



## My home has hidden defects

**You purchase a house. After you move in, you realize that it has major defects. Can you cancel the purchase? Can you lower the purchase price?**

### THE FACTS

A man buys a mobile home for \$54,000. On the property listing the home is said to be in impeccable condition. Prior to purchasing the home, the man has it inspected by a professional. The inspector reports that the home is of average quality, and suggests several renovations that could improve its condition. Several months after the owners move in, the man and his partner notice the presence of mould at the base of the walls in the master bedroom and the children's rooms. The gentleman contacts the seller to inform him of these observations. The seller says it is not his concern. The man retains the services of an expert who makes note of major defects including rot, mildew, and mould caused by condensation in the home's walls. The home is subsequently declared unsanitary and is disinfected and decontaminated. As a result, the man decides to sue the seller for cancellation of the sale and for damages and interest, maintaining that he would never have purchased the home had he known of the defects in question. For his part, the seller maintains that the defects were not hidden, and that a prudent, diligent buyer would have seen them. Further, he maintains that buyer's habits could have contributed to the problem.

### THE ISSUE

Can the problems that affect the home be considered to be hidden defects? Can the buyer have the sale cancelled, or the price lowered?

### THE DECISION

Judge Landry declares the sale of the mobile home between the parties to be cancelled. The seller must therefore repay the purchase price to the buyer and reassume ownership of the home. The judge also awards damages and interest.

### THE GROUNDS

The judge must first determine if the case is about hidden defects. In this instance, the home was sold with a legal guarantee against hidden defects. The judge concludes that the condensation problems inside the home are indeed hidden defects. First, based on the experts' evidence, the judge concludes that the advanced state of the rot demonstrates that the problem had existed before the conclusion of the sale on May 3, 2002. Secondly, the judge believes that the buyer acted in a prudent and diligent manner given that he had retained the services of an inspector before the sale. At the time of that inspection, the walls appeared to be in good condition because the seller had just completed renovations. It was only during a later examination made once the mould had been discovered, that the experts opened the walls, and the advanced state of the damage was revealed. The buyer therefore has grounds to seek the cancellation of the sale or a reduction of the purchase price. The buyer could also seek damages and interest if the seller was aware of the defects at the time of the sale. The judge concludes that the seller was either aware of or should have been aware of the defects since he had lived on the premises for 20 years and because he had had work done on the home on several

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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## **My home has hidden defects (Cond't)**

occasions. The judge therefore awards damages and interest in this instance. Cancellation of the sale is usually granted in cases where the defect is so large that the buyer would not have purchased the home in the first place. In this instance, the cancellation of the sale is granted because the cost of repairs would be more than 70% of the value of the home.

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### **References**

*Lussier v. Lucas*, (S.C.) Joliette 705-22-005365-034,  
2004/03/08, judge : Richard Landry (J.E. 2004-957; [www.jugements.qc.ca](http://www.jugements.qc.ca))

*Civil Code of Québec*, (L.Q. 1991, c. 64), art. 1590, 1604, 1726,  
1727,1728.