

Lies, damned lies and selling property

Anyone selling a property will want to show it in its best light. People are familiar with estate agent's phrases such as "deceptively spacious" and "with sea views". However, when mild exaggeration becomes being economical with the truth an expensive damages claim could be the result.

I thought it was 'buyer beware'? Doesn't the buyer have to make his own enquiries?

Not quite. Whilst some facts about the property are easily researched, such as whether there are any planning permissions, other facts, such as whether there has been a neighbour dispute, will not necessarily be easy to discover.

If you've ever sold a property, you will have been asked to complete a property information form, known as CPSEs (for commercial property) or the SPIF (for residential property) in which the buyer asks a series of questions about the property. The seller is under no obligation to answer them, but if he does, he must answer them truthfully and very carefully indeed.

Why?

Because if the seller knowingly, recklessly, or even innocently makes a false statement of fact relating to the property and that statement is relied upon by the buyer, and causes him loss, the buyer could have a number of remedies against the seller.

In some cases, the buyer will be entitled to rescind the contract (i.e. treat it as not existing) and will also be able to seek damages to compensate him for his losses. He may even be able to recover losses not directly caused by the statement, such as losses caused by a falling market. In a recent case, we successfully compelled the seller to buy back the property and pay our client damages and costs totalling £130,000.

That was a good result. What were the circumstances?

As a result of problems at his last flat, our client was particularly concerned about noisy neighbours when buying a new flat. So as well as the standard enquiries about disputes and complaints, he asked specific questions about the existence of noisy neighbours to which the seller didn't disclose anything unusual. However, it transpired that the seller's replies were inaccurate, as, in the past, the seller had made several written complaints about a troublesome neighbour. We managed to negotiate a favourable settlement out of court.

What if the statement is made during a viewing or by my agent in an email?

It could still result in a claim. It depends on the terms of the contract, which often restrict liability to statements made in writing by solicitors or to statements contained in property information forms.

How can I protect myself?

Your solicitor will seek to insert terms into the contract that limit the chances of a claim but such provisions are not always enforceable as the court has decided that even 'usual' contract terms can sometimes be unfair. The best way to protect yourself is to give full and accurate answers. If you are not sure whether to disclose a matter in response to a pre-contract enquiry, ask your solicitor. In the current economic climate, property buyers may be on the look out for reasons to escape a contract which they now think is too expensive. A poorly completed property information form could give them just that opportunity. Commercial property solicitor Zoë Strong says: *"Approving draft replies to enquiries can often seem to be a bit of thankless task. But just spending a few minutes considering each reply could save you a fair few pennies (and pounds) in the long run!"*

For more information, please contact:

Edward Cracknell

Solicitor

+44 (0)20 7440 4818

Ed.Cracknell@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice. No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP © Russell-Cooke LLP. April 2012.

www.russell-cooke.co.uk