

A woman inherited a house from a distant relative. The woman had never visited the house, which was located in another state, and did not want to own it. Upon learning this, a man who lived next door to the house called the woman and asked to buy the house. The woman agreed, provided that the house was sold "as is." The man agreed, and the woman conveyed the house to the man by a warranty deed.

The man had purchased the house for investment purposes, intending to rent it out while continuing to live next door. After the sale, the man started to renovate the house and discovered serious termite damage. The man sued the woman for breach of contract.

How should the court rule?

- A. For the man, because he received a warranty deed.
- B. For the man, because of the doctrine of caveat emptor.
- C. For the woman, because she sold the house "as is."
- D. For the woman, because the man planned to change the use of the house for investment purposes.

Explanation:

Seller's duty to disclose

Common law (minority) rule	Caveat emptor	No duty to disclose property defects unless otherwise provided
Modern (majority) rule	Commercial property	
	Residential property	Must disclose known material defects that buyer could not reasonably discover
		Exception: "as is" clause or specific disclaimers without seller's fraud

Under the common-law rule of caveat emptor, sellers had no duty to disclose property defects to the buyer. This rule still largely applies to commercial sales. But for **residential sales**, the majority of jurisdictions now require sellers to **disclose material defects** that are **known** to the seller and **cannot be reasonably discovered** by the buyer (**Choice B**). Here, the woman never visited the house so she likely did not know about the termite damage.

Even if she did know, a **seller can disclaim the duty to disclose** if (1) the disclaimer is clearly and specifically stated in the sales contract and (2) the seller has not fraudulently misrepresented or concealed the condition of the property. Here, the contract plainly stated that the house was being sold "as is," and the woman made no misrepresentations regarding its condition. Therefore, the court should rule for the woman.

(Choice A) A **warranty deed** promises that *title* is free from defects, but it makes no promises regarding the physical quality of the property (eg, termite damage).

(Choice D) The man's plans to change the use of the house have no impact on the woman's ability to prevail because (1) the contract contained an "as is" clause that relieved her of any liability for property defects and (2) the woman had no knowledge of his plans.

Educational objective:

Sellers of residential property have a duty to disclose *known* material defects that the buyer cannot reasonably discover. However, the seller can disclaim this duty (eg, with an "as is" clause) so long as the seller has not fraudulently misrepresented or concealed the condition of the property.

References

77 Am. Jur. 2d Vendor and Purchaser § 265 (2020) (discussing "as is" sales clauses).

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.