RESUME

Frank A. Cellura
5450 Hoover Rd.
Grove City, Ohio 43123
(614) 871-1799

GOAL: To obtain a corporate or law firm position to broaden my legal knowledge and to enhance research and trial legal skills.

EXPERIENCE:

June, 1980 to Present — Ohio Department of Commerce, Division of Real Estate, 77 S. High St., Columbus, Ohio 43215-0547

ATTORNEY HEARING EXAMINER. Preside over formal disciplinary administrative involving licensed brokers and salespeople.

April, 1978 to Present — SOLE PRACTITIONER legal court work. Including work for plaintiff and defendant in civil and criminal work; collection cases; real estate contracts.

August 1978 to April 1980 — OHIO DEPARTMENT OF ENERGY. Assisted state in compliance with 1979 National Energy Conservation Policy Act of 1979, and developed state energy contingency plans and administered fuel state set-aside program.

CERTIFICATIONS TO PRACTICE LAW:

State of Ohio, April 28, 1978, Attorney Reg. No. 0020713

State of Florida, Inactive Status.

MEMBERSHIPS:

Ohio State Bar Association.
Columbus Bar Association.
Grove City Bar Association.

EDUCATION:

Case Western Reserve Univeristy, B.A., 1972, Major Field of Study: Urban and Environmental Studies; Minor: Biology.

Cleveland State University, J.D., 1977, Cleveland Marshall College of Law.

MILITARY SERVICE: Ohio/U.S. Army National Guard September 1972-August 1978
Highest Rank: Specialist 5 (Medical Corpsman).
Awards: National Defense Award, 5-Year Service, Sharpshooter

ACTIVITIES:

Vice-President, Finance Committee, Our Lady of Perpetual Help Church and School (1990-Present).
Member, Facilities Committee, Superintendent's Citizens' Committee for Southwestern City Schools (1992).
Committee Chairman, Cub Scout Pack 392, Grove City (1988-89).

PROFESSIONAL PUBLICATIONS:

Ohio Lawyer magazine, September/October 1988, p.21, authored feature article entitled **"Let the Buyer Beware"**

INSURANCE: Ohio Bar Liability Insurance Company malpractice insurance. Other coverages applicable since 1986.

Let the Buyer Beware

by Frank A. Cellura

The common law doctrine of caveat emptor, known more commonly as "Let the Buyer Beware," was recently recognized as viable by the Ohio Supreme Court. In a recent decision in the case of *Layman* v. *Binns*, 35 Ohio St. 3d 176 (1988), the Court forcefully resurrected the caveat emptor doctrine.

In the *Layman* case, prospective purchasers previewed a home with an agent representing the seller and were unhindered in their inspection. In the basement of the home, outside the presence of the agent, they saw steel I-beams that were being utilized to shore up the support of a wall which had bowed. The purchasers did ask the agent a few questions regarding other matters; but sought no information about the condition they observed with respect to the structural defect in the basement. The agent, though he had learned specific information about this problem at the time he listed the property for the seller, volunteered no additional information to the purchasers about the condition.

In its decision, the Court found that a seller or his representative agent need not disclose everything they know about a property. In the instant case, when the purchasers made no inquiry regarding the conditions they observed, they were deemed to have accepted the situation as a part of the sale. The Court permitted them no recourse against the seller, or the agent who remained silent, even though the purchasers suffered great impairment in the value of the property because of the structural problem which was a serious one.

The *Layman* decision constitutes a retrenchment in the trend of gradual erosion of the *caveat emptor* doctrine. The Court implied in *Layman* that if a condition is plainly visible to purchasers, the *caveat emptor* doctrine will be invoked notwithstanding the peculiar ability of any particular purchaser to recognize defects and evaluate them. One exception recognized by the Court, with respect to the presence of observable defects, is that sellers or their agents will continue to be held accountable for the commission of fraud with respect to such defects. Since the agent in the *Layman* case had remained silent about the condition, and since the Court found no duty to speak with respect to it, the Court had little difficulty in finding that no fraud had been committed.

There is no application of the *caveat emptor* doctrine with respect to latent defects. The popular latent defect rule has long been a recognized exception. The rule is a seller or his agent must disclose any material latent defect, of which the seller is aware, to a purchaser. A latent defect is one defined as not readily observable or discoverable by a purchaser upon a reasonable inspection. A material defect is one likely to affect the conduct of a reasonable person in buying a house.

The latent defect rule continues to be expanded not only to physical characteristics of property, such as termite infestation damage or leaky basements, but to deficiencies having no physical manifestation but which impair, or will impair, the value of the property, such as assessments or easements.

Since a disclosure of a latent defect is a duty imposed by law, the representative agent of the seller is required to disclose it despite the negative impact it might have on the marketing of the property. If a seller insists on the concealment of a latent defect from a buyer, the agent should withdraw from the representation.

Real estate agents have an ethical duty to ascertain all pertinent facts concerning a property and must do so with diligence and care. (Article 5.3, Ohio Canons of Ethics of the Real Estate Industry; Article 9, Code of Ethics of the National Association of Realtors.) It is wise for an agent to inspect the property himself so that there can be an intelligent discussion with the seller about its features and deficiencies. Circumstances may require that an agent consult with extraneous sources of information in order to resolve some issues. [*Vradenburg* v. *Ohio Real Estate Commission*, 456 N.E.2d 573 (Franklin Co. 1982). State disciplinary action against listing agent upheld for failure to ascertain correct school district in which property being sold was located even upon being requested to re-check the information previously furnished.]

If there is a situation where the seller himself does not have current pertinent information about the property, such as where the seller has not occupied it or the property is being listed by a legally designated representative of the actual owner or occupant, it may behoove the agent to suggest a professional inspection be undertaken solely on the seller's initiative and expense.

Obtaining as much knowledge about a property as possible enables the agent to fulfill his duty to intelligently and honestly respond to a purchaser's inquiry. Still, it must be recognized that not all available information need be volunteered, as this duty of fundamental fairness to the purchaser is not as broad as if a principal-agent relationship existed. As the Court states in *Layman*, "a seller of realty is not obligated to reveal all that he or she knows. A duty falls upon the purchaser to make inquiry and examination."

In the case of *Klott* v. *Associates Real Estate*, 41 Ohio App. 2d 188 (Franklin Co. C.A. 1974), the Court allowed no recourse for the purchaser for an agent's nondisclosure of the fact that the property purchased received its water from a well, not a municipal water supply, and that the well equipment was not in good working order. This Court

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reasoned that it had not been the duty of the agent to bring to the attention of the purchasers the water supply source and condition of the well equipment. The Court based its decision on the fact the defect was not purposely hidden, was readily discoverable upon inspection of the property, and the source of the water supply on the land was not a dangerous peril posing imminent harm to the purchasers. In previewing the property with the agent, the purchasers had asked no questions about the water supply upon being given opportunity to fully inspect the premises.

The dichotomy proposed in *Klott*, that there should be a difference in the treatment of latent defects which constitute dangerous perils and those which do not, is perhaps a vestigial one. Other Court decisions since *Klott* have failed to recognize or attach significance to such factors.

In fact, a seller's duty of disclosure may now attach to conditions separate and unrelated to any physical condition of the property, such as deficiencies affecting the value or relating to the use of it. For example, in the case of *Mitchell* v. *Slocum*, 7 Ohio Misc. 2d 33 (Akron M.C. 1981), the Court found that the seller was liable to the purchaser, under the doctrine of constructive fraud, because the seller did not inform the purchaser that an assessment known to the seller was going to be imposed against the property for the City's actions in coming onto the premises to fill in a dangerous vault in the basement of the home.

In the case of *Miles* v. *McSwegin*, 58 Ohio St. 2d 97 (1979), a real estate agent made a representation to a prospective purchaser that the residence being considered for purchase was a "good solid" structure. Just before the closing of the transaction, the agent learned there was termite infestation in the home which needed treatment. After this eleventh hour discovery, the agent failed to contact the purchaser to disclose the information. The Court found that the agent erred in not informing the purchasers of the defect before the sale was completed, particularly in view of the fact he had made a prior statement to them that he knew was no longer valid. As it turned out, there was further discovery by the purchasers, well past the time of sale, that there was significant structural damage as a result of the termites.

As reiterated in *Layman*, the purchaser has his own independent duty to inspect a property considered for purchase. This duty is terminated, however, if he or she makes inquiry regarding particular conditions. Even absent deceit or an intent to mislead, a purchaser has recourse if the information provided was erroneous. [*DiPippo* v. *Meyer*, 263 N.E. 2d 907 (Hamilton Co. C.A. 1970) Condition of electrical and plumbing misrepresented; *Foust* v. *Valleybrook Realty Co.*, 4 Ohio App. 3d 164 (Wood Co. C.A. 1981).]

The purchaser is entitled to rely on the information furnished by a seller or his agent. He is not required to independently seek verification. [*Niehaus* v. *Haven Park West, Inc.*, 2 Ohio App. 3d 24 (Hamilton Co. C.A. 1981) Agent furnished false information of zoning classification applicable to premises. Correct

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zoning affecting site obtainable from public records, but this fact not determinative of whether agent should be accountable for furnishing erroneous information.] There is a somewhat variant result in the case of *Traverse* v. *Long*, 165 Ohio St. 244 (1956). In *Traverse*, the purchaser noticed some filled-in ground and slag holes in the driveway to the garage on the property he was intending to purchase. The purchaser made an inquiry to the agent about this specific situation. The agent advised the purchaser to walk around the area and inspect it, and his overall conduct probably communicated an impression that the problem was not significant. As it turned out, the subsurface support of the driveway area, composed of cribbing made up of deteriorating railroad ties and slag, was in great need of repair. The Court held, that since the purchaser viewed the problem firsthand, he should be estopped from proclaiming after completion of the sale that he had relied on the misrepresentations of the agent, since the actions of the agent were not fraudulent.

There are some cases which indicate that a purchaser has actionable recourse for positive statements about property conditions which turn out to be erroneous, if the maker of the representations was reckless in his conduct. [*Vradenburg*, supra; *Sanfillippo* v. *Rarden*, 24 Ohio App. 3d 164 (Hamilton Co. 1985).] An unqualified assertion of what one does not know to be true may be found to be equivalent to, and as unjustifiable as, the assertion of a falsehood. If a seller or agent is uncertain of the information he is disclosing, he or she should make sure that the statements are qualified in that respect.

In the case of *Fulton* v. *Aszman*, 4 Ohio App. 3d 64 (Warren Co. C.A. 1982), an agent's misrepresentation of the location of the boundary line of property being purchased resulted in the Court's invalidation of the sale since the location of the land was a known concern of the purchasers even though the purchasers could have ascertained the true location of the boundaries of the property from the deed and mortgage.

Perhaps the *Fulton* case leaves open for future consideration and disposition, the issue of whether the seller or his agent has an absolute duty of disclosure when there is an awareness that the purchaser is particularly concerned about a particular subject concerning a property being sold.

No better advice can be given to all of the participants in a real estate transaction than to know their rights and responsibilities before entering into a sales contract.

Frank A. Cellura is an administrative hearing officer for the Ohio Division of Real Estate. He is licensed to practice in both Ohio and Florida.

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT.

PERSONAL DATA

1. LAST NAME-FIRST NAME-MIDDLE NAME	2. SERVICE NUMBER	3. SOCIAL SECURITY NUMBER
CELLURA, FRANK ANTHONY	NONE	295 48 3507

4. DEPARTMENT, COMPONENT AND BRANCH OR CLASS	5a. GRADE, RATE OR RANK	b. PAY GRADE	6. DATE OF RANK	DAY	MONTH	YEAR
ARMY ARNGUS AMEDD	PV2	E-2		12	Jan	73

7. U.S. CITIZEN	8. PLACE OF BIRTH (City and State or Country)	9. DATE OF BIRTH	DAY	MONTH	YEAR
XX YES ☐ NO	East Cleveland. Ohio		8	Aug	50

SELECTIVE SERVICE DATA

10a. SELECTIVE SERVICE NUMBER	10b. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY, STATE AND ZIP CODE	c. DATE INDUCTED		
		DAY	MONTH	YEAR
33 236 50 1017	LB# 236, Cleveland, Ohio		NA	

TRANSFER OR DISCHARGE DATA

11a. TYPE OF TRANSFER OR DISCHARGE	b. STATION OR INSTALLATION AT WHICH EFFECTED
Released to ARNG of Ohio (See 30)	Fort Sam Houston, Texas

c. REASON AND AUTHORITY	d. EFFECTIVE DATE	DAY	MONTH	YEAR
Sec VI Chap 2 AR 635-200 SPN 201 Expiration of Term of Service		10	Jun	73

12. LAST DUTY ASSIGNMENT AND MAJOR COMMAND	13a. CHARACTER OF SERVICE	b. TYPE OF CERTIFICATE ISSUED
Co A-2 Bn TUSAMEDTC 5th US Army	HONORABLE	NONE

14. DISTRICT, AREA COMMAND OR CORPS TO WHICH RESERVIST TRANSFERRED	15. REENLISTMENT CODE
Revert to ARNGUS of Ohio	NA

SERVICE DATA

16. TERMINAL DATE OF RESERVE/UMT&S OBLIGATION			17. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION	b. TERM OF SERVICE (Years)	c. DATE OF ENTRY		
DAY	MONTH	YEAR	a. SOURCE OF ENTRY: ☐ ENLISTED (First Enlistment) ☐ ENLISTED (Prior Service) ☐ REENLISTED ☐ OTHER NA		DAY	MONTH	YEAR
NA				NA	12	Jan	73

18. PRIOR REGULAR ENLISTMENTS	19. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SVC	20. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State)
NA	NA	Shaker Heights, Ohio

21. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County, State and ZIP Code)	23a. SPECIALTY NUMBER & TITLE	b. RELATED CIVILIAN OCCUPATION AND D.O.T. NUMBER
13654 Fairhill Road Apartment #101 Shaker Heights (Cuyahoga) Ohio	91A10MedCorpsman 8Jun73	First Aid Attendant 354.878

22. STATEMENT OF SERVICE		YEARS	MONTHS	DAYS
a. CREDITABLE FOR BASIC PAY PURPOSES	(1) NET SERVICE THIS PERIOD	0	4	29
	(2) OTHER SERVICE	0	4	14
	(3) TOTAL (Line (1) plus Line (2))	0	9	13
b. TOTAL ACTIVE SERVICE		0	4	29
c. FOREIGN AND/OR SEA SERVICE		0	0	0

24. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED

Sharpshooter Badge (Rifle M-16)

25. EDUCATION AND TRAINING COMPLETED

TUSAMEDTC (Medical Corpsman Course)

VA AND EMP. SERVICE DATA

26a. NON-PAY PERIODS TIME LOST (Preceding Two Years)	b. DAYS ACCRUED LEAVE PAID	27a. INSURANCE IN FORCE (NSLI or USGLI)	b. AMOUNT OF ALLOTMENT	c. MONTH ALLOTMENT DISCONTINUED
NONE	13	☐ YES ☐ NO XX	NA	NA

28. VA CLAIM NUMBER	29. SERVICEMEN'S GROUP LIFE INSURANCE COVERAGE
C- NONE	XX $15,000 ☐ $10,000 ☐ $5,000 ☐ NONE

REMARKS

30. REMARKS

Civilian Education: 16 Years-Urban & Environmental Studies Blood Group: A Positive
Item 11a: Released from ADT and returned to State Control as a member of the Army National Guard of Ohio to complete remaining service obligation of 5 years and 3 months.
ADT. 21 Weeks

AUTHENTICATION

31. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County, State and ZIP Code)	32. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED
16824 Van Aken Boulevard Shaker Heights (Cuyahoga) Ohio 44120	Frank A Cellura
33. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER	**34. SIGNATURE OF OFFICER AUTHORIZED TO SIGN**
R. J. LUNGO, 2LT, Asst Adj	R J Lungo

DD FORM 1 JUL 70 214 PREVIOUS EDITION OF THIS FORM IS TO BE USED. ARMED FORCES OF THE UNITED STATES REPORT OF TRANSFER OR DISCHARGE

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c. REASON AND AUTHORITY	d. EFFECTIVE DATE	DAY	MONTH	YEAR
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