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Property advertisements hold no guarantees

When a property is advertised, terminology – like the word “immaculate” describing the house our reader bought – is often used with the aim of raising the interest of prospective buyers.

However, says Grant Howard from Kaplan Blumberg attorneys in Port Elizabeth, no guarantees are given regarding the property itself. It remains the buyer’s responsibility to satisfy himself of the condition of the property.

He says the sale agreement contains the whole agreement between the parties, including guarantees given by the seller regarding the property.

“If the seller gives guarantees in the sale agreement in terms of the condition of the property, then he is bound by it,” says Howard. “Should it later appear that the property is not in the condition guaranteed by the seller, the buyer will have a legally enforceable claim against the seller to make the necessary repairs to the property.

“The buyer cannot, however, depend on an advertisement in support of a claim of misrepresentation by a seller.”

Howard says our reader’s question also raises issues relating to patent and latent defects in a property.

A patent defect, according to him, is a fault that is clearly visible to the naked eye, for example, cracked tiles. A latent defect is a defect that will not be clearly visibly to an ordinary person, although an expert may notice it, and a seller may not conceal these defects in any way.

In terms of our common law, there is an implied term in a contract of sale that the seller warrants to the purchaser that there are no latent defects in the property, says Howard.

“If it appears that a latent defect in a property exists after the parties have signed the sale agreement, the seller is liable for the defect irrespective of whether he knew about it.

“In order to obviate this burden on the seller, it has become standard practice to include a ‘voetstoots’ clause in sale agreements,” says Howard. “This clause states that the seller will not be liable for latent defects in the property and that the purchaser buys the property in its current state.”

Warren Jack from the Warren Jack Property Group says a purchaser must therefore satisfy himself of the condition of the property prior to making an offer.

“If the seller didn’t know about latent defects in the property and if latent defects manifested after the sale, the seller cannot be held liable for those defects under protection of the ‘voetstoots’ clause.”

However, says Jack, if a seller knew about a latent defect and deliberately concealed it with the purpose of inducing the purchaser to buy the property, the seller cannot hide behind this clause.

Our reader signed an offer to purchase a house, which at the time seemed in excellent condition. However, dampness began to appear shortly thereafter.

Jack says if the reader is of the opinion that the seller was aware of the damp problem at the time of contracting and that he had deliberately concealed these defects, then the reader may consider taking legal action against the seller for damages and additional expenses.

“The reader will have to obtain reports from experts and building inspectors to support his claim that the defects existed at the time of entering into the contract.”

If the reader can prove that the seller had deliberately concealed the problem, or refrained from disclosing it, Jack says the reader should succeed in his claim.

Send your property related questions to coetzee@fullstopcom.com.

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