

## - "Home Buyers Documented Investigation Key to Recovering for Defect Concealment "

Posted by Greg Womer

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A recent Washington State Appeals Court decision is worth noting from both a buyer due diligence perspective and a seller liability perspective – *Douglas v. Visser*. Though this is a Washington case, Oregon realtors should consider whether their procedures would have helped prevent the case from happening. A home was purchased by a real estate agent named Visser for investment and rehab. Visser leveled several bungalows that were located on the property but attempted to renovate the main house. During renovation, Visser discovered dry rot in several locations throughout the home. Because his intended renovation was going to be more expensive and time-consuming than he anticipated, he sold the property to the Douglasses.

The facts are always critical to cases like this, but the trial court's finding summarizes what happened nicely as follows:

*During the course of renovating the house, the Vissers discovered significant wood rot to the sill plate and rim joist that connects the concrete foundation to the frame...Rather than correct these defects, the Vissers or their hired help made superficial repairs to the visible damage and covered up the rest.*

The trial court further concluded that "the defects were unknown to the Douglasses and were not discoverable by a careful and reasonable inspection." There were two critical problems for the Douglasses' case. One, they received a Seller's Disclosure Statement that contained several "don't know" or non-answers. They rightly sought clarification in writing and requested a copy of the inspection report prepared for the Vissers when they purchased the property. However, the Douglasses never received the inspection report and they didn't follow-up on answers to the Seller Disclosure Statement that they felt were inadequate. Later, the Douglasses commissioned their own inspection report and it identified an area of rot near the roofline, an area of rotted sill plate, and sistered floor joists. Their inspector testified that signs of rot aren't that uncommon and that the inspection could not have uncovered the true extent of the damage, which ultimately forced demolition of the structure.

The Appellate Court held that the Douglasses were on notice of a defect and had a duty to make further inquiries. The Court called the Vissers efforts to conceal the defects "reprehensible," but ruled that the Douglasses, once on notice of a defect, had a duty to make further inquiries. Despite the fact that the damage was far more extensive than anticipated, it could not be said that the extent of the damage rendered the problem unknown by the Buyers, a key element of their case. The Court found significance in the fact that they follow-up questions regarding the Disclosure Statement did not deal with the rot in question and found significance in the fact that their inspection came in after the Douglasses requested the Vissers' inspection report.

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The lesson? A buyer's due diligence standard is probably higher than most buyers and agents believe. Any evidence of a defect places a burden on the buyer to make new inquiries as to the extent of the problem and such inquiries and the seller's responses should be carefully documented.