 02-14-2006) No. 05AP-21, 2006-Ohio-640, 2006 WL 330099, Unreported. [Brokers](#)  34; [Brokers](#)  102


Lot purchaser's failure to mitigate damages after discovering that lot was smaller than he believed did not preclude him from recovering on breach of fiduciary duty and negligent misrepresentation claims against real estate agent and real estate company; when purchaser discovered true size of lot, he offered it back to vendor, but vendor refused to take the lot back, which left purchaser with no choice but to proceed with building of house on lot. [Schmiedebusch v. Rako Realty, Inc.](#) (Ohio App. 5 Dist., Delaware, 09-16-2005) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported. [Brokers](#)  102


Doctrine of merger by deed did not bar lot purchaser's claim for negligent misrepresentation against real estate agent and agency who allegedly failed to inform purchaser that lot he was purchasing was smaller than he believed, as real estate agent was not a party to the agreement that led to the execution of the deed or a party to the deed itself. [Schmiedebusch v. Rako Realty, Inc.](#) (Ohio App. 5 Dist., Delaware, 09-16-2005) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported. [Deeds](#)  94


Genuine issue of material fact as to whether real estate agent and agency failed to exercise reasonable care or competence in obtaining information regarding actual size of lot precluded summary judgment for agent and agency on negligent misrepresentation claim by purchaser, who believed he was purchasing larger lot based on


picture in listing. [Schmiedebusch v. Rako Realty, Inc. \(Ohio App. 5 Dist., Delaware, 09-16-2005\) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported. Judgment](#)  181(18)


Genuine issue of material fact as to whether real estate agent, while acting within the course and scope of his employment with agency, should have been aware of size of lot and disclose to lot purchaser the size of the lot precluded summary judgment for agent and agency on breach of fiduciary duty claim by purchaser, who believed he was purchasing larger lot. [Schmiedebusch v. Rako Realty, Inc. \(Ohio App. 5 Dist., Delaware, 09-16-2005\) No. 04CAE08062, 2005-Ohio-4884, 2005 WL 2266701, Unreported. Judgment](#)  181(18)

Vendor was not agent of his wife and thus wife was not liable as principal for vendor's fraud and negligent misrepresentations regarding landfill on property sold to purchasers; wife testified that she allowed vendor to make decisions concerning property "because he was more knowledgeable about these kinds of things" and because that's "what you do as husband and wife," and testified that she agreed he would take care of the matters. [Clemente v. Gardner \(Ohio App. 5 Dist., Licking, 04-26-2004\) No. 2002CA00120, 2004-Ohio-2254, 2004 WL 953700, Unreported. Husband And Wife](#)  25(1)

Whether condominium unit vendor had proper authority, under power of attorney, to act as agent for his incapacitated parent, who was unit's owner, in sale of condominium unit, had no effect on unit purchaser's action for fraud arising from nondisclosure of structural damage to unit; vendor explicitly acknowledged that he was acting as agent for incapacitated owner, and that he had no knowledge as to property's condition, and purchaser accepted one-year warranty in consideration of vendor's lack of knowledge. [Majoy v. Hord \(Ohio App. 6 Dist., Erie, 04-23-2004\) No. E-03-037, 2004-Ohio-2049, 2004 WL 870430, Unreported. Fraud](#)  16

Genuine issue of material fact as to whether vendors' real estate agent actively concealed from home purchasers the existence of a capped gas well under home precluded summary judgment for agent in purchasers' action against agent and vendors. [Bedwell v. Schmitt \(Ohio App. 11 Dist., Portage, 12-13-2002\) No. 2001-P-0136, 2002-Ohio-6909, 2002 WL 31813019, Unreported, appeal not allowed 98 Ohio St.3d 1540, 786 N.E.2d 902, 2003-Ohio-1946. Judgment](#)  181(18)

Vendor's real estate broker was not liable to purchaser for negligent misrepresentation, relating to broker's representation that vendor's access easement across another property would survive the conveyance, in absence of reliance by purchaser on such representation. [Davis v. Montenery \(Ohio App. 7 Dist., 11-15-2007\) 2007-Ohio-6221, 2007 WL 4145989. Brokers](#)  102

When a real property purchaser continues to investigate possible problems on his own and looks to others, such as inspectors' and electricians' representations, the purchaser is not justifiably relying on the real estate agent's representations regarding those possible problems, and thus, the agent cannot be liable to the purchaser for negligent misrepresentation. [Davis v. Montenery \(Ohio App. 7 Dist., 11-15-2007\) 2007-Ohio-6221, 2007 WL 4145989. Brokers](#)  102

Inspection provision of real estate purchase agreement, stating that purchasers or purchasers' real estate agent had the responsibility to order the inspection, provided real estate agent with apparent authority to enter into any agreements reasonably necessary to the inspection, including an arbitration agreement with a home inspector. [Church v. Fleishour Homes, Inc. \(Ohio App. 5 Dist., 04-16-2007\) 2007-Ohio-1806, 2007 WL 1123178. Brokers](#) 🔑 13

Vendors were not liable for their real estate agent's alleged misrepresentations, to purchasers, that damp crawl space beneath home had been treated with silicone and that the silicone treatment had a lifetime warranty, where vendors had no actual knowledge of the alleged misrepresentations. [Clark v. Allen \(Ohio App. 12 Dist., 09-02-2003\) 154 Ohio App.3d 200, 796 N.E.2d 965, 2003-Ohio-4617. Brokers](#) 🔑 102

In home purchasers' action against real estate agent for fraud in misrepresenting or concealing condition of basement, trial court improperly awarded restoration costs as damages without considering diminution in value of the property, and thus matter would be remanded for redetermination of damages. [Bartholet v. Carolyn Riley Realty, Inc. \(Ohio App. 9 Dist., 12-30-1998\) 131 Ohio App.3d 23, 721 N.E.2d 474. Appeal And Error](#) 🔑 1178(6); [Brokers](#) 🔑 106

Attorney had good grounds to file fraud action on behalf of purchasers of home against both listing broker and sub-agent of listing broker, based on allegations that brokers had supplied "bogus" report of home inspection which "duped" closing agent, so that imposition of sanctions against attorney under Rule 11 was not warranted; while attorney did not draft complaint with precision, and alleged that both brokers undertook obligation to have proper inspection performed when only sub-agent had done so, sufficient circumstantial evidence of fraud justified filing of complaint against both. [Burns v. Henne \(Ohio App. 2 Dist., 10-18-1996\) 115 Ohio App.3d 297, 685 N.E.2d 294.](#)

Realty company and its agents have duty not to assert as fact matters as to which they have no knowledge. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

A real estate agent who voluntarily secures a termite inspection by retaining on behalf of either the buyer or seller a third party to conduct the inspection may be liable to the buyer or seller for civil damages if the agent is negligent in selecting and retaining a pest control company whose report states "no visible evidence of infestation from wood destroying insects was observed" and after moving into the home the buyers discover a swarm of termites in the basement area. [Lucre v. Aid Pest Control, Inc. \(Ohio App. 5 Dist., Stark, 11-09-1998\) No. 98CA00078, 1998 WL 819771, Unreported, cause dismissed 85 Ohio St.3d 1403, 706 N.E.2d 786.](#)

A vendor who is a real estate broker by profession and acting in his own capacity as owner of the real estate has no duty to speak or disclose the existence of a defect in a wall and is shielded from liability both contractually through the "as is" clause and legally through the doctrine of caveat emptor. [Hull v. Arrow Material Products, Inc. \(Ohio App. 4 Dist., Gallia, 09-01-1995\) No. 94CA25, 1995 WL 535186, Unreported.](#)

Real estate agents had no duty to affirmatively speak up and disclose their knowledge of crimes simply because they were in room at time purchaser questioned vendor regarding safety of residence. [Van Camp v. Bradford](#) (Ohio Com.Pl. 1993) 63 Ohio Misc.2d 245, 623 N.E.2d 731. [Brokers](#) 🔑 102

#### 5. Caveat emptor doctrine

Doctrine of caveat emptor imposes a duty upon a vendor or vendor's agent to disclose only those defects on the property known by the vendor that could not be readily discovered by a reasonable inspection. [McMullian v. Borean](#) (Ohio App. 6 Dist., 07-28-2006) 167 Ohio App.3d 777, 857 N.E.2d 180, 2006-Ohio-3867. [Vendor And Purchaser](#) 🔑 37(7)

The doctrine of caveat emptor does not apply to the sale of a house if there is fraudulent misrepresentation or concealment by the sellers even though they allowed inspection or an opportunity to inspect. [Donnelly v. Taylor](#) (Ohio Com.Pl., 04-04-2002) 122 Ohio Misc.2d 24, 786 N.E.2d 119, 2002-Ohio-7461, affirmed 2003-Ohio-729, 2003 WL 356316. [Fraud](#) 🔑 22(1)



Unless confidential information is at issue, a real estate agent has an affirmative obligation to inform her client of all information material to the transaction, must also advise her client in furtherance of the client's interest, and may not assert caveat emptor as a defense to a fraud claim by the client if the agent fails to adhere to these fiduciary duties. [Allison v. Cook](#) (Ohio App. 12 Dist., 10-16-2000) 139 Ohio App.3d 473, 744 N.E.2d 254. [Brokers](#) 🔑 19; [Brokers](#) 🔑 38(1)



The defense of caveat emptor does not apply when a real estate agent fails to disclose to his clients facts known by him that are material to the transaction. [Allison v. Cook](#) (Ohio App. 12 Dist., 10-16-2000) 139 Ohio App.3d 473, 744 N.E.2d 254. [Brokers](#) 🔑 29


A real estate agent has an affirmative duty to disclose information to and advise her client on material matters; a failure to perform these duties, or a willful concealment of material matters, may support the client's fraud claim against the real estate agent. [Allison v. Cook](#) (Ohio App. 12 Dist., 10-16-2000) 139 Ohio App.3d 473, 744 N.E.2d 254. [Brokers](#) 🔑 34


Doctrine of caveat emptor did not apply in fraudulent concealment action by purchasers of home in connection with fuel oil contamination on basement wall; vendors' obscuring of wall with piled furniture and an open door denied purchasers an unimpeded opportunity to inspect premises and also constituted fraud. [Padgett v. Sanders](#) (Ohio App. 12 Dist., 09-28-1998) 130 Ohio App.3d 117, 719 N.E.2d 636. [Fraud](#) 🔑 22(2)


Trial court's finding that flooding problem in basement was not a latent defect was not against the manifest weight of the evidence, so that doctrine of caveat emptor barred purchaser's claim based upon structural defect, where, although purchaser testified that she did not see water marks during her inspection, she later admitted she would not have known what water mark was anyway, and purchaser was aware of problems in basement, includ-


ing rotting sills, rusting furnace vents, dry-rotted floor joists, leaks in walls, and damp basement. [Bell v. Perkins \(Ohio App. 12 Dist., 12-22-1997\) 124 Ohio App.3d 539, 706 N.E.2d 834](#). Fraud  17; Vendor And Purchaser  37(1)


Trial court's finding that there was no fraud on part of vendor was not against manifest weight of evidence, so that doctrine of caveat emptor barred purchaser's claim for flooding damage based upon structural defect, where vendor testified that she did not intend to mislead purchaser by failing to mention the two prior instances of flooding in basement. [Bell v. Perkins \(Ohio App. 12 Dist., 12-22-1997\) 124 Ohio App.3d 539, 706 N.E.2d 834](#). Fraud  58(1); Vendor And Purchaser  37(7)

Competent, credible evidence supported the trial court's finding that cracks in the basement wall were not “latent defects,” such that doctrine of caveat emptor precluded recovery in purchasers' misrepresentation and fraudulent concealment action against vendor seeking damages for flooding, where vendor testified that after initial repair of cracks, she never saw water come in through the cracks, and two other witnesses testified that they had never seen water come through the cracks. [Rogers v. Hill \(Ohio App. 4 Dist., 12-16-1998\) 124 Ohio App.3d 468, 706 N.E.2d 438](#). Fraud  16

Competent, credible evidence supported trial court's finding that the hole in basement wall around the water pipe was not a “latent defect” in that it could have been detected by inspection, such that doctrine of caveat emptor precluded recovery in purchasers' misrepresentation and fraudulent concealment action against vendor seeking damages for flooding, where witness testified that he had shown purchaser point at which water line entered house and that hole was visible. [Rogers v. Hill \(Ohio App. 4 Dist., 12-16-1998\) 124 Ohio App.3d 468, 706 N.E.2d 438](#). Fraud  16

Water leakage into basement was open to the public and as such was not “latent defect,” within meaning of doctrine of caveat emptor, which relieves vendor of residential property of obligation of revealing other than latent defects, where efflorescence in basement was noted by purchaser and his two home inspectors prior to purchaser's offer to buy house and prior to transfer of title, and inspectors informed purchaser that home may have had drainage problem. [Cardi v. Gump \(Ohio App. 8 Dist., 06-05-1997\) 121 Ohio App.3d 16, 698 N.E.2d 1018](#). Fraud  17

Doctrine of caveat emptor governs real property sales transactions in Ohio and relieves a vendor of the obligation of revealing every imperfection that might exist in a residential property. [Cardi v. Gump \(Ohio App. 8 Dist., 06-05-1997\) 121 Ohio App.3d 16, 698 N.E.2d 1018](#). Vendor And Purchaser  37(1)

Although doctrine of caveat emptor governs real property sales transactions, vendor does have duty to disclose material facts which are latent, not readily observable or discoverable through purchaser's reasonable inspection. [Black v. Cosentino \(Ohio App. 9 Dist., 12-26-1996\) 117 Ohio App.3d 40, 689 N.E.2d 1001](#). Fraud  17

Doctrine of caveat emptor governs real property sales transactions in Ohio and relieves vendor of obligation of revealing every imperfection that might exist in a residential property. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

Caveat emptor precludes recovery in an action by purchaser for structural defect in real estate when condition complained of is open to observation or discoverable upon reasonable inspection, purchaser had unimpeded opportunity to examine premises, and there is no fraud on part of vendor. [Buchanan v. Geneva Chervenik Realty \(Ohio App. 9 Dist., 10-09-1996\) 115 Ohio App.3d 250, 685 N.E.2d 265.](#)

Doctrine of caveat emptor did not apply to claim based on latent, concealed defects and fraudulent misrepresentations on the part of vendors. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Fraud ↪ 22\(1\)](#)


Doctrine of “caveat emptor” precludes recovery in action by purchaser for structural defect in real estate where condition complained of is open to observation or discoverable upon reasonable inspection, purchaser had unimpeded opportunity to examine premises, and there is no fraud on part of vendor. [Apesos v. Kemper Mechanical Serv., Inc. \(Ohio App. 2 Dist., 11-08-1995\) 107 Ohio App.3d 307, 668 N.E.2d 946, appeal not allowed 75 Ohio St.3d 1451, 663 N.E.2d 332. Fraud ↪ 23](#)


Doctrine of “caveat emptor” applies to real estate transactions, and precludes recovery in action by purchaser for structural defects in real estate where (1) condition complained of is open to observation or discoverable upon reasonable inspection, (2) purchaser had unimpeded opportunity to examine premises, and (3) there is no fraud on part of vendor; however, doctrine will not bar recovery by purchaser when latent defects not easily discoverable are coupled with affirmative misrepresentations or concealment. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653. Fraud ↪ 22\(1\); Fraud ↪ 28](#)



Doctrine of caveat emptor precludes recovery in action by purchaser for structural defect in real estate where: (1) condition complained of is open to observation or discoverable upon reasonable inspection; (2) purchaser had unimpeded opportunity to examine premises; and (3) there was no fraud on part of vendor. [Barker v. Stoner \(Ohio Mun., 10-04-1994\) 70 Ohio Misc.2d 42, 650 N.E.2d 1372. Vendor And Purchaser ↪ 37\(1\)](#)

Doctrine of caveat emptor did not apply in action by purchasers for structural defect in basement of home as jury could infer from masonry experts' failure to discover water problem on their inspection that ordinary prudent person would not have discovered it on reasonable inspection. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734. Evidence ↪ 571\(3\)](#)


Doctrine of caveat emptor is recognized in sale of real estate. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734. Vendor And Purchaser ↪ 37\(1\)](#)

Doctrine of caveat emptor does not apply in action by purchaser for defect in real estate where condition complained is latent defect; defect is open and observable if ordinary prudent person would discover it upon reasonable inspection. [Dennison v. Koba \(Lorain 1993\) 86 Ohio App.3d 605, 621 N.E.2d 734. Vendor And Purchaser](#)  37(1)

Home buyer was precluded by caveat emptor doctrine from recovery in her action against sellers for alleged defects in wood flooring, furnace, and air conditioning unit, but could recover for defects in the electrical system; the alleged defects in the floor, furnace, and air conditioning unit were open to observation or were discoverable upon reasonable inspection, the buyer had unimpeded opportunity to have the house inspected and there was no fraud by the sellers, except for their statement that they had completely rewired the electrical system in the house. [Zanko v. Kapcar \(Ohio App. 9 Dist., Summit, 05-15-2002\) No. 20825, 2002-Ohio-2329, 2002 WL 1023664, Unreported. Fraud](#)  22(1)

Caveat emptor doctrine barred recovery for home purchasers' claims that vendors and real estate agent fraudulently misrepresented the extent of problems with the bathroom plumbing, even though the real estate agent and vendors claimed that past water damage had been completely fixed and there was no structural damage; purchasers were able to see a water stain on one bathroom ceiling during their tour of the house, but did not discover the extensive water damage until the plaster ceiling fell in due to problems with the second floor shower. [Duman v. Campbell \(Ohio App. 8 Dist., Cuyahoga, 05-09-2002\) No. 79858, 2002-Ohio-2253, 2002 WL 973095, Unreported. Brokers](#)  102; [Fraud](#)  23

Buyer can recover for fraudulent concealment where seller conceals problems with a sewer system and fails to respond to the question regarding any known material defects where buyers (1) after taking possession discover a defective sewer discharge line which backs up and damages the interior of the home, (2) learn the waste system is inoperable and needs extensive repair or replacement, (3) detect a musty odor and discover water penetration into the floor, and (4) find terry cloth towels stuffed beneath the carpeting; seller's "as is" clause in the purchase agreement does not entitle seller to judgment as a matter of law because the defect is latent, making the doctrine of caveat emptor inapplicable. [McCann v. Anastasio \(Ohio App. 11 Dist., Portage, 10-05-2001\) No. 2000-P-0078, 2001-Ohio-4300, 2001 WL 1182798, Unreported.](#)

Under Ohio law, a purchaser's fraudulent misrepresentation claims against a vendor regarding the condition of the property's roof were barred by the doctrine of caveat emptor; the condition of the roof was open to observation and a reasonably prudent person would have engaged in further investigation and discovered the extent of the damage, and any reliance on the vendor's alleged misrepresentations was not justified in light of facts available to the purchaser. [E-Poch Properties, LLC v. TRW Automotive U.S., LLC \(C.A.6 \(Ohio\), null, 07-07-2008\) No. 07-3472, 286 Fed.Appx. 276, 2008 WL 2660916, Unreported. Fraud](#)  22(1)

Purchasers' fraudulent misrepresentation and concealment claims against vendors of residential real estate were barred by caveat emptor, where the cause of action was based upon vendors' alleged failure to disclose water leakage in basement, the condition of water leakage in the basement was discoverable upon reasonable inspec-

tion, and vendors admitted verbally and in the property disclosure form that they performed repair work in the basement. [States v. Wing \(Ohio App. 11 Dist., Trumbull, 08-25-2006\) No. 2005-T-0145, 2006-Ohio-4423, 2006 WL 2466640, Unreported. Fraud ↪ 22\(1\)](#)

Doctrine of caveat emptor precluded home purchasers from recovering from vendors on fraud and actual malice claims arising when purchasers discovered that roof leaked seventeen days after moving into home; vendors disclosed fact that roof had prior leakage problems, purchasers saw hole in the roof and water damage during their first walk through of the home, purchasers' home inspection report revealed problems with the roof and evidence of past leakage, purchasers had unfettered access to inspect the home, and there was no evidence vendors acted fraudulently. [Ripley v. McDevitt \(Ohio App. 7 Dist., Columbiana, 03-10-2006\) No. 05 CO 23, 2006-Ohio-1156, 2006 WL 621361, Unreported. Fraud ↪ 20](#)

Purchasers' action against vendors, and real estate agent for negligently or fraudulently misrepresenting the square footage of the house they purchased was barred by caveat emptor; although size of the house, represented in the feature sheet, multiple listing service (MLS) printout, and tax records as 1,991 square feet rather than 1,445, was misstated, the size of the house was easily discoverable, the purchasers inspected the house three times and could have measured the house but did not until after closing, and the feature sheet contained a disclaimer for any errors and omissions. [Abbott v. Loss Realty Group \(Ohio App. 6 Dist., Lucas, 11-04-2005\) No. L-05-1107, 2005-Ohio-5876, 2005 WL 2933757, Unreported. Brokers ↪ 102; Fraud ↪ 22\(1\)](#)

Genuine issue of material fact as to whether vendors attempted to conceal water damage from a leaky toilet in their home precluded summary judgment for vendors on purchaser's claim of fraudulent concealment in his lawsuit against vendors. [Smith v. Cooper \(Ohio App. 4 Dist., Gallia, 06-10-2005\) No. 04CA12, 2005-Ohio-2979, 2005 WL 1400032, Unreported, appeal not allowed 107 Ohio St.3d 1408, 836 N.E.2d 1228, 2005-Ohio-5859. Judgment ↪ 181\(29\)](#)

Doctrine of caveat emptor barred residential real estate purchaser from recovery in his case against vendors alleging fraudulent concealment and fraudulent misrepresentation, with the exception of claimed instance of concealment involving leaky toilet; though purchaser claimed that vendors made various misrepresentations about the condition of the property and, thus, perpetrated fraud, evidence indicated that the claimed defects could have been discovered by a reasonable inspection of the home, and although purchaser could have inspected the premises, he chose not to do so, but instead simply accepted vendors' word, albeit ill-informed, that everything was in working order. [Smith v. Cooper \(Ohio App. 4 Dist., Gallia, 06-10-2005\) No. 04CA12, 2005-Ohio-2979, 2005 WL 1400032, Unreported, appeal not allowed 107 Ohio St.3d 1408, 836 N.E.2d 1228, 2005-Ohio-5859. Fraud ↪ 22\(1\); Vendor And Purchaser ↪ 37\(7\)](#)

Trial court's finding that sellers actively concealed water damage by painting basement walls and floors in close proximity to sale of home, as grounds for determining that doctrine of caveat emptor did not apply to preclude purchasers' recovery for damages, was supported by photographs taken less than two months after purchasers took possession of home showing mold behind cabinets, in corners of basement, and high on wall, and expert

testimony that water leakage problems and resulting mold had developed over period of years and not by one-time flooding of basement when water heater broke, as alleged by sellers. [Nichols v. Petroff \(Ohio App. 5 Dist., Stark, 02-07-2005\) No. 2004CA00271, 2005-Ohio-481, 2005 WL 299843, Unreported. Fraud ↪ 16](#)

Caveat emptor doctrine precluded home purchasers' recover from home vendors; although purchasers claimed vendors failed to disclose that basement walls bulged and that house had water problems in basement, vendors disclosed that foundation wall had collapsed during construction and purchasers failed to seek additional professional advice related to wall, there was no evidence that vendors had knowledge that basement walls bulged at time of sale, vendors were not required to disclose to purchasers report prepared by structural engineer hired by third parties who previously rescinded home purchase agreement, purchasers were aware of report but never procured copy of report, purchasers testified that they had not seen water in basement, vendors did not engage in fraud, and purchasers had home inspected. [Getz v. Taylor \(Ohio App. 5 Dist., Fairfield, 10-04-2004\) No. 03 CA 99, 2004-Ohio-5506, 2004 WL 2315170, Unreported. Fraud ↪ 36](#)

Doctrine of caveat emptor, which precludes recovery in an action by purchaser for a structural defect in real estate, was not applicable because the water problem in basement was not open and observable and the vendor had engaged in fraud; vendor had painted basement walls prior to placing house up for sale, vendor's sister, who was in basement when house was for sale, did not notice any water damage, water problem occurred only when it rained, and vendor's only disclosure concerning basement was that there was slight dampness on wall with heavy rain, despite fact that there was evidence of more extensive water problem. [Klasa v. Rogers \(Ohio App. 8 Dist., Cuyahoga, 08-26-2004\) No. 83374, 2004-Ohio-4490, 2004 WL 1902539, Unreported. Vendor And Purchaser ↪ 37\(1\)](#)

Doctrine of caveat emptor applied to bar purchaser's claim against vendor arising from the post-purchase discovery of puddles in basement of home that purchaser acquired "as-is"; problem complained of was open to observation, nothing impeded purchaser's discovering the problem, and there was no evidence that vendor acted fraudulently. [Moreland v. Ksiazek \(Ohio App. 8 Dist., Cuyahoga, 06-10-2004\) No. 83509, 2004-Ohio-2974, 2004 WL 1277187, Unreported. Fraud ↪ 22\(1\)](#)

Doctrine of caveat emptor did not bar purchasers' claims against vendor for fraud and negligence stemming from concealed landfill on purchased land, where landfill was neither readily observable nor discoverable upon reasonable inspection, and there was evidence that vendor knew land had been part of landfill and that vendor prohibited environmental testing of and around landfill. [Clemente v. Gardner \(Ohio App. 5 Dist., Licking, 04-26-2004\) No. 2002CA00120, 2004-Ohio-2254, 2004 WL 953700, Unreported. Fraud ↪ 22\(1\)](#)

"Caveat emptor doctrine" precludes purchaser's recovery for defects in real property that are "open to observation," and requires vendors of property to disclose latent defects unless buyer agreed to take property "as is." [Majoy v. Hord \(Ohio App. 6 Dist., Erie, 04-23-2004\) No. E-03-037, 2004-Ohio-2049, 2004 WL 870430, Unreported. Vendor And Purchaser ↪ 37\(7\)](#)

Land purchasers were barred by doctrine of caveat emptor from pursuing fraud claim against vendors for failure to disclose well's low yield; purchasers had full opportunity to inspect premises, tests existed to measure yield of well, tests were not ordered, well's yield was public record, vendors had no statutory duty to disclose low yield, and vendors did not actively misrepresent any material defect. [Witfoth v. Kiefer \(Ohio App. 6 Dist., Lucas, 12-12-2003\) No. L-02-1325, 2003-Ohio-6766, 2003 WL 22947478, Unreported. Fraud ↪ 17](#)

Evidence that sellers had knowledge of water leakage in certain parts of home at one time did not constitute newly discovered evidence, so as to justify relief from judgment denying recovery for water leakage and damage in basement on theory of caveat emptor. [Bryant v. Bulach \(Ohio App. 12 Dist., Butler, 03-31-2003\) No. CA2002-01-023, No. CA2002-06-137, 2003-Ohio-1609, 2003 WL 1689613, Unreported. Judgment ↪ 378](#)

Doctrine of caveat emptor precluded purchaser of home from recovering damages from sellers for water leakage and mold discovered upon taking possession; leakage and mold would have been discovered upon reasonable inspection, purchaser had unimpeded opportunity to inspect home prior to purchase, and there was no evidence of fraud on part of sellers. [Bryant v. Bulach \(Ohio App. 12 Dist., Butler, 03-31-2003\) No. CA2002-01-023, No. CA2002-06-137, 2003-Ohio-1609, 2003 WL 1689613, Unreported. Fraud ↪ 22\(1\); Fraud ↪ 22\(2\)](#)

Genuine issue of material fact as to whether presence of masonry compound, and the defect it concealed, were open to observation or discoverable upon reasonable inspection precluded summary judgment for home vendors based on caveat emptor doctrine, in purchasers' action alleging fraudulent misrepresentation and fraudulent concealment relating to water seepage in basement. [Kimball v. Duy \(Ohio App. 11 Dist., Lake, 12-27-2002\) No. 2002-L-046, 2002-Ohio-7279, 2002 WL 31886713, Unreported. Judgment ↪ 181\(29\)](#)

Doctrine of caveat emptor did not bar home purchasers' claims against vendors which arose out of discovery that house was built atop capped gas well, as gas well was 20 feet below property surface and thus was not open to discovery upon observation or reasonable inspection. [Bedwell v. Schmitt \(Ohio App. 11 Dist., Portage, 12-13-2002\) No. 2001-P-0136, 2002-Ohio-6909, 2002 WL 31813019, Unreported, appeal not allowed 98 Ohio St.3d 1540, 786 N.E.2d 902, 2003-Ohio-1946. Fraud ↪ 23; Vendor And Purchaser ↪ 37\(1\)](#)

The seller of a home which developed serious structural problems did not commit fraud nor conceal material defects by stating in a residential property disclosure form that there were no problems with the foundation and no material cracks other than what could be seen during the buyer's inspection of the home where (1) the buyer was given unimpeded opportunity to inspect the house and toured the home extensively before purchasing it, (2) the buyer discussed observed foundation cracks with the seller during her inspection of the house, and (3) the real estate agent encouraged the buyer to obtain a professional inspection of the property but she declined to do so, and therefore the doctrine of caveat emptor applies in this action. [Barr v. Wolfe \(Ohio App. 4 Dist., Lawrence, 02-24-2000\) No. 99CA17, 2000 WL 236467, Unreported.](#)

Because the disclosure requirements of RC 5302.30 are not limited to latent defects, caveat emptor was rendered an impotent defense where sellers had actual knowledge of defects, even if such defects were open to observa-

tion and discoverable upon a reasonable inspection. [Harpest v. Parrott \(Ohio App. 2 Dist., Miami, 10-08-1999\) No. 99CA20, 1999 WL 812250, Unreported.](#)

A purchaser's claim to recover the cost of repairing a structural defect which allowed water to enter the basement is barred where (1) the buyer observes water marks on the wall prior to purchase, (2) buyer inspects the basement on two occasions and is encouraged to obtain an inspection, and (3) the disclosure form indicates that the seller did not live in the house which implicitly warns the buyer that the seller may not be entirely aware of its condition; as a devisee who had not occupied the property the seller has no duty to inspect the house in order to complete a residential property disclosure form. [Moody v. Blower \(Ohio App. 4 Dist., Athens, 04-19-1999\) No. 98CA28, 1999 WL 250135, Unreported.](#)

According to the doctrine of caveat emptor, buyers may recover from sellers for non-disclosure of latent defects of which the seller has knowledge but may not recover from sellers for the non-disclosure of patent defects such as foundation damage that is open to observation or discoverable upon reasonable inspection and buyers decline an opportunity to inspect the premises. [Good v. McElhaney \(Ohio App. 4 Dist., Athens, 09-30-1998\) No. 97 CA 41, 1998 WL 682328, Unreported.](#)

Sellers do not fraudulently represent grading defects that cause water to accumulate and leak into the house where the defects are observable in dry weather and include (1) a lot that is nearly flat, (2) a driveway that is higher than the garage floor slab, (3) a patio concrete slab at the rear of the house that is above the elevation of the floor slab, and (4) downspouts and gutters that discharge adjacent to the house. [Moravek v. Hornsby \(Ohio App. 12 Dist., Clermont, 07-14-1997\) No. CA96-12-113, 1997 WL 397012, Unreported.](#)

The doctrine of caveat emptor precludes recovery in an action for extensive termite infestation and damage where a buyer is put on notice that the residence had previously been treated for termites and the buyer could have further investigated the termite history of the residence or conducted further inspections. [Moore v. Daw \(Ohio App. 5 Dist., Muskingum, 08-20-1996\) No. CT 95-20, 1996 WL 488853, Unreported, dismissed, appeal not allowed 77 Ohio St.3d 1516, 674 N.E.2d 370.](#)

Purchasers who contract to buy a house that is not connected to the city sewer system but rather has an old septic system that is disclosed to require pumping annually and who have an unimpeded opportunity to inspect the septic system are not entitled to judgment for damages arising from the purchase of their home in absence of fraud as to the condition of the septic system. [Felty v. Gibson \(Ohio App. 12 Dist., Butler, 05-13-1996\) No. CA95-04-076, 1996 WL 251834, Unreported.](#)

Defects in a 160-year-old home, including water seepage from the foundation, broken drain tiles, powder post beetle infestation, carpenter ant infestation, and rats, are not latent defects not discoverable upon reasonable inspection, nor are any misrepresentations or misstatements of a material fact by the vendors sufficient to support the vendees' action in fraud, especially where the vendors' disclosure information checklist indicated to the vendees what to look for and where to find it. [Manning v. Van Hala \(Ohio App. 8 Dist., Cuyahoga, 11-03-1994\)](#)

No. 67080, 1994 WL 615013, Unreported.

Caveat emptor precludes the buyer of a house from recovering damages from the seller for structural defects in the basement where the buyer, prior to purchasing the house, observes standing water, stained tile, and mildewed ceilings, has her own expert view the house and the expert's written report indicates seepage problems, and the seller inserts into the purchase contract a clause regarding the seepage problem. [Smith v. Schneider \(Ohio App. 8 Dist., Cuyahoga, 11-03-1994\) No. 66958, 1994 WL 613732, Unreported, appeal not allowed 72 Ohio St.3d 1407, 647 N.E.2d 496.](#)

The doctrine of caveat emptor bars an action by vendees for defects in real estate where (1) the purchase agreement contains an "as is" clause; (2) several conditions, including a cracked garage floor, replacement of the basement walls and chimney, a broken door sill, and differential separation of the house's foundation visible from a crawlspace, would put a reasonably prudent person on notice of a possible defect; and (3) there is evidence that the vendors' repair and redecorating work was done to repair the premises, not to conceal defects. [Vecchio v. Kehn \(Ohio App. 8 Dist., Cuyahoga, 08-18-1994\) No. 66067, 1994 WL 449703, Unreported.](#)

#### 6. In general

Evidence did not establish that purchaser was entitled under contract, which required vendors to guarantee septic system for one year and to complete and guarantee leach field for two years, to recover cost of replacing entire septic system, and thus purchaser was only entitled to cost of replacing leach lines; documents relating to septic system repairs other than leach lines were dated three years after closing, and residential disclosure form did not indicate any problem with "septic system" but rather only indicate problem with "leach field." [Skirvin v. Kidd \(Ohio App. 4 Dist., 12-20-2007\) 2007-Ohio-7179, 2007 WL 4638065. Vendor And Purchaser](#) 🔑 200

Home inspection company did not act inconsistently with, and therefore did not waive, its right to arbitration under arbitration clause of home inspection agreement; company asserted the arbitration clause as an affirmative defense in answer filed five weeks after home purchasers filed their complaint for breach of contract, negligence, and negligent misrepresentation, and company did not invoke the jurisdiction of the court by filing a counterclaim or third-party complaint. [Church v. Fleishour Homes, Inc. \(Ohio App. 5 Dist., 04-16-2007\) 2007-Ohio-1806, 2007 WL 1123178. Alternative Dispute Resolution](#) 🔑 182(1)

Where purchaser receives statutory disclosure form before executing agreement for transfer of residential real property, purchaser is deemed aware of the various disclosures required by statute before he decides to make the purchase. [Wilson v. Safarek \(Ohio App. 7 Dist., 01-28-1999\) 131 Ohio App.3d 622, 723 N.E.2d 181. Antitrust And Trade Regulation](#) 🔑 199

Where purchaser executes agreement for transfer of residential real property, and then receives statutory disclosure form, he has the right to rescind the transfer agreement within three days after receipt, because his decision to purchase may be altered by the disclosures. [Wilson v. Safarek \(Ohio App. 7 Dist., 01-28-1999\) 131 Ohio](#)

[App.3d 622, 723 N.E.2d 181. Antitrust And Trade Regulation](#) 🔑 401

Purchasers of residential real property received statutory disclosure form from vendor prior to execution of agreement to transfer property, so that purchasers could not rescind agreement based on disclosures in form, where vendor completed property disclosure form, and purchasers read form and acknowledged receipt of form by signing and dating it, before execution of transfer agreement, even though purchasers did not retain copy of disclosure form, because negotiations took place at location which lacked copy machine, and did not receive copy of form until two weeks later. [Wilson v. Safarek \(Ohio App. 7 Dist., 01-28-1999\) 131 Ohio App.3d 622, 723 N.E.2d 181. Antitrust And Trade Regulation](#) 🔑 401

When fraud induces the purchase of real estate, damages are measured as the difference between the value of the property as presented and the actual value at the time of sale. [Padgett v. Sanders \(Ohio App. 12 Dist., 09-28-1998\) 130 Ohio App.3d 117, 719 N.E.2d 636. Fraud](#) 🔑 59(2)

Basing of damages award to purchasers in fraudulent concealment action on cost of cleaning up fuel oil contamination on their residential property, as opposed to diminution in market value, was not error, in absence of credible evidence supporting estimates of diminished value offered by purchaser's expert and purchasers themselves. [Padgett v. Sanders \(Ohio App. 12 Dist., 09-28-1998\) 130 Ohio App.3d 117, 719 N.E.2d 636. Fraud](#) 🔑 60

Refusal of trial court, in ruling on summary judgment motion by vendor of house on purchasers' fraudulent concealment claim, to consider unauthenticated letter from employee of waterproofing company that purchasers attached to their affidavit was not error despite vendor's failure to object to letter; the content of letter was improper hearsay evidence. [Felker v. Schwenke \(Ohio App. 8 Dist., 08-17-1998\) 129 Ohio App.3d 427, 717 N.E.2d 1165. Judgment](#) 🔑 185.3(18); [Judgment](#) 🔑 189

Doctrine of "mitigation of damages" is intended to prevent inclusion in damage award of such damages that could have been avoided by reasonable affirmative action by injured party without substantial risk to that party. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Damages](#) 🔑 62(1)

Vendors were not entitled to instruction on mitigation of damages resulting from latent defects in roof, even though they presented testimony that it would have cost \$2,000 to stop leak in a roof dormer which was major source of leaking, where major damage had already been done at the time of inspection and the roof was not structurally sound. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Damages](#) 🔑 214

Award of \$30,000 for defects in roof was supported by testimony that minimum cost of repairs was \$23,531 and that there could be much more in need of repair once the work began. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Fraud](#) 🔑 62

Testimony of purchasers that they did not get roof repaired because they thought it would cost \$15,000 was not hearsay in action against vendors where it was not offered to prove the extent of the damages but to explain their conduct in trying to get the roof repaired. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Evidence ↪ 314\(5\)](#)

Genuine issue of material fact as to whether latent defect existed in roof precluded summary judgment in favor of vendors in purchasers' action alleging failure to disclose latent defect; evidence of water stains on ceiling did not negate allegation of latent defect in roof. [Apesos v. Kemper Mechanical Serv., Inc. \(Ohio App. 2 Dist., 11-08-1995\) 107 Ohio App.3d 307, 668 N.E.2d 946, appeal not allowed 75 Ohio St.3d 1451, 663 N.E.2d 332. Judgment ↪ 185.3\(18\)](#)

With respect to real estate sales transactions, seller may be liable to buyer for nondisclosure of latent defect where seller is under duty to disclose facts and fails to do so. [Jacobs v. Racevskis \(Ohio App. 2 Dist., 06-14-1995\) 105 Ohio App.3d 1, 663 N.E.2d 653. Fraud ↪ 16](#)

Generally, if restoration can be made, measure of damages for injury to real property is reasonable cost of restoration, plus reasonable value of loss of use of property between time of injury and restoration, unless such cost of restoration exceeds difference in market value of property as whole before and after injury, in which case measure is difference in market value before and after injury. [Noble v. Mandalin \(Ohio App. 11 Dist., 05-08-1995\) 104 Ohio App.3d 11, 660 N.E.2d 1231. Damages ↪ 108](#)

Purchasers' failure to request punitive damages in their fraud action against vendors of house did not preclude award of such damages. [Lance v. Bowe \(Ohio App. 9 Dist., 10-26-1994\) 98 Ohio App.3d 202, 648 N.E.2d 60. Fraud ↪ 49](#)

For sales conducted on or after July 1, 1993, statute requires vendor of residential property to provide each prospective purchaser, or his agent, with prescribed disclosure form regarding various aspects of property. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Vendor And Purchaser ↪ 36\(1\)](#)

Purpose of disclosure form wherein vendor is required to disclose various aspects of property to purchaser is to disclose material matters regarding not only physical condition of property, but also title, survey, and other matters. [Van Camp v. Bradford \(Ohio Com.Pl. 1993\) 63 Ohio Misc.2d 245, 623 N.E.2d 731. Vendor And Purchaser ↪ 36\(1\)](#)

Purchasers who alleged that vendors failed to disclose material water problems in house, which contained mold, did not offer sufficient evidence that vendors' conduct was extreme and outrageous as necessary to support claim for intentional infliction of emotional distress. [Kleinholz v. Goettke \(Ohio App. 1 Dist., 09-21-2007\) 173 Ohio App.3d 80, 2007-Ohio-4880. Damages ↪ 192](#)

Under Ohio law, a vendor did not agree in a purchase contract to bear the costs of future air monitoring; the vendor agreed to “[c]omplete, at seller's sole expense, the cleanup of the Property under Ohio's Voluntary Action Program (“VAP”) ... and deliver to [purchaser] a No Further Action (“NFA”) letter from a Certified Professional. [vendor] agrees to apply for a Covenant Not To Sue (“CNS”) from the State of Ohio.” [E-Poch Properties, LLC v. TRW Automotive U.S., LLC \(C.A.6 \(Ohio\), null, 07-07-2008\) No. 07-3472, 286 Fed.Appx. 276, 2008 WL 2660916, Unreported. Vendor and Purchaser](#) 🔑 203

Trial court was required to use preponderance of evidence standard, rather than clear and convincing evidence standard, in assessing whether, in purchasers' negligent misrepresentation claim against vendors, purchasers relied on alleged representations of vendors, and therefore, remand was required in order for trial court to reconsider the evidence in light of the correct standard. [Brothers v. Morrone-O'Keefe Dev. Co. \(Ohio App. 10 Dist., Franklin, 03-09-2006\) No. 05AP-161, 2006-Ohio-1160, 2006 WL 620894, Unreported. Appeal And Error](#) 🔑 1177(2); [Vendor And Purchaser](#) 🔑 350

Vendors' property condition disclosure statement and words and conduct between vendors, their agents, and purchaser during period of negotiations did not give rise to implied warranty as to condition of home. [Reeder v. Frey \(Ohio App. 8 Dist., Cuyahoga, 11-03-2005\) No. 85932, 2005-Ohio-5853, 2005 WL 2885962, Unreported. Contracts](#) 🔑 205.35(1)

Purchasers were not entitled to award of punitive damages based on sellers' active concealment of water damage during negotiations to sell home, insofar as parties had minimal contact with each other and there was no showing of malice. [Nichols v. Petroff \(Ohio App. 5 Dist., Stark, 02-07-2005\) No. 2004CA00271, 2005-Ohio-481, 2005 WL 299843, Unreported. Fraud](#) 🔑 61

Dismissal of home vendor's cross-claims against insect exterminator, after granting vendor summary judgment on purchaser's claim that vendor had fraudulently failed to disclose termite infestation, was not abuse of discretion; cross-claims, which alleged vendor's liability to purchaser as damages, were derivative of purchaser's claim. [Dito v. Wozniak \(Ohio App. 9 Dist., Lorain, 01-05-2005\) No. 04CA008499, 2005-Ohio-7, 2005 WL 19437, Unreported. Pretrial Procedure](#) 🔑 651

Purchasers failed to show in action for breach of warranty against vendors that changes in embankment area near residence constituted a lack of stability, for purposes of provision in sales contract whereby vendors were to warranty stability of embankment and driveway apron, although purchasers' engineer testified that there were problems with fill and compaction, and although purchasers' architect found that embankment area was failing and was unstable; vendors and builder of house testified that condition of property had not changed since time of sale, and vendors' geotechnical engineer concluded that soil was compacted properly and did not see any evidence that hillside was unstable. [Walter v. Agoston \(Ohio App. 12 Dist., Warren, 05-17-2004\) No. CA2003-03-039, 2004-Ohio-2488, 2004 WL 1088505, Unreported. Vendor And Purchaser](#) 🔑 350

In a trial for fraudulent concealment in a real estate transaction a directed verdict in favor of sellers on the issue

of punitive damages is warranted where buyers fail to establish that the fraudulent concealment concerning disintegration of the exterior brickwork is particularly gross or egregious; on the contrary, active concealment is not evidenced where (1) the bricks are not painted, covered up, or concealed in any manner, (2) cut-out areas where bricks had been taken out of the walls for testing are visible, (3) the replaced entranceway bricks are a different color, and (4) sellers select an auctioneer who agrees to disclose the existence of problems with the brick. *Petta v Clarke*, No. 96CA006327, 12997 WL 33295 (9th Dist Ct App, Lorain, 1-15-97).

#### 7. Private home inspections, liability

Arbitration provision in contract between home purchasers and home inspection service was unenforceable, despite fact that provision was neither procedurally nor substantively unconscionable, where purchasers were effectively denied remedy as purchasers paid \$169 for inspection, contract provided that purchasers were limited to recovering this amount in event that they succeeded in action against inspection service, and contract required purchasers to arbitrate claims with certain arbitration service, which required \$650 filing fee. *McDonough v. Thompson* (Ohio App. 8 Dist., Cuyahoga, 12-09-2004) No. 84342, 2004-Ohio-6647, 2004 WL 2847818, Unreported. [Alternative Dispute Resolution](#) 🔑 134(1)

Individual who, pursuant to power of attorney, signed property disclosure form for home vendors could not be held liable to purchasers for defective air conditioner, where purchaser did not have property inspected, purchaser did not claim she was not given opportunity to inspect property or that defect would not have been discovered upon reasonable inspection, and there was no evidence that individual engaged in fraud. *Reiter v. Davidson* (Ohio App. 3 Dist., Seneca, 06-01-2004) No. 13-03-77, 2004-Ohio-2800, 2004 WL 1192431, Unreported. [Antitrust And Trade Regulation](#) 🔑 199

In action against house inspection company by purchasers of house claiming that inspector negligently failed to detect and/or negligently failed to inform purchasers of defect in roof, inspector was not liable as matter of law where house inspection report and affidavit of company's president stated that inspector reported all readily discernible defects in roof and that it was not negligent, and purchasers failed to file any evidentiary materials showing that inspector was negligent. *Apesos v. Kemper Mechanical Serv., Inc.* (Ohio App. 2 Dist., 11-08-1995) 107 Ohio App.3d 307, 668 N.E.2d 946, appeal not allowed 75 Ohio St.3d 1451, 663 N.E.2d 332. [Fraud](#) 🔑 13(3); [Negligence](#) 🔑 1205(1)

#### 8. Attorney fees

Issue of whether purchasers of residence, who brought action against vendors arising out of vendors' failure to disclose flooding problems and mold affecting the property, were entitled to recover attorney fees as an element of compensatory damages was for the jury; attorney fees could be justified by fraudulent or malicious conduct on the part of the vendors. *Zappitelli v. Miller* (Ohio App. 8 Dist., Cuyahoga, 01-26-2006) No. 85895, 2006-Ohio-279, 2006 WL 178558, Unreported, appeal allowed 110 Ohio St.3d 1437, 852 N.E.2d 186, 2006-Ohio-3862, reversed 114 Ohio St.3d 102, 868 N.E.2d 968, 2007-Ohio-3251. [Damages](#) 🔑 208(5)

Attorney fees could not be awarded as compensatory damages to purchasers in action against vendor for defects in house where punitive damages were not found. [Czarnecki v. Basta \(Ohio App. 8 Dist., 07-08-1996\) 112 Ohio App.3d 418, 679 N.E.2d 10. Fraud ↪ 60](#)

Purchasers did not engage in frivolous conduct by filing complaint against vendors claiming that vendors failed to disclose latent defect in roof, and thus vendors were not entitled to attorney fees where water marks on roof were evidence of leaking roof but not of defects which were not otherwise observable. [Apesos v. Kemper Mechanical Serv., Inc. \(Ohio App. 2 Dist., 11-08-1995\) 107 Ohio App.3d 307, 668 N.E.2d 946, appeal not allowed 75 Ohio St.3d 1451, 663 N.E.2d 332. Costs ↪ 194.44](#)

Chapter 7 debtor-vendors' representations to purchasers regarding condition of home, including omission of defects from real estate disclosure form, were material and were made in gross recklessness for truth, and debtors knew or should have known that purchasers would rely on information provided by debtors, thus establishing intent to deceive element for fraud discharge exception; debtors were aware that purchase of their home would involve disclosure of pertinent information related to home's physical condition, and they knew or should have known that such information was to be detailed on their real estate disclosure form as required by state law. [In re Sprague \(Bkrcty.N.D.Ohio, 02-21-1997\) 205 B.R. 851. Bankruptcy ↪ 3372.17](#)

As required to apply fraud discharge exception, purchasers established that they justifiably relied upon Chapter 7 debtor-vendors' false pretenses or false representations regarding physical condition of home, where purchasers read and relied upon information pertaining to property as it was described in listing sheet and in real estate disclosure form required under state law, and cursory inspection of property prior to purchase would likely not have revealed any defects later discovered by purchasers, but rather discovery would have required extensive inspection into home's structural, plumbing, and electrical systems. [In re Sprague \(Bkrcty.N.D.Ohio, 02-21-1997\) 205 B.R. 851. Bankruptcy ↪ 3372.42](#)

#### 9. Bankruptcy of seller, effect

Chapter 7 debtor-vendors' failure to disclose information both in writing and verbally was analogous to silence, thus supporting finding that debtors' sale of residential property was incurred under false pretenses and false representation, so that purchasers' claim for debt arising from home repairs was nondischargeable under fraud exception; debtors failed to disclose problems with water supply, septic system, and roof and failed to disclose defective nonprofessional repairs performed by debtor to plumbing and electrical systems, and home had been advertised as having "new" plumbing and wiring. [In re Sprague \(Bkrcty.N.D.Ohio, 02-21-1997\) 205 B.R. 851. Bankruptcy ↪ 3372.8](#)

#### 10. Newly constructed residential property

Statute governing property disclosure forms for transfer of residential real property did not create duty on part of bank to ensure issuance of occupancy permit or to disclose absence of that permit before making final disbursement on home construction loan; transfer involved newly constructed residential real property that had not been

inhabited. [Gene Patton, Inc. v. Greenwood \(Ohio App. 6 Dist., Lucas, 05-13-2005\) No. L-03-1277, 2005-Ohio-2354, 2005 WL 1125330, Unreported. Mortgages ↗ 210](#)

R.C. § 5302.30, OH ST § 5302.30

Current through 2009 File 8, of the 128th GA (2009-2010), apv. by 7/16/09 and filed with the Secretary of State by 7/16/09.

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