

# DON'T GIVE UP YOUR RIGHT TO FULLY PROTECT YOURSELF IN YOUR REAL ESTATE PURCHASE: *FORM 17 DISCLOSURES AND THE ECONOMIC LOSS RULE*

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On March 1, 2007, the Washington Supreme Court issued its decision in *Alejandre v. Bull*, 159 Wash.2d 674, 153 P.3d 864 (2007). That decision altered the ability of residential real estate purchasers to recover damages against sellers for misrepresentations made by the sellers in the sale of their properties. *Alejandre v. Bull* stands for the proposition that: “the economic loss rule . . . bar[s] recovery for alleged breach of tort duties where a contractual relationship exists and the losses are economic losses. If the economic loss rule applies, the party will be held to contract remedies, regardless of how the plaintiff characterizes the claims.” In *Alejandre*, the plaintiffs alleged that Ms. Bull misrepresented the condition of the septic system in the residence she sold to the Alejandres. The Court limited the Alejandres’ remedy to those contract damages negotiated for in the parties’ Residential Real Estate Purchase and Sale Agreement.

Since *Alejandre*, Washington courts have further narrowed the circumstances under which a buyer of real estate can recover for damages caused by conditions not discovered by the buyer prior to the purchase of the property. Unless they contracted with the seller for additional remedies, buyers are now limited to recovery of damages for such defective conditions when they can prove there has been a fraudulent concealment of the condition by the seller. *Carlile v. Harbour Homes, Inc.*, 147 Wn. App. 193, 194 P.3d 280 (Div. 1, 2008). As a result of this line of cases limiting the ability of buyers to recover damages when they discover undisclosed defects in their residences, in 2008 the Northwest Multiple Listing Service revised its Residential Real Estate Purchase and Sale Agreement (“REPSA”) to include the following provision:

**Disclosures in Form 17:** Buyer will  will not  have a remedy for Seller’s negligent errors, inaccuracies, or omissions in Form 17.

If the parties check the “will” box in this statement and execute the REPSA, the buyers then have a contractual right to recover for negligent and fraudulent misrepresentations that are made by the seller in the Form 17 Seller’s Disclosure Statement that must be provided as part of the real estate sales transaction.

Buyers should make sure that they and their real estate agents protect their ability to pursue a seller who knew or reasonably should have known about a defect in their residence, but failed to disclose the defect to the buyers. The ability to prove that a seller was negligent in his or her representations regarding the condition of the foundation, roof, or plumbing system in a house or condominium is substantially easier than proving that a seller intentionally concealed a similar problem. Don't give up this important right as part of purchasing your dream home!

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