

## I bought a house and found out there is damage. What can I do?

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Buying a house is one of the biggest transactions many people will go through. It can be a very exciting process. Unfortunately, in rare cases home buyers encounter unexpected defects, or damage, when they move into their new home. Defects encountered include broken appliances, cracks in the foundation, damage to the walls or to the roof, among others.

When purchasing property, the general rule is *Caveat Emptor* which is Latin for “buyer beware.” In other words, it is the buyer’s responsibility to inspect the property to identify any defects. A seller has no obligation to disclose a defect that is discoverable upon a typical inspection. On the other hand, the seller cannot hide or conceal damage and cannot lie to the buyer about defects if asked. If you are purchasing a house, it is crucial to get an experienced home inspector to conduct a comprehensive home inspection.

If you have purchased a house and find damage, you should let the professionals assisting you know as soon as possible. If you have used a realtor, advise them of what you have encountered immediately. Moreover, if evidence is necessary to settle the matter, the realtor may be a neutral witness.

It is recommended that you do a walk-through on possession date before you start moving in or renovating. This will help to discover defects that were not present when you viewed the property. It will also help prove that the damage was the seller’s fault and not caused by you.

Finally, there will be a limitation date on bringing any claim. You should not delay on advising your lawyer. Once contacted, your advisors will assist in the following:

**Determine the damages.** To obtain a resolution, you will need to determine the total cost of the damages and how you can be compensated for the defect. Courts generally award damages to make an individual whole or to compensate only for the value of the damage; a party should not receive a windfall or profit from the damages.

In the example of a damaged appliance, if the appliance (e.g., dishwasher) was five years old the damages would equal the cost of buying a used dishwasher, not a brand new one.

**Review the contract.** Did the provisions of the contract address the specific issue that has arisen, or was there a clause for a holdback?

Realtors often use a Property Disclosure Statement (“PDS”) which is sometimes used in private real estate transactions. The PDS is intended to give the buyer some background and comfort in their purchase. It also encourages the seller to turn their mind to any problems with the house. A PDS is supposed to create more transparency in the transaction.

**Obtain evidence.** Pictures of the damage, quotes for repairs and other evidence may be necessary to resolve the matter.

**Communicate with the other party.** The seller will need to be notified to resolve the issue. Sometimes these negotiations are short, and a resolution is reached within hours. If the matter is litigated, it may take months or even years to reach a resolution.

In conclusion, when purchasing a home take steps to lessen the likelihood of encountering damage. For example, make the offer conditional on a home inspection and hire a qualified home inspector. Realtors, home inspectors, lawyers, and other professionals who have experience with these issues can provide logical perspective to help you through the damage. Although finding defects in your newly purchased home can be frustrating, it is generally better to identify the defects early, rather than discover the damage later when bigger problems have occurred.

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