



## EXCLUSION OF LEGAL WARRANTIES

It is the intention of this information flyer to very briefly summarize the key points with respect to the vendor's limitation or exclusion of warranty.

The underlying principle behind these warranties is to compensate the buyer for any limitations to the use and enjoyment of the property he purchases.

The seller is bound to deliver the property and to **warrant the ownership and quality** of the property. These warranties exist of right whether or not they are stipulated in the contract of sale.

Regarding **WARRANTY OF OWNERSHIP**, the seller is bound to warrant the buyer that the property is free of all rights **except those he has declared at the time of the sale** (i.e. liens and servitudes). The seller is warrantor towards the buyer for any encroachment on his part **unless he has declared it at the time of the sale** and for any violation of restrictions of public law affecting the property (i.e. zoning by-law restrictions), **except where he has given notice of these restrictions to the buyer at the time of the sale**, where a prudent and diligent buyer could have discovered them by reason of the nature, location and use of the premises or where such restrictions have been registered in the registry office.

As for **WARRANTY OF QUALITY**, the seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

The seller is not bound, however, to warrant against any **latent defect known to the buyer or any apparent defect**; an apparent defect is a defect that can be perceived by a prudent and diligent buyer without any need of expert assistance.

If the seller was aware or could not have been unaware of the latent defect, he is bound to disclose such information otherwise he will have deliberately defrauded the purchaser by withholding his knowledge of such defect. He will be liable not only to restore the purchase price, but to pay all damages suffered by the buyer.

The parties may, in their contract, vary the legal warranty by adding to its obligations, diminishing its effects or excluding it altogether but in no case may the seller exempt himself from his personal fault. The possibility, however, to limit or exclude liability exists only where the seller has disclosed the defects of which he was aware or could not have been unaware and which affect the right of ownership or the quality of the property. Hence, where the sale is made **without guarantee**, the seller is excluding his warranty of ownership and quality but not exempting himself from his personal fault.

In the absence of any disclosure, and even in the case of ill faith on behalf of the seller, the seller can completely exclude his warranty if the **BUYER BUYS PROPERTY AT HIS OWN RISK AND PERIL FROM A SELLER WHO IS NOT A PROFESSIONAL SELLER**.

Clauses limiting or excluding the guarantee of quality are restrictively interpreted. In order to have effect they must be drafted in clear and unambiguous language. It has been held that clauses specifying that the buyer accepts the property **"as is"** and after **"having seen and examined the property"** do not exclude the guarantee with respect to latent defects. Rather, clear reference must be made to latent defects.

