

Please sign in for special features.



- Features
- jp Home Page
- News
- Jewish Classifieds**
- Shoppers Directory
- K Dining Guide
- Print Edition
- Subscribe
- Members
- Register | Log In
- Inside
- Need Help?
- Privacy Policy
- Contact
- Special Offers**
- Calling Cards

News Sections

[News](#) | [Page One Feature](#) | [Editorials](#) | [Features](#) | [Opinion](#) | [Media Monitor](#) | [Columns](#) | [Torah](#)
[Letters To The Editor](#) | [Travel](#) | [Kosher Food](#) | [Books](#) | [Electronics Today](#) | [Art](#) | [Please Say](#)
[Tehillim For...](#) | [Womens Page](#) | [Celebrate 350](#)

Columns

Dear Moshe:

Posted 3/16/2005
By *Moshe Lazarus*

[Print This Article](#)
[E-mail This Article](#)

Dear Moshe:

I read your column appearing in the January 21, 2005 issue of The Jewish Press with great interest. [Note to readers: In this column, I received a letter from a person who had purchased a home, and, shortly after the closing, discovered that the plumbing equipment was in terrible disrepair. The purchaser was quite surprised to discover these defects because the seller, in showing the house to the purchaser, assured him that the plumbing equipment was in fact in good working order.

The plumber hired to repair the damage told the purchaser that he had discovered some temporary repairs which were recently done to the plumbing equipment. He told the purchaser that the existence of these repairs made it quite likely that the seller was, in fact, aware of the damage prior to the closing, and that he performed the temporary repairs to conceal the damages so that they could not be discovered by the purchaser until after the closing.

I had advised the purchaser that, despite the insistence of the seller's attorney to the contrary, the purchaser could recover for the damages suffered due to the defective plumbing equipment. To see the column in its entirety, please visit my website at www.lazaruslawfirm.com, and click on the publications tab. Thanks. ML]

The letter you addressed struck a personal chord for me, as I found myself in a situation very similar to that of the person who wrote the letter. The only difference is that the damage I suffered was due to termite infestation rather than defective plumbing. Because our situations were so similar, I was surprised to see that you advised the letter writer that he would be entitled to recover for damages suffered due to the defective plumbing equipment, as the result in my situation was quite different.

In my case, I was advised that I would not be able to recover damages from the seller. The reason I was given is that since the seller chose not to give me a Property Condition Disclosure Statement regarding the property, and chose instead to give me a \$500 credit at closing, he could not be held liable for defects discovered in the property after the closing. Thus, I was surprised to read that you advised the letter writer that he could recover damages from the seller, and that you did not discuss whether or not a Property Condition Disclosure Statement had been delivered.

Answer:

Thank you very much for your letter. I have received quite a bit of feedback regarding the column you have addressed, and, interestingly, several readers have raised the same issue that you have (although none have experienced this situation firsthand as you have). Thus, I thank you for the opportunity to correct what seems to be a widely held misconception.

Under New York law, a seller must either deliver to the purchaser a Property Condition Disclosure Statement (commonly referred to as a "PCDS") regarding the property at the closing, or give the purchaser a \$500 credit towards the purchase. The PCDS contains 48 questions regarding the condition of the property, all of which the seller must answer truthfully (even if the information he will be required to provide is quite unfavorable). What's more, the seller will be held liable for damages suffered by the purchaser due to its reliance on inaccurate statements made by the seller in the PCDS.

Of course, the PCDS can prove to be quite harmful to the seller in a number of ways. If the seller chooses to complete and deliver the PCDS to the purchaser, the purchaser might be scared off by the defects and shortcomings in the property that the seller will have to disclose. Furthermore, if any of the information set forth in the PCDS by the seller proves to be inaccurate, the seller can be held liable for damages suffered by the purchaser after the closing.

For this reason, many attorneys will advise their clients to refrain from providing the purchaser a PCDS, and instead to simply allow the purchaser a \$500 credit at closing. These attorneys feel that the potential liability a seller opens himself up to by delivering a PCDS is not worth the \$500 saved by doing so.

However, the understanding set forth in your letter (that a seller who chooses not to deliver a PCDS to the purchaser can not be held liable for defects in the property discovered after closing), although commonly held, is simply not accurate. To the contrary, if the seller acts in a manner for which he would be liable to the purchaser for damages (in our case, actively defrauding the purchaser regarding the condition of the property), he will in fact be liable to the purchaser regardless of whether or not he elected to provide a PCDS to the purchaser.

Thus, I am afraid that you were poorly advised, and in fact were entitled to recover damages suffered due to the fraudulent concealment and misstatements made to you by the seller. However, there may still be hope for you. Depending on the specific nature of your claim and upon the amount of time that has passed since you've purchased your home, the statute of limitations with respect to your grievance may not yet have tolled. If so, you may in fact still be entitled to bring an action to recover the damages you have suffered.

I wish you hatzlacha in pursuing your claim, and in all that you do.

Disclaimer: The advice contained in this column is general in nature, and may vary greatly depending on the particulars of a given situation. For this reason, one should not act in reliance on the advice set forth in this column without first consulting with an attorney. •

Moshe Lazarus, Esq. is an attorney specializing in real estate law. His firm represents a broad assortment of clients throughout New York and New Jersey with respect to all real estate related legal matters. Moshe can be reached by phone at (845) 371-5636 or by e-mail to mark@lazaruslawfirm.com. For more information, please visit www.lazaruslawfirm.com.

 [Print This Article](#) |  [E-mail This Article](#)



[Click Here](#) to Receive 2 Free Months Home Delivery of The Jewish Press.

The Jewish Press has the nations largest Jewish classifieds, call 800-992-1600

Search >

for

Features > [Home Page](#) | [News](#) | [Shopping](#) | [Dining Guide](#) | [Print Edition](#) | [Subscribe](#)

Members > [Register](#) | [Log In](#)

Inside > [Need Help?](#) | [Privacy Policy](#) | [Contact](#)

© Copyright 2001, The Jewish Press Inc. (ISSN 0021-6674) > [Our Privacy Pledge](#)