

Winter 1986

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Recommended Citation

Linda S. Whitton, *Realtor Liability for Innocent Misrepresentation and Undiscovered Defects: Balancing the Equities Between Broker and Buyer*, 20 Val. U. L. Rev. 255 (1986).

Available at: <https://scholar.valpo.edu/vulr/vol20/iss2/4>

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REALTOR LIABILITY FOR INNOCENT MISREPRESENTATION AND UNDISCOVERED DEFECTS: BALANCING THE EQUITIES BETWEEN BROKER AND BUYER

INTRODUCTION

Whether realtors¹ should be liable for innocent misrepresentation and undiscovered defects in the sale of used housing is a controversial question currently eliciting diverse responses in courts across the country.² The question typically arises after a buyer closes a real estate transaction and then discovers error in the information provided by the realtor,³ or finds a major defect in the property.⁴ In

1. "Realtor" is a copyrighted name applicable to real estate brokers who are members of the National Association of Realtors. As members of the Association, realtors are subject to a professional code of ethics. See NATIONAL ASSOCIATION OF REALTORS, CODE OF ETHICS & STANDARDS OF PRACTICE (1981); NATIONAL ASSOCIATION OF REALTORS, INTERPRETATIONS OF THE CODE OF ETHICS (7th ed. 1978). For the purposes of this note, "realtor" and "broker" are used interchangeably as designations for a professional real estate broker.

2. In the United States, jurisdictions which have addressed the question of realtor liability for innocent misrepresentation or undiscovered defects include Alabama, Alaska, California, District of Columbia, Florida, Georgia, Illinois, Kansas, Maine, Michigan, Nevada, New Hampshire, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin. See *infra* notes 30, 43-45, 69 and accompanying text.

3. Allegations of innocent misrepresentation have originated from several different types of misinformation, including: errors as to house square footage, see *Bauer v. Vanguard Realty, Inc.*, 365 So. 2d 196 (Fla. Dist. Ct. App. 1978), *appeal dismissed*, 368 So. 2d 1362 (Fla. 1979); *Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535 (Tex. 1981), property acreage, see *Bartner v. Carter*, ___ Me. ___, 405 A.2d 194 (1979); *Dugan v. Jones*, 615 P.2d 1239 (Utah 1980); *Gauerke v. Rozga*, 112 Wis. 2d 271, 332 N.W.2d 804 (Wis. 1983), well capacity, see *Bevins v. Ballard*, 655 P.2d 757 (Alaska 1982); *Nordstrom v. Miller*, 227 Kan. 59, 605 P.2d 545 (1980), type of building construction, see *Prigge v. South Seventh Realty*, 97 Nev. 640, 637 P.2d 1222 (1981); *Lengyel v. Lint*, 280 S.E.2d 66 (W. Va. 1981), condition of heating system, see *Spagnapani v. Wright*, 110 A.2d 82 (D.C. 1954), existence of sewer connection, see *Lyons v. Christ Episcopal Church*, 71 Ill. App. 3d 257, 389 N.E.2d 623 (1979), state of title, see *Duby v. Apple Town Realty, Inc.*, 120 N.H. 438, 417 A.2d 1 (1980), mortgage interest rate, see *Beard v. Gress*, 90 Ill. App. 3d 622, 413 N.E.2d 448 (1980).

4. Undiscovered property defects which have prompted suits include: unstable soil condition, see *Cooper & Co., Inc. v. Bryant*, 440 So. 2d 1016 (Ala. 1983); *Easton v. Strassburger*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383 (1984), building defects, see *U-Haul Co. of Western Georgia v. Dillard Paper Co.*, 169 Ga. App. 280, 312 S.E.2d 618 (1983), defective gas line, see *Hammond v. Matthes*, 109 Mich. App. 352, 311 N.W.2d 357 (1981), collapse of basement wall, see *Provost v. Miller*, 144 Vt. 67, 473 A.2d 1162

a recent Vermont case,⁵ buyers brought suit against real estate brokers when a basement wall collapsed. The Supreme Court of Vermont held that a realtor is not subject to liability for misrepresentation or undiscovered defects unless the realtor provides information to a buyer which he knows or has reason to know may be untrue.⁶ California has taken an opposite view.⁷ Realtors in California were held liable when an undiscovered landfill condition caused massive earth slides and substantial losses to a buyer.⁸ The California court found realtor liability for undiscovered defects based on an affirmative duty to inspect the property.⁹ One reason the opinions on this issue are inconsistent is that intent to deceive is not an element of a cause of action for innocent misrepresentation.¹⁰ Therefore, the legal approach adopted by a jurisdiction depends on how the court chooses to balance the equities between an innocent real estate broker and an innocent buyer.¹¹

Considering the present diversity of legal opinion regarding realtor liability for innocent misrepresentation and undiscovered defects, the need exists for a consistent legal standard to guide the expectations of realtors and buyers in a real estate transaction. This standard should equitably reflect the realities of the realtor-buyer relationship and objectively define the parties' respective rights and duties. In an attempt to formulate such a standard, this note will first summarize the current legal views on realtor liability for innocent

(1984), chronic drainage and sewage problems, *see* *McRae v. Bolstad*, 101 Wash. 2d 161, 676 P.2d 496 (1984).

5. *See Provost*, 144 Vt. 67, 473 A.2d 1162.

6. *Id.* at 69, 473 A.2d at 1163-64.

7. *See Easton*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383.

8. *Id.*

9. *Id.* at 99-102, 199 Cal. Rptr. at 387-90.

10. *See* RESTATEMENT (SECOND) OF TORTS § 552C(1) (1977), which defines the tort of innocent misrepresentation as:

One who, in a sale, rental or exchange transaction with another, makes a misrepresentation of a material fact for the purpose of inducing the other to act or to refrain from acting in reliance upon it, is subject to liability to the other for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation, even though it is not made fraudulently or negligently.

See also *Bevins*, 655 P.2d at 761-63; *Spargnapani*, 110 A.2d at 83-84; *Beard*, 90 Ill. App. 3d at 627-28, 413 N.E.2d at 452; *Bartner*, ___ Me. at ___, 405 A.2d at 200; *Dugan*, 615 P.2d at 1249; *McRae*, 101 Wash. 2d at 167, 676 P.2d at 500; *Lengyel*, 280 S.E.2d at 69; *Gauerke*, 112 Wis. 2d at 280, 332 N.W.2d at 809.

11. *See* *Bevins*, 655 P.2d at 763; *Gauerke*, 112 Wis. 2d at 280, 332 N.W.2d at 808-09.

misrepresentation and undiscovered defects, and then evaluate how effectively each approach meets the realities of the realtor-buyer relationship and delineates the rights and duties of the parties.

INNOCENT MISREPRESENTATION AND UNDISCOVERED DEFECTS—
CURRENT VIEWS ON REALTOR LIABILITY

Although case law on realtor liability for innocent misrepresentation and undiscovered defects reflects a wide range of opinion,¹² current views on this issue can be categorized according to three legal approaches. The most traditional approach protects realtors from all liability for innocent misrepresentation and undiscovered defects under the doctrine of caveat emptor.¹³ Approximately half the jurisdictions which have addressed the question of realtor liability for innocent misrepresentation and undiscovered defects follow this view.¹⁴ A more liberal approach, gaining popularity in a growing number of jurisdictions,¹⁵ recognizes realtor liability for innocent misrepresentation based on the notion of justifiable buyer reliance.¹⁶ The third and most liberal approach, recently formulated by California,¹⁷ holds realtors liable for undiscovered defects based on an affirmative duty by the realtor to inspect a property for the benefit of the buyer.¹⁸ The current views on realtor liability for innocent misrepresentation and undiscovered defects thus range from complete protection of the realtor under caveat emptor to realtor liability for even undiscovered defects under the California approach.

12. Compare, e.g., *Easton*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383 with *Provost*, 144 Vt. 67, 473 A.2d 1162. See also *infra* notes 30, 43-45, 69 and accompanying text.

13. See *infra* text accompanying notes 28-41.

14. Jurisdictions which protect realtors from liability for innocent misrepresentation and undiscovered defects under the doctrine of caveat emptor include Alabama, Florida, Georgia, Illinois (Although Illinois does not recognize a common law action for innocent misrepresentation, innocent misrepresentation by a realtor may be actionable under the state's Consumer Fraud Act.), Kansas, Michigan, Nevada, New Hampshire, and Vermont. See *infra* note 30 and accompanying text.

15. While Alaska, the District of Columbia, West Virginia, and Wisconsin recognize a common law cause of action for innocent misrepresentation by realtors, Illinois, Maine, Texas, and Washington permit actions against realtors for innocent misrepresentation under their states' consumer protection acts. Utah is currently the only state to base liability for innocent misrepresentation on its real estate broker licensing statute. See *infra* notes 43-45 and accompanying text.

16. See *infra* text accompanying notes 42-68.

17. See *Easton*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383.

18. See *infra* text accompanying notes 69-82.

Protection from Liability Based on the Doctrine of Caveat Emptor

Caveat emptor,¹⁹ a doctrine founded on the presumption that a buyer is competent to protect his own interests,²⁰ once governed most sales of goods and real estate.²¹ Under this doctrine, a seller was generally protected from liability for the sale of defective property, unless he made the sale through conscious deceit or under express warranty.²² As a result of the Uniform Commercial Code implied warranties of merchantability²³ and fitness,²⁴ caveat emptor no longer applies to the sale of goods.²⁵ Following this lead, a majority of United States jurisdictions have also abandoned the doctrine of caveat emptor as applied to the sale of newly constructed houses,²⁶ in favor of an implied warranty of habitability.²⁷ Due to this abandonment of caveat emptor in the sale of goods and new houses, the doctrine's pervasive influence has diminished.

While caveat emptor no longer governs sale of goods and most new houses, the doctrine has survived in transactions involving used housing.²⁸ Traditionally, caveat emptor has shielded all sellers of used housing, as well as their brokers,²⁹ from liability for defects or innocent misrepresentation. Currently, half the jurisdictions which have addressed the issue of realtor liability for innocent misrepresentation and undiscovered defects affirm the traditional rule of caveat emptor.³⁰

19. For a comprehensive discussion of the development of the doctrine of caveat emptor, see Hamilton, *The Ancient Maxim Caveat Emptor*, 40 YALE L.J. 1133 (1931).

20. *Id.* at 1135. See also *infra* note 40 and accompanying text.

21. See generally Hamilton, *supra* note 19.

22. *Id.* at 1179.

23. U.C.C. § 2-314 (1978).

24. U.C.C. § 2-315 (1978).

25. See generally Roberts, *The Case of the Unwary Home Buyer: The Housing Merchant Did It*, 52 CORNELL L.Q. 835, 836 (1967).

26. *E.g.*, Pollard v. Saxe & Yolles Dev. Co., 12 Cal. 3d 374, 525 P.2d 88, 115 Cal. Rptr. 648 (Cal. 1974). See J. DUKEMINIER & J. KRIER, PROPERTY 668-74 (1981), for a compilation of jurisdictions recognizing some form of the warranty of habitability in the sale of new homes.

27. See J. DUKEMINIER, *supra* note 26, for a summary of the development of the doctrine of the implied warranty of habitability. See also Roberts, *supra* note 25, at 837-43.

28. See *infra* note 30 and accompanying text. See also Note, *Caveat Emptor! The Doctrine's Stronghold*, 1 WILLAMETTE L.J. 369 (1960).

29. See *infra* text accompanying notes 37-39. See also Sinclair, *The Duty of the Broker to Purchasers and Prospective Purchasers of Real Property in Illinois*, 69 ILL. B.J. 260, 264 (1981).

30. Cooper, 440 So. 1016 (undiscovered cracked slab and settling problems caused by soil condition); Bauer, 365 So. 2d 196 (misrepresentation as to actual square footage);

The most recent decision to follow the doctrine of caveat emptor was *Provost v. Miller*.³¹ In this case, the Supreme Court of Vermont held a realtor has no duty to independently verify the seller's representations unless the realtor has reason to believe such representations are false.³² The buyers in *Provost* brought suit against the seller and real estate brokers for losses incurred when a basement wall in the house collapsed soon after purchase.³³ Although the sellers were found guilty of fraud,³⁴ the judgment against the real estate brokers for misrepresentation was reversed.³⁵ The court concluded that a realtor should be liable for misrepresentation only if he provides information to a buyer which he knows or has reason to know may be untrue.³⁶

A comparison of *Provost* with opinions from other jurisdictions which follow caveat emptor reveals two primary reasons for protecting realtors from liability for innocent misrepresentation and undiscovered defects. The first is that a realtor is an agent of the seller, not of the buyer, and is protected from liability under agency law.³⁷ According to agency law, an agent owes no greater duty to a third party than does his principal.³⁸ Therefore, to the extent that a seller's duty to a buyer is limited by caveat emptor, the realtor's duty is limited to the same degree. Furthermore, an agent is permitted to repeat information from his principal without fear of liability should such information prove untrue, unless the agent knows or has reason to know of its falsity.³⁹ Thus, the realtor not only enjoys the general

U-Haul, 169 Ga. App. 280, 312 S.E.2d 618 (building defect discovered where building was represented as being of excellent construction); *Lyons*, 71 Ill. App. 3d 257, 389 N.E.2d 623 (misrepresentation that property was connected to city sewer system), *but see Beard*, 90 Ill. App. 3d 622, 413 N.E.2d 448 (innocent misrepresentation by realtor actionable under Consumer Fraud Act); *Nordstrom*, 227 Kan. 59, 605 P.2d 545 (misrepresentation as to production capability of wells on "irrigated" farmland); *Hammond*, 109 Mich. App. 352, 311 N.W.2d 357 (hidden defect in gas line); *Prigge*, 97 Nev. 640, 637 P.2d 1222 (misrepresentation that dwelling was frame and stucco construction); *Duby*, 120 N.H. 438, 417 A.2d 1 (misrepresentation regarding the state of title to land); *Provost*, 144 Vt. 67, 473 A.2d 1162 (basement wall collapsed).

31. 144 Vt. 67, 473 A.2d 1162.

32. *Id.* at 70, 473 A.2d at 1164.

33. *Id.* at 68, 473 A.2d at 1163.

34. *Id.*

35. *Id.* at 70, 473 A.2d at 1164.

36. *Id.* at 69, 473 A.2d at 1163-64.

37. *Cooper*, 440 So. 2d at 1019; *Lyons*, 71 Ill. App. 3d at 260, 389 N.E.2d at 625; *Nordstrom*, 227 Kan. at 63-64, 605 P.2d at 551; *Hammond*, 109 Mich. App. at 359, 311 N.W.2d at 361; *Prigge*, 97 Nev. at 640, 637 P.2d at 1223; *Provost*, 144 Vt. at 69, 473 A.2d at 1163-64.

38. RESTATEMENT (SECOND) OF AGENCY §§ 343 comment c, 347(2) (1958).

39. *E.g.*, *Lyons*, 71 Ill. App. 3d at 260, 389 N.E.2d at 625. *See also* RESTATEMENT (SECOND) OF AGENCY § 348 comment b (1958).

protection of caveat emptor, but he also receives the special protection afforded an agent who acts as a conduit for his principal's representations.

The second reason for protecting realtors from liability for innocent misrepresentation and undiscovered defects is the buyer's affirmative duty to protect his own interests under the doctrine of caveat emptor.⁴⁰ The courts have interpreted this duty as requiring the buyer to use ordinary diligence to discover the truth of any representation made in the course of a real estate transaction.⁴¹ Consequently, the realtor is insulated from liability for erroneous information and defects not only by an absence of duty to the buyer under agency law, but also by virtue of the buyer's obligation to protect himself under caveat emptor.

Liability for Innocent Misrepresentation Based on Justifiable Buyer Reliance

Despite the influence of caveat emptor, a growing number of jurisdictions are holding realtors liable for the losses that buyers suffer due to reliance on realtor's misrepresentations.⁴² A survey of the states which have recognized realtor liability for innocent misrepresentation indicates three legal bases on which the courts are willing to find liability: common law public policy,⁴³ state consumer protection acts,⁴⁴ and statutory licensing requirements.⁴⁵ Although the basis for liability

40. *Cooper*, 440 So. 2d at 1019; *Bauer*, 365 So. 2d at 197; *U-Haul*, 169 Ga. App. at 281-82, 312 S.E.2d at 620; *Duby*, 120 N.H. at 438, 417 A.2d at 1.

41. *E.g.*, *U-Haul*, 169 Ga. App. at 281-82, 312 S.E.2d at 620.

42. Jurisdictions which have recognized realtor liability for innocent misrepresentation include Alaska, District of Columbia, Illinois, Maine, Texas, Utah, Washington, West Virginia, and Wisconsin. *See infra* notes 43-45 and accompanying text.

43. *See Bevins*, 655 P.2d 757 (innocent misrepresentations regarding the adequacy of the property's well); *Spargnapani*, 110 A.2d 82 (realtor, relying on information from owner, represented that the house could be heated for approximately \$100.00 per year when in fact the heating system was defective); *Lengyel*, 280 S.E.2d 66 (where realtors innocently advertised a house to be of a particular type of construction other than what it in fact was, the court held a cause of action could exist against the realtor if the buyer justifiably relied upon this representation); *Gauerke*, 112 Wis. 2d 271, 332 N.W.2d 804 (realtors, based on seller's information, misrepresented the amount of acreage and road and river frontage of property).

44. *See Beard*, 90 Ill. App. 3d 622, 413 N.E.2d 448 (misrepresentation of mortgage interest rate); *Bartner*, ___ Me. ___, 405 A.2d 194 (misrepresentation of acreage); *Cameron*, 618 S.W.2d 535 (misrepresentation of square footage); *McRae*, 101 Wash. 2d 161, 676 P.2d 496 (chronic drainage and sewage problems).

45. *See Dugan*, 615 P.2d 1239 (court found realtor liability for innocent misrepresentation of acreage under UTAH CODE ANN. § 61-2-6(a) (1953), which requires

may vary from state to state, the underlying reason for finding the realtor liable is the same. In each case, the court has held that the buyer may justifiably rely on information provided by the realtor, and therefore is entitled to recover damages if misinformation causes the buyer's loss.⁴⁶

1. Common Law Public Policy

A buyer's right to rely on the realtor's representations is the foundation for the common law public policy of realtor liability for innocent misrepresentation.⁴⁷ This right appears to originate from the nature of the realtor-buyer relationship.⁴⁸ Commenting on this relationship, the Supreme Court of Alaska held in *Bevins v. Ballard* that buyers are entitled to rely on realtor representations because realtors present themselves as having specialized housing knowledge.⁴⁹ Therefore, the realtor has a duty to be accurate in the information he provides.⁵⁰ In *Bevins*, the buyer relied on realtor representations regarding the adequacy of the property's well.⁵¹ When the well subsequently failed to provide sufficient water, the buyer incurred expenses to deepen it.⁵² Concluding that the buyer's reliance was justified, the court held public policy requires liability for innocent misrepresentation.⁵³

In addition to buyer reliance, another equitable consideration a court must address in a suit for innocent misrepresentation is the absence of a realtor's intent to deceive. The realtor, like the buyer, is an innocent party in the transaction because he makes his represen-

a realtor to meet the standards of "honesty, integrity, truthfulness, reputation, and competency"; see also KAN. STAT. ANN. § 58-3062(a)(18) (1983) ("No licensee shall . . . engage in fraud or make any substantial misrepresentation."). Although the Kansas courts have yet to apply this provision of the Kansas Real Estate Brokers and Salesmen Act (effective July 1, 1980), the statute appears to extend the scope of realtor liability to include non-fraudulent, but substantial misrepresentations. Altenhofen, *Potential Liability of Real Estate Brokers and Salesmen for Misrepresentation and Nondisclosure in Kansas*, 52 J. KAN. B.A. 9 (1983).

46. *Bevins*, 655 P.2d at 761-63; *Spargnapani*, 110 A.2d at 83-84; *Beard*, 90 Ill. App. 3d at 627-28, 413 N.E.2d at 452; *Bartner*, ___ Me. at ___, 405 A.2d at 200; *Dugan*, 615 P.2d at 1248-49; *McRae*, 101 Wash. 2d at 167, 676 P.2d at 500; *Lengyel*, 280 S.E.2d at 69; *Gauerke*, 112 Wis. 2d at 281-82, 332 N.W.2d at 809.

47. See *Bevins*, 655 P.2d at 763.

48. *Id.*

49. *Id.*

50. See *id.*

51. *Id.* at 759.

52. *Id.*

53. *Id.* at 763.

tations without fraud or negligence.⁵⁴ As between an innocent realtor and an innocent buyer, the courts following a policy of realtor liability for innocent misrepresentation have held that the reliance of the innocent buyer tips the balance of equity in favor of the buyer's protection.⁵⁵ The courts justify placing the loss on the innocent realtor because they view the realtor as better situated to ascertain the truth of his representations.⁵⁶ Thus, although the realtor may not have an intent to deceive, the courts have found it equitable to hold the realtor liable for innocent misrepresentation because of both the buyer's reliance and the realtor's ability to initially prevent dissemination of misinformation by careful verification.

2. Consumer Protection Acts

Following equitable considerations similar to those forming the common law public policy of realtor liability for innocent misrepresentation, the courts of four jurisdictions now interpret their states' consumer protection acts as providing buyers with a statutory remedy for realtor misrepresentation.⁵⁷ Although the statutory language and its interpretation vary from state to state,⁵⁸ all jurisdictions agree that proof of a realtor's intent to deceive is not required to sustain a cause of action.⁵⁹ Like the common law action, the element critical to relief under a consumer protection act is the buyer's proof of detrimental reliance on the realtor's erroneous representation.⁶⁰ In effect, the statutory cause of action provided by consumer protection acts is a codification of the policy considerations underlying the common law action.

54. See *supra* note 10.

55. See *Bevins*, 655 P.2d at 763; *Gauerke*, 112 Wis. 2d at 280-82, 332 N.W.2d at 808-09.

56. See, e.g., *Gauerke*, 112 Wis. 2d at 280, 332 N.W.2d at 809.

57. *Beard*, 90 Ill. App. 3d at 626, 413 N.E.2d at 451; *Bartner*, ___ Me. at ___, 405 A.2d at 199-200; *Cameron*, 618 S.W.2d at 537; *McRae*, 101 Wash. 2d at 166, 676 P.2d at 500. *But cf. Zeeman v. Black*, 156 Ga. App. 82, 273 S.E.2d 910 (1980) (Georgia does not recognize a cause of action for misrepresentation against a real estate agent under the state's Fair Business Practice Act because a realtor's misrepresentation in the sale of real property is viewed as an essentially private controversy with no impact on the consumer marketplace).

58. Compare *Beard*, 90 Ill. App. 3d at 625-27, 413 N.E.2d at 450-52; *Bartner*, ___ Me. at ___, 405 A.2d at 199-202; *Cameron*, 618 S.W.2d at 540-41; *McRae*, 101 Wash. 2d at 165, 676 P.2d at 499.

59. *Beard*, 90 Ill. App. 3d at 627-28, 413 N.E.2d at 452; *Bartner*, ___ Me. at ___, 405 A.2d at 200; *Cameron*, 618 S.W.2d at 537; *McRae*, 101 Wash. 2d at 167, 676 P.2d at 500.

60. *Beard*, 90 Ill. App. 3d at 625, 413 N.E.2d at 450; *Bartner*, ___ Me. at

3. State Licensing Requirements

A further basis for a cause of action against realtors for innocent misrepresentation is state realtor licensing requirements. Utah has adopted the position that realtors have a duty under the state's licensing statute to provide accurate information.⁶¹ Utah's realtor licensing statute requires a realtor to meet standards of "honesty, integrity, truthfulness, reputation, and competency."⁶² On these requirements, the Supreme Court of Utah has held that the rule of caveat emptor is inapplicable to buyers dealing with a licensed real estate broker.⁶³ The court reasoned that if standards of integrity and competency must be met by a realtor to obtain a license, then a buyer should have a right to rely on the realtor's knowledge and expertise.⁶⁴ The court concluded that a realtor must be answerable at law when he breaches his statutory duty to the public.⁶⁵

Whereas the Utah statute indirectly grants a cause of action for misrepresentation through imposition of certain professional standards, a provision of the Kansas Real Estate Brokers and Salesmen Act explicitly forbids a licensed realtor to "engage in fraud or make any substantial misrepresentation."⁶⁶ Although Kansas courts have yet to apply this provision, the language appears to extend the scope of realtor liability to include substantial misrepresentations made without wrongful intent.⁶⁷ Notwithstanding the fact that Utah is the only state to expressly abandon caveat emptor based on statutory licensing requirements in cases of misrepresentation, the existence of statutes like the Kansas provision⁶⁸ indicates a potential for other states to adopt a similar position by direct legislation.

_____, 405 A.2d at 200 (the buyers in this action failed to prove reliance or direct injury resulting from the erroneous representation); *Cameron*, 618 S.W.2d at 537; *McRae*, 101 Wash. 2d at 165, 676 P.2d at 499.

61. See *Dugan*, 615 P.2d at 1248. See also Note, *Recent Developments in Utah Law—Property Law: Broker Can Be Held Liable for Negligent Misrepresentation to Vendee*, 1981 UTAH L. REV. 229.

62. UTAH CODE ANN. § 61-2-6(a) (1953).

63. *Dugan*, 615 P.2d at 1248.

64. *Id.*

65. *Id.*

66. KAN. STAT. ANN. § 58-3062(a)(18) (1983).

67. *Altenhofen*, *supra* note 45, at 16. *But cf. Nordstrom*, 227 Kan. 59, 605 P.2d 545 (The common law in Kansas limits an agent's liability to cases of intentional fraud).

68. *Altenhofen*, *supra* note 45, at 17.

Liability for Undiscovered Defects Based on a Realtor Duty of Inspection

Although a growing number of jurisdictions have recognized realtor liability for innocent misrepresentation, only California has totally abandoned caveat emptor by extending the realtor's scope of liability to include undiscovered defects about which the realtor has made no representation.⁶⁹ In the landmark case of *Easton v. Strassburger*,⁷⁰ the buyers brought suit because an undiscovered faulty landfill condition caused massive earth slides and damage to the house and property purchased. The California Court of Appeals affirmed realtor liability for these damages, holding that realtors have an affirmative duty to conduct a "reasonably competent and diligent" inspection of residential property in order to discover defects for the benefit of the buyer.⁷¹ This decision stands in sharp contrast to the doctrine of caveat emptor, which leaves a buyer solely responsible for protecting his own interests.⁷²

The California court abandoned caveat emptor in favor of a realtor duty to protect the buyer's interests because of what it perceived as the realities and expectations of the realtor-buyer relationship.⁷³ Following the same rationale as jurisdictions recognizing realtor liability for innocent misrepresentation,⁷⁴ the court observed that a realtor, because of his professional expertise, is better situated than a buyer to obtain reliable information about a property.⁷⁵ Furthermore, because most real estate transactions are relatively complex, and most buyers inexperienced, the court reasoned it is within the expectations of both the realtor and buyer that a buyer will rely upon a realtor to protect his interests.⁷⁶

In addition to buyer reliance as a justification for the realtor duty to inspect for defects, the court held that placing the duty of inspection on the realtor rather than the buyer is equitable because of the "relative ease" with which a realtor can sustain the burden of the duty.⁷⁷ The court supported its position by noting that "the

69. See *Easton*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383.

70. *Id.*

71. *Id.* at 99-102, 199 Cal. Rptr. at 387-90.

72. See *supra* text accompanying note 32. Compare *Provost*, 144 Vt. 67, 473 A.2d 1162 with *Easton*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383.

73. *Easton*, 152 Cal. App. 3d at 100-01, 199 Cal. Rptr. at 388-89.

74. See *supra* text accompanying notes 47-53, and 55-56.

75. *Easton*, 152 Cal. App. 3d at 100, 199 Cal. Rptr. at 388.

76. *Id.* at 100-01, 199 Cal. Rptr. at 388-89.

77. *Id.* at 101, 199 Cal. Rptr. at 389.

affirmative obligation to discover [the] adverse factors that a reasonably competent and diligent investigation would disclose" was already a professional ethical obligation of realtors under The Code of Ethics of the National Association of Realtors.⁷⁸ However, in raising this duty from an ethical obligation to a legal one, the court did not provide any further guidelines as to what type of inspection would be sufficient to meet the stated standards of "competence" and "diligence."

The court refused to place a limitation on the realtor's duty of investigation,⁷⁹ stating that any limitation might diminish a realtor's incentive to conduct a thorough inspection.⁸⁰ Instead, the opinion held that principles of comparative negligence would adequately protect a realtor who merely failed to disclose "manifest" defects which should have been apparent to the buyer.⁸¹ While the court acknowledged the possibility that property defects might be so clearly apparent that a realtor would not be negligent for failure to disclose them,⁸² it did not address the issue of what defects, if any, are so undetectable that the law could not expect a realtor to discover them by a reasonably competent and diligent inspection.

To summarize, the current views on realtor liability for innocent misrepresentation and undiscovered defects include protection of the realtor from liability under the doctrine of caveat emptor, liability for innocent misrepresentation based on justifiable buyer reliance, and liability for undiscovered defects based on an affirmative realtor duty of inspection. Jurisdictions following the traditional approach of caveat emptor protect the realtor from liability because of his status as the seller's agent, and because of the buyer's obligation under caveat emptor to protect his own interests. States recognizing realtor liability for innocent misrepresentation reject caveat emptor in the belief that the buyer's right to rely on information provided by the realtor is within the expectations of the realtor-buyer relationship. Because these jurisdictions view the realtor as better situated than the buyer to verify the truth of his representations, they place the burden of loss on the realtor when a buyer is damaged due to justifiable reliance on the realtor's innocent misrepresentations. Only California has completely abandoned caveat emptor by recognizing

78. *Id.* at 101-02, 199 Cal. Rptr. at 389-90 (quoting NATIONAL ASSOCIATION OF REALTORS, INTERPRETATIONS OF THE CODE OF ETHICS art. 9 (7th ed. 1978)).

79. *Easton*, 152 Cal. App. 3d at 103, 199 Cal. Rptr. at 391.

80. *Id.* at 103, 199 Cal. Rptr. at 391.

81. *Id.*

82. *Id.*

realtor liability for even undiscovered defects about which no representation has been made. Under the California approach, a realtor has an unlimited affirmative duty to conduct a reasonably competent and diligent inspection of residential property in order to discover defects.

BALANCING THE EQUITIES BETWEEN BROKER AND BUYER

Considering the diversity of legal opinion regarding realtor liability for innocent misrepresentation and undiscovered defects, the need exists for a consistent legal standard to guide the expectations of realtors and buyers in a real estate transaction. Ideally, this standard should equitably reflect the realities of the realtor-buyer relationship and objectively define the parties' respective rights and duties. In an attempt to formulate such a standard, the following analysis will evaluate both the equity and objectivity of the current views on realtor liability for innocent misrepresentation and undiscovered defects.

Protection from Liability Based on the Doctrine of Caveat Emptor

The strength of the doctrine of caveat emptor is the objective exactness with which it delineates the rights and duties of realtors and buyers. The realtor, as agent of the seller, is protected by caveat emptor and agency law from any liability for innocent misrepresentation and undiscovered defects.⁸³ The buyer, on the other hand, has an affirmative duty to protect his own interests.⁸⁴ Absent a sale through conscious deceit or under express warranty, there are no exceptions to these clearly defined standards.⁸⁵

Although caveat emptor provides an objective standard by which to define the respective rights and duties of realtors and buyers, it fails to address any of the equitable considerations raised by the realities of the realtor-buyer relationship. By presuming without question the competence of a buyer to protect his own interests, caveat emptor precludes any inquiry into the interaction between realtors and buyers and the effect it may have in encouraging buyer reliance. In light of the complexity of a modern day real estate transaction,⁸⁶ a buyer may no longer be competent to protect his own interests. Caveat emptor lacks the flexibility to recognize this possibility.

83. See *supra* text accompanying notes 29-39.

84. See *supra* text accompanying notes 40-41.

85. See *supra* text accompanying note 22.

86. See *Bevins*, 655 P.2d at 763; *Easton*, 152 Cal. App. 3d at 100, 199 Cal. Rptr. at 388. See also *Sinclair*, *supra* note 29, at 260.

Liability for Innocent Misrepresentation Based on Justifiable Buyer Reliance

Unlike caveat emptor's insensitivity to the realtor-buyer relationship, realtor liability for innocent misrepresentation based on justifiable buyer reliance is founded upon what many courts believe are the realities of the realtor-buyer relationship.⁸⁷ Even if a realtor is viewed as merely a professional marketing agent, the position taken by jurisdictions following caveat emptor,⁸⁸ it is within the realm of reasonable expectation for buyers to rely on a professional marketing agent to be accurate in the information he provides. To the extent that a realtor offers advice and guidance to buyers, a common characteristic of the realtor-buyer relationship,⁸⁹ the justification for protecting buyer reliance is further strengthened.

The other consideration which lends credibility to realtor liability for innocent misrepresentation is that the scope of liability is subject to objective guidelines. The realtor is exposed to liability only for representations he makes on his own behalf or as a conduit for the seller,⁹⁰ and the buyer is protected only as to those material facts upon which he justifiably relies to his detriment.⁹¹ Thus, both realtor and buyer have a clear standard delineating their respective rights and duties because liability is limited by the extent of information provided.

Liability for Undiscovered Defects Based on a Realtor Duty of Inspection

The California approach to realtor liability for undiscovered defects appears more equitable than caveat emptor because of its responsiveness to the realtor-buyer relationship,⁹² but fails to set objective guidelines for the realtor's duty of inspection. The *Easton* court not only refused to limit the realtor's duty,⁹³ it also provided no guidance as to what type of inspection would meet the stated criteria of "competence" and "diligence."⁹⁴ Rather, the opinion simply concluded

87. See *supra* text accompanying notes 47-56.

88. *E.g.*, *Provost*, 144 Vt. at 69-70, 473 A.2d at 1164.

89. See *Bevins*, 655 P.2d at 763; *Easton*, 152 Cal. App. 3d at 100-01, 199 Cal. Rptr. at 388-89.

90. See *supra* note 10.

91. See *supra* text accompanying notes 46, 60, 64-65.

92. See *supra* text accompanying note 73.

93. *Easton*, 152 Cal. App. 3d at 103, 199 Cal. Rptr. at 390-91.

94. See *supra* text accompanying notes 78-82.

that as between a realtor and buyer, the realtor has a higher degree of expertise concerning potential housing defects,⁹⁵ and therefore should bear the burden of investigating for defects.⁹⁶

Although the analysis in *Easton* may support the conclusion that a realtor is more capable than a buyer to inspect for defects, greater capability alone does not necessarily make it more equitable to place the burden of inspection on the realtor. Nor does a relatively greater degree of capability provide a standard by which to measure the realtor's duty. Before the equity of the duty can be evaluated, a definition of exactly what degree of capability is required by the duty must still be ascertained.

The degree of capability required by the realtor's duty of inspection will depend on how the courts choose to view a realtor's professional status. The *Easton* court never defined a standard of professional expertise for realtors,⁹⁷ but jurisdictions following caveat emptor view real estate brokers as merely marketing agents,⁹⁸ and conclude that the law should not hold realtors to the same standard of professional expertise as a structural engineer or contractor.⁹⁹ Even under the California approach, such a sophisticated standard of expertise would seem inequitably demanding. Nevertheless, without further clarification, neither realtors nor buyers can be certain what level of expertise the California law requires.

This atmosphere of uncertainty may prove detrimental to the interests of all parties in a real estate transaction. Absent a clear standard of competence by which to gauge the adequacy of their inspection, realtors will most likely have to hire professional inspectors, or carry insurance to protect themselves in the event of liability for an undiscovered defect. A probable consequence of these additional marketing costs will be higher commission rates, and likewise, higher selling prices. Thus, the imposition of an unqualified duty on the realtor to inspect for undiscovered property defects could adversely impact both the seller and buyer by increasing the costs associated with the real estate transaction.

In summary, even though a realtor's duty to inspect for defects may be justified by the present realities of the realtor-buyer relationship, this legal approach to the issue of liability for undiscovered

95. See *supra* note 75 and accompanying text.

96. *Id.*

97. See *supra* text accompanying notes 78-82.

98. *E.g., Provost*, 144 Vt. 69-70, 473 A.2d at 1164.

99. *Id.*

defects cannot guide the parties' expectations in a real estate transaction unless the duty is clearly and objectively defined. While the California approach is less than ideal because it does not clearly limit and define the realtor's duty, it is more equitable than the doctrine of *caveat emptor* which fails to consider the expectations of the realtor-buyer relationship. A comparison of the California approach with *caveat emptor* suggests that the most equitable balance between the interests of the realtor and the buyer would result from a limited realtor duty of inspection, clearly defined by an explicit level of professional competence.

On the issue of innocent misrepresentation, a legal approach which favors realtor liability based on justifiable buyer reliance appears most equitable because it reflects the realities of the realtor-buyer relationship, and defines the parties' respective rights and duties according to objective guidelines. This approach assumes that buyers may reasonably rely on the realtor's representations because a realtor is a housing professional. The realtor is exposed to liability only for representations he makes on his own behalf or as a conduit for the seller, and the buyer is protected only as to those material facts upon which he justifiably relies to his detriment. Unlike *caveat emptor*, this approach effectively balances the equities between broker and buyer.

Formulating a Consistent Standard

Upon comparison of the current legal views regarding realtor liability for innocent misrepresentation and undiscovered defects, the approach which appears to most effectively meet the expectations of the realtor-buyer relationship is one which recognizes realtor liability for innocent misrepresentation, as well as a limited and clearly defined realtor duty of inspection. If a realtor were subject to liability for innocent misrepresentation without a corresponding limited duty of inspection for defects, he might be tempted to provide less information to a buyer, fearing that his chances of exposure to liability for innocent misrepresentation would multiply with the quantity of information provided. A limited duty of inspection is therefore necessary to ensure that realtors will supply buyers with both the quantity and quality of information expected from housing professionals.

A realtor duty of inspection cannot, however, provide guidance for the parties' expectations in a real estate transaction unless it is clearly limited and defined. The need for consistency in dealings between realtors and buyers requires the formulation of an objective standard by which the realtor can gauge the extent of his legal responsibilities to a buyer. The "reasonable competence and diligence" stan-

dard forwarded by the *Easton* court is not definite enough to satisfy this need. No explanation is offered by the *Easton* court as to the scope of duty defined by this vague phrase, or how trial judges are to intelligently translate it to a jury.¹⁰⁰

Given the present diversity of legal opinion on the issue of a realtor's duty to buyers in the sale of used housing, the only practical way to achieve uniformity in real estate transactions would be by a Congressional enactment. In 1973, Senator Philip A. Hart proposed such a bill, known as the Truth in Housing Act.¹⁰¹ This proposed Act required that any person who sold a house, acted as the seller's agent, or furnished mortgage credit to a buyer must provide written disclosure to the buyer of any substantial defects existing in the house as of the date of disclosure.¹⁰² The primary purpose of the Act was to "regulate interstate commerce by providing for uniform and full disclosure of certain information with respect to the sale of dwellings . . . in order to promote sound and effective price competition and to prohibit unfair and deceptive sales and other anticompetitive practices. . . ."¹⁰³

The Act was designed to further this purpose by mandating disclosure of substantial defects relating to the house's structure and major components, plumbing system, heating system, electrical system, and any other matters that the Federal Trade Commission might require.¹⁰⁴ In addition, the written disclosure would have to state the estimated cost of eliminating any disclosed defects, as well as the estimated useful life of each item covered by the disclosure.¹⁰⁵ The cost of the inspection relating to this disclosure statement was to be paid by the buyer.¹⁰⁶ Should the buyer subsequently discover an untrue statement or omission of material fact in the disclosure, the Act granted the buyer a cause of action for actual damages, punitive damages not exceeding \$1,000, court costs, and reasonable attorney fees against the seller or his agent, and the person who furnished mortgage credit.¹⁰⁷ Thus, by providing buyers with uniform disclosure and a remedy for misrepresentation and undisclosed defects, the Act would have eliminated any competitive advantage enjoyed by sellers

100. See *supra* text accompanying notes 92-99.

101. S. 2028, 93d Cong., 1st Sess. (1973), *reprinted in* Appendix.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

or realtors who purposefully or innocently hide behind silence and inaccurate information.

Although Senate hearings on the Truth in Housing Act were held, Senator Hart died shortly thereafter, and the bill was never enacted. In light of the growing trend in many states toward recognition of realtor liability for innocent misrepresentation and undiscovered defects,¹⁰⁸ such legislation is ripe for reconsideration. While imposing liability for faulty disclosure on the provider of mortgage credit may be excessive, the equitable notion of justifiable buyer reliance supports holding both sellers and their real estate agents equally responsible for full and fair disclosure of information to buyers.¹⁰⁹ A federal statute which explicitly states what information must be gathered and disclosed for a buyer's benefit would provide an objective and consistent standard to guide the expectations of all parties involved in a real estate transaction. Absent a federal standard, realtor liability for innocent misrepresentation and undiscovered defects will continue to depend upon the piecemeal development of state statutory and common law.

CONCLUSION

Current legal views on realtor liability for innocent misrepresentation and undiscovered defects include protection of the realtor from liability under the doctrine of caveat emptor, liability for innocent misrepresentation based on justifiable buyer reliance, and liability for undiscovered defects based on an affirmative realtor duty of inspection. Considering this diversity of opinion, the need exists for a consistent legal standard to guide the expectations of realtors and buyers in a real estate transaction. Upon comparison of the strengths and weaknesses of the current legal views, the approach which appears to most effectively balance the equities between broker and buyer is one which recognizes realtor liability for innocent misrepresentation, as well as a limited and clearly defined realtor duty of inspection for defects. Given the recent state trend toward greater recognition of realtor liability in this area, the time is right for Congress to reconsider legislation like the Truth in Housing Act as a means to provide a consistent and equitable standard by which parties in a real estate transaction can conduct their business.

LINDA S. WHITTON

108. See *supra* text accompanying notes 42-82.

109. See *supra* text accompanying notes 87-91.

APPENDIX

S.2028

IN THE SENATE OF THE UNITED STATES

June 20 (legislative day, June 18), 1973

Mr. Hart introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To regulate interstate commerce by providing for uniform and full disclosure of certain information with respect to the sale of dwellings for occupancy by not more than four families in order to promote sound and effective price competition and to prohibit unfair and deceptive sales and other anticompetitive practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Truth in Housing Act."

FINDINGS AND PURPOSE

SEC. 2. The Congress finds that competition in the business of selling dwellings for occupancy by not more than four families and competition in making mortgage credit available for the purchase of such dwellings would be improved by the uniform and full disclosure of certain information with respect to their condition and useful life and the condition of their components, including, but not limited to, structural components and plumbing, heating, and electrical systems. It is the purpose of this Act to promote sound and effective price competition by minimizing the capacity of advertising and sales practices to deceive the consumer, and by enabling the consumer to obtain the facts necessary to make an informed choice with respect to the cost of purchasing and maintaining such a dwelling.

DEFINITIONS

SEC. 3. For the purpose of this Act, the term—

(1) "Commission" means the Federal Trade Commission;

(2) "substantial defect" means a defect which seriously affects the use and livability of any dwelling unit and which a proper inspection on the date of closing could reasonably be expected to disclose; and

(3) "date of closing" means the date on which the beneficial title to the property is transferred to the purchaser.

GENERAL REQUIREMENTS OF DISCLOSURE

SEC. 4. (a) Any person who sells or acts as an agent in the sale of or who furnishes mortgage credit for the purchase of a dwelling for occupancy by not more than four families shall be responsible for the written disclosure, in such form as the Commission may require, to the purchaser of the dwelling of any substantial defects which exist as of the date of the disclosure.

(b) Such written disclosure shall include any substantial defects as of that date relating to—

- (1) the structure and the major components thereof;
- (2) the plumbing system;
- (3) the heating system;
- (4) the electrical system; and
- (5) such other matters as the Commission may require.

(c) Such written disclosure shall also include the estimated cost of eliminating any such defect, and the estimated remaining useful life of each of the matters enumerated in the preceding subsection.

(d) Any person who sells, or acts as an agent in the sale of, or makes mortgage credit available for the purchase of, a dwelling for occupancy by not more than four families shall be reimbursed at the closing by the purchaser for the cost of any inspection relating to such written disclosure.

(e) Any contract for the purchase of a dwelling for occupancy by not more than four families, where the written disclosure required by this section has not been made to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within ninety-six hours, where he has received such written disclosure less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide, except that the contract or agreement may stipulate that the foregoing revocation authority shall not apply in the case of a purchaser who (1) has received such written disclosure and inspected the one to four family dwelling to be purchased in advance of signing the contract or agreement, and

(2) acknowledges by his signature that he has made such inspection and has read and understood such report.

UNLAWFUL SALES ACTIVITIES

SEC. 5. (a) It shall be unlawful for any person to sell, act as an agent in the sale of, or make mortgage credit available for the purchase of, a dwelling for occupancy by not more than four families without conforming to the provisions of this Act.

(b) The sale of, or the furnishing of mortgage credit for the purchase of, such a dwelling in violation of subsection (a) constitutes an unfair and deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act.

CIVIL LIABILITIES

SEC. 6. (a) If any part of a written disclosure required by section 4(b) contains an untrue statement of a material fact or fails to state a material fact required to be stated therein, the purchaser acquiring the dwelling covered by such written disclosure (unless he knew of such untruth or omission at the time of closing) may bring an action in any court of competent jurisdiction, against the seller or his agent in the sale, and the person who furnished mortgage credit for the purchase of that dwelling.

(b) In any action brought under subsection (a), the plaintiff is entitled to recover actual damages and not more than \$1,000 punitive damages, together with court costs and reasonable attorney fees.

LIMITATION OF ACTIONS

SEC. 7. No action shall be maintained to enforce any liability created under section 6 unless it is brought within one year after the later of—

(1) the date of closing,

(2) the date on which the untrue statement or omission of the material statement would have been discovered by the exercise of reasonable diligence.

In no event shall any such action be brought more than three years after the closing date on such purchase.

CONTRARY STIPULATIONS VOID

SEC. 8. Any condition, stipulation, or provision contrary to the

provisions of this Act, or purporting to bind any person acquiring any dwelling to which this Act applies to waive compliance with any provision of this Act or with any requirement of the Commission under this Act, shall be void.

ADDITIONAL REMEDIES

SEC. 9. The rights and remedies provided by this Act shall be in addition to any other legal or equitable remedy that may be available to a purchaser of a dwelling to which this Act applies.

PENALTIES FOR VIOLATIONS

SEC. 10. Any person who willfully fails to make written disclosure in violation of section 4 or willfully, in such written disclosure, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than \$5,000 or imprisoned not more than five years, or both.

JURISDICTION OF OFFENSES AND SUITS

SEC. 11. The district courts of the United States shall have jurisdiction of offenses under this Act, and shall have concurrent jurisdiction with State courts, of all actions brought under section 6. Any such action may be brought in the district in which the defendant is found, or is an inhabitant, or transacts business, or in which the property is located. Process in any such case may be served in any district in which the defendant is an inhabitant or may be found.

ADMINISTRATION

SEC. 12. (a) This Act shall be administered and enforced by the Commission. The Secretary for Housing and Urban Development, the Administrator for Veterans' Affairs, and the Secretary of Agriculture shall provide such assistance and information to the Commission as it may require. The Commission is authorized to issue such rules and regulations as may be necessary to achieve the purposes of this Act. Prior to issuance of such rules and regulations, the Commission shall consult with the Secretary for Housing and Urban Development, the Administrator for Veterans' Affairs, and the Secretary of Agriculture.

(b) In the exercise of its functions, the Commission may obtain upon request the views of any other Federal agency which, in the judgment of the Commission, exercises regulatory and supervisory functions with respect to any class of persons subject to this Act.

ADVISORY COMMITTEE

SEC. 13. The Commission shall establish an advisory committee to advise and consult with it in the exercise of its functions under this Act. In appointing the members of the committee, the Commission shall seek to achieve a fair representation of the public interest and of the interests of any class of persons subject to the Act. The committee shall meet from time to time at the call of the Commission, and members thereof shall receive not to exceed \$100 per day including travel time, and shall be reimbursed for expenses of travel and subsistence incurred while engaged in the performance of their duties.

COOPERATION WITH STATE AUTHORITIES; JURISDICTION OF REAL ESTATE COMMISSION OR SIMILAR BODY OF STATE

SEC. 14. (a) In the exercise of its functions under this Act, the Commission shall cooperate with State authorities charged with the responsibility of regulating the sale of dwellings subject to the provisions of this Act. The Commission may request the views of any State authority which, in the judgment of the Commission, exercises regulatory or supervisory functions with respect to any class of persons subject to this Act.

(b) Nothing in this Act shall affect the jurisdiction or power of the real estate commission (or any agency or office performing like functions) of any State over the sale of any such dwelling or such persons.

AUTHORIZATION OF APPROPRIATIONS

SEC. 15. There are authorized to be appropriated to the Commission such sums as may be necessary to carry out the provisions of this Act.