

**WHAT MUST A SELLER OR BROKER DISCLOSE  
TO THE BUYER IN THE SALE OF A HOME?  
LET THE BUYER BEWARE!!**

The short answer to this question is...”If you don’t ask about it they don’t have to tell you!” Massachusetts continues to follow the rule of “caveat emptor”, a Latin phrase that means “let the buyer beware”. This has been the rule in Massachusetts real estate law for many years since the case of *Swinton v. Whitinsville Savings Bank*, 311 Mass. 677 (1942). In this landmark case, the Massachusetts Supreme Judicial Court ruled that the mere non-disclosure by a Seller of real estate to defects in the condition of real estate is not automatically actionable by the aggrieved Buyer. The Massachusetts Legislature has enacted laws, which are now two (2) exceptions to this rule:

1. Sellers must disclose lead paint as required by MGL c. 111 sec. 197A and;
2. Seller must disclose presence of Urea Formaldehyde Foam Insulation under MGL c. 255 sec. 12I

This caveat emptor doctrine varies if a potential Buyer of real estate regarding the condition of the property asks Seller specific questions. If the Seller makes a specific representations (for example “the roof will cost \$3,000.00 to repair”, or “the septic tank is title V certified”) and it is later found the Buyer *relied on* these assertions, the Seller may be liable to the Buyer for misrepresentation, fraud, deceit or a breach of warranty under common law. This also applies to real estate brokers, who generally work for the *Seller*, and in fact are required to tell prospective Buyers *who* they really represent. In fact real estate brokers are held to even higher standards than Sellers, as a Broker could be liable for misrepresentation as well as under MGL c. 93A the Massachusetts Consumer Protection statute. The line between actual misrepresentations and false statements of opinion by Sellers or brokers is very difficult to determine in many cases.

Thus the well informed Buyer of real estate should be prepared to ask questions about items such as the age/condition of the roof, lead paint, asbestos, underground fuel storage tanks, wood destroying pests, pending building code violations, zoning etc. This is by no means intended as a comprehensive checklist of factors to ask about, but is questions a well-informed Buyer should be prepared to ask, and a Seller or their broker by prepared to answer.

Of course, for reason such as those outlined here, the best protection both a Buyer and Seller of real estate can have is to retain the services of an attorney at the *earliest* possible stage of the transaction. Often times, parties consult an attorney when it is too late to remedy the matter, and hope the attorney can undo the “mistake”.

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