



# When the Client's Dream Home Turns into A Nightmare



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# Cliff's Notes Version

1

Express Warranties – *Dewolfe v. Hingham Centre, Ltd.*, 464 Mass. 795 (2013) (interpreting no representations and warranties provision in GBRE form)

- “As Is” Clauses – *Sound Techniques, Inc. v. Hoffman*, 50 Mass. App. Ct. 425 (2000) (applying exculpatory provision to negligent misrepresentation claims).

2

Implied Warranty of Habitability – *Albrecht v. Clifford*, 436 Mass. 706 (2002) (implying warranty for latent defects which affect habitability of home).

- Trivial Defects – *McAllister v. Boston Housing Authority*, 429 Mass. 300 (1999) (trivial defects do not apply).

3

Fraud – *Kannavos v. Annino*, 356 Mass. 42 (1969) (half-truths can constitute fraud)

- Mere Nondisclosure – *Greenery Rehabilitation Group, Inc. v. Antaramian*, 36 Mass. App. Ct. 73 (1994) (mere silence is not fraud)

4

Chapter 93A – *Rousseau v. Gelinas*, 24 Mass. App. Ct. 154 (1987) (Chapter 93A applies to professional sellers)

- Private Sale – *Lantner v. Carson*, 374 Mas. 606 (1978) (private, nonprofessional sale of residence does not implicate Chapter 93A)

# *Caveat Emptor:*

Let the Buyer Beware



# *St. Thomas Aquinas*

Aquinas, *Summa  
Theologica* (2d ed. 1896)



A defect in kind, in quantity, or in quality, if known to the vendor and unrevealed, is sin and fraud, and the sale is void.



A seller is bound to reveal secret flaws that may occasion loss through a decrease in the value of the article or danger through the ware becoming harmful in use.



If the defect be unknown it is no sin. Yet the seller must make good to the buyer his loss.



If the flaw is manifest, he is not bound to reveal it “by any duty of justice,” though to do so would exhibit “the more exuberant virtue.”

# *The Bezoar Stone Case*

*Chandelor v. Lopus,*  
79 Eng. Rep. 3 (1603)

- Absent express warranty or fraud, no recovery for defective goods.

# *The Implied Warranty of Habitability*

1

Buyer purchased  
the property from a  
builder-vendor;

2

The property  
contained a latent  
defect;

3

The defect or defects  
became known after  
the purchase;

4

The defect or defects  
were caused by the  
builder's improper  
design, material or  
workmanship; and

5

The defect or defects  
created a  
substantial question  
of safety or  
habitability.

# *Implied Warranty Cases*

*Boston Housing Authority v. Hemingway*,  
363 Mass. 184 (1973) (landlord-tenant)

*Albrecht v. Clifford*, 436 Mass. 706 (2002)  
(newly constructed single-family home)

*Berish v. Bornstein*, 437 Mass. 706 (2002)  
(condominium)



# *Implied Warranty (Cont.)*

*Sullivan v. Gagliardi*, SJC-12934 (to be heard fall 2020)

- Whether the implied warranty of habitability applies to a substantially renovated home.

# Fraud

*Barrett Assocs., Inc. v. Aronson*, 346 Mass. 150, 152 (1963) (fraud requires: (i) a false representation of a material fact; (ii) knowledge of its falsity; (iii) reasonable reliance on the statement; and (iv) damages)

*Greenery Rehabilitation Group, Inc. v. Antaramian*, 36 Mass. App. Ct. 73 (1994) (silence on a particular point ordinarily does not rise to the level of fraud)

*Kannavos v. Annino*, 356 Mass. 42 (1969) (half-truths are actionable as fraud)

# *Exculpatory Provisions – Scope and Extent*

*Bates v. Southgate*, 308 Mass. 170 (1941)  
(exculpatory provisions do not exonerate fraudulent conduct)

*Sound Techniques, Inc. v. Hoffman*, 50 Mass. App. Ct. 425, 433 (2000)  
(exculpatory provisions apply to negligent misrepresentations)

*McEvoy Travel Bureau, Inc. v. Norton Co.*, 408 Mass. 704, 712 (1990)  
(addressing possible application of exculpatory claim to fraud claim).

# *No Representations or Warranties*

## **GBRE Form:**

The BUYER acknowledges that the BUYER has not been influenced to enter into this transaction nor has he relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by either the SELLER or the Broker(s):

*DeWolfe v. Hingham Centre, Ltd.*, 464 Mass. 795 (2013) (prior written statements constitute warranties).

# *Chapter* *93A*

Section 2 of G.L. c. 93A declares unlawful “unfair or deceptive acts or practices in the conduct of any trade or commerce.”

# *Unfair or Deceptive*

## 940 C.M.R. § 3.16

Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of M.G.L. c.93A, § 2 if:

1

It is oppressive or otherwise unconscionable in any respect; or

2

Any person or other legal entity subject to this act fails to disclose to a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction; or

3

It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection; or

4

It violates the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of M.G.L. c. 93A, § 2.

# *Trade or Commerce*

[T]he advertising, the offering for sale, rent, or lease, the sale, rent, lease, or distribution of any services or any property, tangible or intangible, real, personal, or mixed, and any security, contract of sale, or any other trade or commerce directly or indirectly affecting the people of this Commonwealth.

G.L. c. 93A, s. 1

# *Trade or Commerce Factors Test*

*Nei v. Burley*, 388 Mass. 307, 317  
(1983).

1

the nature of the  
transaction,

2

the character of the  
parties,

3

the activities engaged  
in by the parties,

4

whether there were  
past similar  
transactions,

5

whether the defendants'  
motivation was personal or  
business-related, and

6

whether the defendants  
actively participated in the  
transaction.



# *Private Residence Exception*

*Lantner v. Carson*, 374 Mas. 606 (1978)  
(rejecting Chapter 93A claim by private,  
nonprofessional homeowner)

*Rousseau v. Gelinas*, 24 Mass. App. Ct.  
154 (1987) (allowing Chapter 93A claim  
where sale was part of a larger real  
estate concern)

## *Questions?*

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