

## **Fraud and Fraudulent Suppression in Residential Real Estate Sales**

This paper addresses the standards of liability for Fraud and Fraudulent Suppression in the sale of residential real estate under Alabama law. It discusses the doctrine of caveat emptor, the seller's duty to disclose, the impact of 'as-is' clauses, and key Alabama cases interpreting these principles.

### **1. Fraud and Fraudulent Suppression Claims**

Under Alabama law:

- Fraudulent Misrepresentation occurs when a seller makes a false statement of material fact intending the buyer to rely on it, and the buyer reasonably relies on it to their detriment.
- Fraudulent Suppression occurs when a seller conceals or fails to disclose a material fact they have a duty to disclose, causing harm to the buyer.

Both claims require the buyer to establish reasonable reliance on the misrepresentation or omission.

### **2. Doctrine of Caveat Emptor (Buyer Beware)**

In Alabama, the doctrine of caveat emptor applies to the sale of used residential property, generally placing the burden on the buyer to inspect the property for defects. There are three narrow exceptions:

1. A fiduciary relationship exists between the buyer and seller.
2. The defect affects health or safety and is not readily observable by the buyer.
3. The buyer makes a direct inquiry about a material condition, which the seller must answer truthfully.

### **3. Impact of "As-Is" Clauses**

Alabama courts have consistently enforced "as-is" clauses in purchase agreements. These clauses generally negate the element of reliance necessary for fraud and fraudulent suppression claims by placing the risk of defects on the buyer.

### **4. Key Case Summaries: Facts, Issues, and Rulings**

#### **Nesbitt v. Frederick, 941 So. 2d 950 (Ala. 2006)**

Facts: Buyers purchased a used home and later discovered latent defects. They alleged the seller failed to disclose these defects. The buyers had the opportunity to inspect the property before closing but did not.

Issues: Whether caveat emptor barred fraud-based claims and when exceptions apply.

Ruling: The Court reaffirmed that caveat emptor applies unless one of three exceptions exists. None applied, so the fraud claims were barred.

#### **Teer v. Johnston, 60 So. 3d 253 (Ala. 2010)**

Facts: The buyers purchased a home with an “as-is” clause and later discovered defects.

Issues: Whether the “as-is” clause barred fraud-based claims.

Ruling: The Court held that the “as-is” clause negated the element of reliance, barring fraud and suppression claims.

#### **Rosenthal v. JRHBW Realty, Inc., 303 So. 3d 1172 (Ala. 2020)**

Facts: Buyers discovered defects after closing. The purchase agreement contained broad disclaimers.

Issues: Whether disclaimers and “as-is” clauses barred fraud claims.

Ruling: The Court enforced the disclaimers, holding that buyers must preserve representations in the purchase agreement.

#### **Leatherwood, Inc. v. Baker, 619 So. 2d 1273 (Ala. 1993)**

Facts: Buyers purchased a home with an “as-is” clause and sued for fraud after discovering defects.

Ruling: The Court reaffirmed that “as-is” clauses preclude fraud claims by defeating reliance.

#### **Haygood v. Burl Pounders Realty, Inc., 571 So. 2d 1086 (Ala. 1990)**

Facts: Buyers purchased a home from a seller who was also a real estate agent. The seller repeatedly assured the buyers that there were no water issues in the basement, even though they had previously patched and attempted to repair leaks. Buyers signed an “as-is” clause.

Issues: Whether the seller’s false assurances and suppression of the prior water problem allowed the buyers’ fraud claims to proceed despite the “as-is” clause.

Ruling: The Court held that the “as-is” clause and entire agreement provisions barred reliance and dismissed the fraud claims, even though the seller’s conduct was troubling. The case illustrates the strong protection “as-is” clauses provide sellers.

### **5. Conclusion and Practical Guidance**

Alabama law strongly favors enforcing “as-is” clauses in used residential property transactions. Fraud and fraudulent suppression claims often fail because these clauses negate the element of reliance. Buyers must protect themselves through thorough inspections and by ensuring any representations are incorporated into the purchase agreement. Sellers should include clear “as-is” and non-reliance language in their contracts to limit liability.

### **6. Protecting Purchasers Through Direct Questions and Contract Addendums**

One of the most effective ways for purchasers to protect themselves from the strict application of caveat emptor and 'as-is' clauses is to make **\*\*specific direct inquiries\*\*** regarding latent defects and then incorporate the seller's responses into the written agreement. Under Alabama law, the doctrine of caveat emptor does not apply where the seller fails to truthfully answer direct inquiries about a material defect. However, to

preserve these protections, buyers should go beyond oral questions and ensure the responses are memorialized in the contract.

Purchasers should:

1. Ask direct, written questions about any latent or non-obvious defects in critical systems (roof, foundation, plumbing, electrical, water intrusion, etc.).
2. Request that the seller certify their responses in writing.
3. Use a contract addendum that creates an exception to the 'as-is' clause for those specific representations.

### Sample Contract Addendum

#### ADDENDUM TO RESIDENTIAL REAL ESTATE PURCHASE AGREEMENT

This Addendum is made part of and incorporated into the Residential Real Estate Purchase Agreement dated [DATE] between [BUYER] and [SELLER] for the property located at [ADDRESS] ('Agreement').

1. **\*\*Seller Representations Regarding Latent Defects:\*\*** In response to Buyer's specific inquiries, Seller represents and warrants that:

- There are no known water intrusion issues in the basement, crawlspace, or attic.
- There are no known foundation cracks or structural defects.
- There are no known plumbing leaks or defects.
- [Insert any other responses to Buyer's specific inquiries].

2. **\*\*Exception to 'As-Is' Clause:\*\*** The parties agree that the 'as-is' provisions of the Agreement and the doctrine of caveat emptor shall not apply to the specific representations stated above. Buyer may rely upon these representations and shall have all remedies available at law or in equity if any representation is false or incomplete.

3. **\*\*No Waiver:\*\*** All other terms and conditions of the Agreement, including the 'as-is' clause, remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth below:

\_\_\_\_\_  
Buyer (Print Name and Sign)

\_\_\_\_\_  
Seller (Print Name and Sign)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 7. Seller-Friendly Template for Responding to Buyer Inquiries

Sellers should respond truthfully to direct inquiries while limiting liability to their actual knowledge and encouraging buyers to independently inspect the property. Below is a model template:

### General Seller Response Template

This Response is provided in connection with the Buyer's direct inquiries about the condition of the property located at [Property Address]. Seller makes the following statements based solely on their actual knowledge as of the date below:

1. Seller's responses are based only on Seller's current actual knowledge and recollection. Seller has not conducted any independent investigation, inspection, or testing.
2. Seller makes no warranties or guarantees, express or implied, as to the current or future condition of the Property.
3. Buyer is strongly encouraged to obtain, at Buyer's sole expense, any surveys, inspections, testing, or other investigations Buyer deems necessary.
4. Responses to Buyer's inquiries:
  - [Question] – To the best of Seller's actual knowledge, Seller is not aware of any [defect] in the area or system identified.
5. Buyer acknowledges that these responses do not modify or waive any other terms of the Purchase Agreement, including the 'as-is' provisions, except as expressly stated.

### Model Response: Previously Known Issues That Have Been Repaired

To the best of Seller's actual knowledge, the Property previously experienced [describe issue briefly, e.g., water intrusion in the basement]. However, Seller represents that the issue was addressed and repaired prior to placing the Property on the market.

- Details of Repairs: [Insert brief summary: who performed the repair, approximate date, and whether documentation is available. For example: 'The repair was completed by [licensed contractor] in [month/year]. Copies of invoices and any available warranties are attached for Buyer's review.']
- No Further Known Issues: Seller is not aware of any recurrence of this issue since the repair was completed. Seller makes no warranties or guarantees regarding the continued performance of the repair or the future condition of the Property.
- Buyer is strongly encouraged to conduct any independent inspections, testing, or investigations Buyer deems necessary to satisfy themselves as to the condition of the Property and the adequacy of any prior repairs.