

## ■ FLORIDA COURT DECISIONS ON PROPERTY DISCLOSURE

### *Johnson v. Davis*

In May of 1982, the Davises contracted to buy the Johnsons' three-year-old home for \$310,000. The contract specified that the buyer had the right to have a roof inspection made. Mr. Davis noticed stains on the ceilings in the kitchen and family room, and was told by Mr. Johnson that the window had a minor problem and had been repaired, and that the stains were wallpaper glue. Several days later, during a heavy rain and before closing, Mr. Davis discovered water gushing in around the window frame, the ceiling fixtures, and the kitchen stove. Three roofers hired by the Davises said the roof was "slipping," and that only a new \$15,000 roof would be watertight. The Davises sued for rescission of contract and a return of all deposits.

The trial court found for the Davises and ordered a return of all deposits. The Third District Court of Appeals affirmed the return of only part of the deposit to the Davises. The Davises appealed to the Florida Supreme Court.

The Supreme Court ruled that the Johnsons knew of and failed to disclose that there had been problems with the roof of the house. The Court also held that the fraudulent misrepresentations made by the Johnsons were not the deciding factor, and even if the Johnsons had not made the statements, there would have been fraudulent concealment. The Court stated: "Accordingly, we hold that where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer."

This landmark case in favor of consumers overturned previous decisions favoring the seller under "caveat emptor." It has had a broad effect in Florida. Chapter 475, F.S., has extended the duty to real estate licensees selling residential property.

### *Raynor v. Wise Realty*

In 1987, the Court ruled in another important case, *Raynor v. Wise Realty*. In that case, the buyer agreed to an "as-is" contract on an older home. The real estate licensee had two wood-destroying organism inspections made, one showing termite infestation and the other showing that the property was clear. The licensee brought the "clear" report to the closing, believing that it did not really matter because of the "as-is" contract. In its decision, the Court ruled that real estate licensees also have duties of disclosure, and the fact that an "as-is" contract exists does not affect that duty.

## ■ NONRESIDENTIAL PROPERTY CONDITION DISCLOSURES

Because buyers of investment property are considered more "sophisticated" than homebuyers, the laws are not as protective when nonresidential property