SO | LEGAL

Misrepresentation Fact Sheet

Buying a home can be a stressful event in life, and for most, it will be the most expensive purchase that they will make. Therefore, it is important that before contracts have been exchanged, the buyer is completely satisfied and fully aware of the risk they will be taking on.

There are several stages during the buying process, and raising enquiries (questions) on the seller is one of them. This is arguably the most important stage as it allows the buyer to seek as much information on the property before becoming legally bound by a contract to purchase.

What are enquiries?

Enquiries can be raised by your solicitor or through standard property forms such as the Fixtures and Fittings Form or the within the Law Society's Property Information Form.

Supplying replies to enquiries are generally provided via the seller's solicitor on their instruction. The Property Information Form provides the buyer with a full range of information concerning the property and the seller's knowledge of the property and potential issues in the surrounding area.

The replies provided within the form are supplied directly from the seller who signs the document as their declaration that the information provided is accurate.

After reviewing the information, the buyer and their solicitor will usually raise additional enquiries of the seller. These replies and the enquiry forms form the basis of representations made to the buyer to induce them to enter into a contract.

Caveat emptor (buyer beware) and the seller's obligation of disclosure

While the legal position when buying a property puts the onus on the buyer to investigate through raising such enquiries, the seller owes a duty of care to the buyer to assist with the buyer's investigations by supplying clear and accurate replies to their enquiries. They must give those replies having made reasonable enquiries themselves.

The seller will often make oral or written statements when supplying the replies. When offering such information, the seller must consider the content, as all answers must accurately reflect the seller's knowledge at the time they were given.

To ensure accuracy, reasonable steps need to be taken to check that the replies are factually correct, as the replies may influence whether the buyer enters into the contract or not.

In supplying replies, the seller and their solicitor should note that a reply will constitute a representation. If the buyer following exchange of contracts finds out that the representation is incorrect and misleading, the seller may be liable to a potential claim for misrepresentation.

What is misrepresentation?

A misrepresentation is an untrue statement made by one contracting party that the other relies upon, inducing that party to enter the contract.

There are three types of misrepresentation:

1. A fraudulent misrepresentation (the seller knew the statement was false but gave it anyway)
2. Negligent misrepresentation (the seller couldn't reasonably believe their statement was true)
3. Innocent misrepresentation (the seller had grounds to believe the false statement was true)

Once the buyer has established that there has been a misrepresentation, to succeed with a claim against the seller they must be able to prove that:

1. They believed the statement to be true
2. They relied on it to a material extent when deciding to enter into the contract
3. They suffered a loss as a result of being induced into entering the contract

An essential component of a claim for misrepresentation is that reliance on the false statement induced entry into a contract. Please contact us for more information on misrepresentation and discuss matters with our litigation team.

To avoid a claim for misrepresentation, it is vitally important that when supplying replies to enquiries, the seller provides careful consideration and utmost accuracy. What may seem a nuisance during pre-contract negotiations may become a significant issue once contracts have been exchanged.

SO Legal tips for sellers in a property transaction

1. Read the instructions on page 1 of the Law Society Property Information Form before providing replies. Also, read all the forms clearly, including the fixtures and fittings form, leasehold information form, CPSE replies in commercial matters and all additional enquiries raised.
2. Provide clear and accurate replies, and do not hide any information you may feel will deter the buyer. Discuss it with your legal adviser if you are unsure of a reply.
3. Inform your legal adviser of any changes to your circumstances to the replies previously given
4. Disclose all available supporting documentation. If you cannot locate it, be clear about that.
5. Do not guess! It is better to say nothing than provide wrong or inaccurate replies.
6. Most importantly, ask your legal advisor for help.

For more information on misrepresentation and how to complete your forms, please contact us at enquiries@solegal.co.uk