

# Buyer Beware: What You See May Not Always Be What You Get

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Before you jump to any conclusions about buying that property, you should keep a number of points in mind:

- There is legislation which requires that agents deal with buyers in good faith and honesty, revealing any facts which may affect the desirability and value of a property.
- Despite the above law, case after case has favored the seller in instances where buyers later discovered facts they would have liked to know before the sale.
- In order to show fraud, the buyer must show that the seller actively sought to mislead or conceal from the buyer material information critical to the buyer's decision to buy.
- Recent court rulings have held that the seller has no duty to reveal such things as flooding, traffic problems, angry nearby dogs and, in a much discussed Long Island case, a convicted child molester living across the street.
- The probable basis for this reluctance to apply liability in these cases is the "slippery slope" notion.
- In view of the above, it is clear that the buyer must protect himself by asking questions and doing his own background investigations.

## Law versus Cases

Despite the fact that the New York Real Property Law requires that agents deal honestly with buyers as noted earlier, the reality is that it is relatively easy for agents to sidestep such legislation by stating that they were unaware of the facts in question.

To make matters worse, the courts seem reluctant to apply liability to such cases. In the Long Island molester case described earlier, the court found that the agents were unaware of the situation and, most significantly, that the sellers did not have a duty to reveal such facts to the buyer.

## Reasoning

Legal experts and experienced real estate attorneys believe that this reluctance to apply liability in these cases is based on the "slippery slope" notion which all law students are introduced to in law school.

Under this theory, one must consider the long-term, overall implications of legislation before one jumps on the bandwagon. In other words, you have to ask yourself, "How far could this go and would we want it to go that far?"

In this case, while many would favor forcing agents to reveal that convicted criminals lived across the street or that the home in question was the scene of a double murder three years ago, where would it end? Once the ball gets rolling, agents would be forced to reveal such tidbits as traffic patterns, crazy neighbors, and smelly pets owned by the guy next door.

## **Implications**

In view of the above, it is clear that buyers must fend for themselves in these matters. It is critical that buyers do their own homework and not rely on assertions made by others. Buyers should also ask a lot of questions, since this will at least put more focus on the seller's assertions to the contrary.

In summary, in real estate as in life, Buyer Beware!