

## **Property Law - HIDDEN DEFECTS FACTSHEET (May 2019)**

You have recently acquired a property and you discover the existence of a hidden defect? Even if the notarial deed contains a clause excluding the guarantee of hidden defects, legal action is still possible.

### ***The guarantee of hidden defects***

Article 1641 of the Civil Code provides that: *"The seller is bound by the guarantee of hidden defects of the sold [property] which render it unsuitable for the use for which it is intended, or which diminish its use, that the buyer would not have acquired it, or would have given a lower price, had he had knowledge of them"*.

The defect is regarded as hidden if a normal examination does not make it possible to detect at the time of the acquisition. The buyer must prove by any means that he was not visible at the time of the sale and that it makes the property unsuitable for his destination.

The buyer's lawyer must demonstrate that several conditions are met, namely that the defect existed prior to the sale, that the defect is serious enough to render the property unsuitable for its purpose, and that the defect was not visible when the sale occurred.

The seller's lawyer will have to prove that the buyer has acquired the property in full knowledge of the property condition and that no element has been hidden. Indeed, if the defect was apparent (and not hidden), the buyer cannot act against the seller and the legal warranty will not be due.

### ***Sanction in case of discovery of a hidden defect***

The aim of the buyer's lawyer is to obtain either the cancellation of the sale or the reduction of the price. In case of cancellation, the seller will recover his property and will be required to return the price of the sale. The action in reduction of price will allow to remain owner of the property acquired while obtaining the refund of a part of the amount of the sale. The lawyer will have to prove the importance of the prejudice caused by the defect in order to obtain the largest price reduction possible.

It should also be stressed that if the seller had knowledge of the existence of the defect (which must be demonstrated), he could be ordered to pay additional damages.

Article 1648 of the Civil Code provides that the buyer has a period of two years from the discovery of the defect to take legal action.