

# In New Jersey A Realtor's Reliance on Seller's Statements May Lead To Liability

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New Jersey Realtors have a new reason to be more diligent in their dealings with clients and listing properties for sale. If Realtors are not already doing so, they will now need to conduct a more thorough investigation and questioning of their clients prior to listing a property for sale, and during the showing of homes for potential purchase. A Realtor's reliance on a "Seller's Property Disclosure Statement" concerning the facts of a property, such as age of the home, the physical, mechanical and structural condition of the home, and neighborhood facts (such as whether in a flood zone, or particular school system), may no longer protect Realtors from liability under New Jersey's Consumer Fraud Act (CFA).

On June 30, 2011, New Jersey Appellate Court renders a clear ruling that Realtors are not exempt as "learned professionals" under the Consumer Fraud Act (CFA). Until this recent ruling, Realtors have sought protection against liability claims under New Jersey's comprehensive Consumer Fraud Act, which awards successful claimants with treble damages and attorneys' fees, through an exemption in the CFA for "learned professions." Although Realtors are not on the same plane as other professionals such as lawyers, physicians, dentists, accountants or engineers, they are subject to testing, licensing, regulations and penalties through other legislative provisions. As such, Realtors are semi-professionals and the nature of their activities are recognized as something beyond the ordinary commercial seller of goods or services for purposes of the CFA.

However, the Court recently clarified the law in New Jersey that by virtue of a January 1976 amendment adding the phrase "or real estate" alongside the term "merchandise" in the CFA, and despite some ambiguous subsequent court rulings, Realtors unequivocally can be held liable under the CFA for "affirmative misrepresentations even in the absence of knowledge of the falsity of the misrepresentation, negligence or intent to deceive."

This presents a significant problem for Realtors that rely considerably on the representations and statements made by their clients. It would now appear that if a seller incorrectly fills out a disclosure form or contract, regardless of knowledge or intent, a Realtor can be held liable for misrepresentations placed in a Multiple Listing Service or in a contract. Perhaps Realtors may now be required to conduct their own independent investigation and due diligence to verify the true and accuracy of a "Seller's Property Disclosure Statement," and just how far should a Realtor go in their investigation? For example, will Realtors have to visit the building department in each municipality to review building and construction records to confirm when a home was built, and whether a seller has obtained all permits and approvals for renovations? The extent and impact of this recent decision will have to be seen in the years to come.

Should Realtors be exempt as semi-professionals that are tested, licensed, regulated and penalized through other legislative provisions? And, should Realtors be held liable for misrepresentations of their clients? What are your thoughts?