

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

MICHAEL HEILMAN AND SANDRA HEILMAN, Plaintiffs, v. ROBERT HOYT AND CAROL HOYT, Defendants.	Case No. LACL160592 JURY INSTRUCTIONS
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INSTRUCTION NO. 1
STATEMENT OF THE CASE

This case arises out of the sale of a residential home by Robert Hoyt and Carol Hoyt to Michael Heilman and Sandra Heilman. The Plaintiffs claim the Defendants violated Iowa Code chapter 558A by failing to disclose material conditions and defects affecting the property in the written disclosure statement. The Plaintiffs claim the Defendants knew, or in the exercise of ordinary care in obtaining information for the disclosure statement should have known, information materially affecting the property and should have disclosed it.

The Defendants deny the Plaintiffs' claims and deny they are liable for the Plaintiffs' damages.

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

INSTRUCTION NO. 2
DUTIES OF JUDGE AND JURY

My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable laws.

The order in which I give these instructions is not important. Your duty is to decide all fact questions.

As you consider the evidence, do not be influenced by any personal sympathy, bias, prejudices, or emotions. Because you are making very important decisions in this case, you are to evaluate the evidence carefully and avoid decisions based on generalization, gut feelings, prejudices, sympathies, stereotypes, or biases. The law demands that you return a just verdict based solely on the evidence, your reason, common sense, and these instructions. As jurors, your sole duty is to find the truth and do justice.

INSTRUCTION NO. 3
BURDEN OF PROOF — PREPONDERANCE OF THE EVIDENCE

Whenever a party must prove something, they must do so by the preponderance of the evidence. Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

INSTRUCTION NO. 4

EVIDENCE

You shall base your verdict only upon the evidence and these instructions. Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations, which are agreements between the attorneys.
4. Any other matter admitted (e.g., answers to interrogatories, matters which judicial notice was taken, etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to, which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

INSTRUCTION NO. 5
INTERROGATORIES

During this trial, you have heard the word “interrogatory.” An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

INSTRUCTION NO. 6
CREDIBILITY OF WITNESSES

You will decide the facts from the evidence. Consider the evidence using your observations, common sense, and experience. You must try to reconcile any conflicts in the evidence, but if you cannot, you will accept the evidence you find more believable. In determining the facts, you may have to decide what testimony you believe. You may believe all, part, or none of any witnesses’ testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses’ appearance, conduct, age, intelligence, memory, and knowledge of the facts; and
3. The witnesses’ interest in the trial, their motive, candor, bias, and prejudice.

INSTRUCTION NO. 7
CONTRADICTORY STATEMENTS — NON-PARTY WITNESS UNDER OATH

You have heard evidence claiming a witness made statements before this trial while under oath which were inconsistent with what that witness said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe that witness. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

INSTRUCTION NO. 8
STATEMENTS BY A PARTY OPPONENT

You may have heard evidence claiming certain parties made statements before this trial. If you find that such statements were made, you may regard the statement as evidence in this case same as if such party had made it under oath during the trial.

If you find that such statements were made and were inconsistent with any such parties' testimony during the trial, you may also use the statement as a basis for disregarding all or any part of such parties' testimony during the trial, but you are not required to do so. You should not disregard a party's testimony during the trial if other credible evidence supports it, or if you believe it for any other reason.

INSTRUCTION NO. 9

EXPERTS

You have heard testimony from persons described as experts. Persons who have become experts in a field because of their education and experience may give their opinion on matters in that field and the reasons for their opinion.

Consider expert testimony just like any other testimony. You may accept it or reject it. You may give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

INSTRUCTION NO. 10
IOWA CODE CHAPTER 558A — ELEMENTS OF CLAIM

The Plaintiffs claim the Defendants violated Iowa Code chapter 558A (Iowa's Real Estate Disclosure Act) in transferring the Defendants' home to the Plaintiffs. To establish this claim, the Plaintiffs must prove all of the following elements by the preponderance of evidence:

1. In transferring title to their residential real estate to Plaintiffs, Defendants provided a "Seller Disclosure Property Condition" statement.
2. The Disclosure statement failed to disclose certain material property conditions of the home.
3. Defendants had:
 - A) actual knowledge of the inaccuracy of the Disclosure statement; or
 - B) failed to exercise ordinary care in obtaining the information to complete the statement.
4. The Defendants' failure to disclose certain material property conditions of the home caused the Plaintiffs' damages.
5. The amount of damages.

If the Plaintiffs have failed to prove any of these elements, you should find for the Defendants. If the Plaintiffs have proven all the elements, you should find for the Plaintiffs.

INSTRUCTION NO. 11
MATERIAL DEFECT OR MATERIAL FACT — DEFINED

A material defect is a specific issue with a system or component of a residential property that may have a significant, adverse impact on the value of the property, or that poses an unreasonable risk to people.

INSTRUCTION NO. 12

IOWA CODE CHAPTER 558A — DISCLOSURE OF KNOWN PROBLEMS AND REPAIRS

A Defendant's duty of disclosure ^{is} ~~was~~ ^{not} limited to a material defect or an important characteristic of the property that was active, ongoing, or visible at the time of the sale.

The duty of disclosure includes or applies to:

- A) A past material defect and important characteristic of the property of which the Defendant had actual knowledge; or
- B) A past material defect and important characteristic even if the Defendant believed the defect had been resolved, fixed, or repaired, provided the Defendant had actual knowledge of the defect; or
- C) A past repair of material defects of which the Defendant had actual knowledge.

INSTRUCTION NO. 13

IOWA CODE CHAPTER 558A — KNOWLEDGE

Actual knowledge means the Defendants actually knew of the defect, problem, condition, or repair history at issue.

Actual knowledge may be proved by direct evidence or by circumstantial evidence. If you find the Defendants did not have actual knowledge of the matter at issue, you must still consider whether the Plaintiffs proved that the Defendants failed to exercise ordinary care in obtaining information required for the disclosure statement.

INSTRUCTION NO. 14

IOWA CODE CHAPTER 558A — ORDINARY CARE IN OBTAINING INFORMATION

A seller must exercise ordinary care in obtaining information required for the written disclosure statement.

Ordinary care means the care a reasonably careful person would use under the same or similar circumstances.

INSTRUCTION NO. 15

IOWA CODE CHAPTER 558A — DUTY

Under Iowa law, the duty to make the residential property disclosure belongs to the seller. The seller must disclose required information about the condition and important characteristics of the property in good faith. This duty includes making a reasonable effort to determine the required information before making the disclosure.

The buyer is not required to take any effort to discover or verify the accuracy of the information that the seller was required to disclose. The buyer has no legal duty under Iowa law to inspect the property in order to uncover undisclosed material conditions or defects before relying on the seller's disclosure statement.

The buyer was entitled to rely on the seller's disclosures as statements made in good faith.

INSTRUCTION NO. 16

CAUSATION

The conduct of a party is a cause of damage when the damage would not have happened except for the conduct.

There can be more than one cause of an injury or damage.

INSTRUCTION NO. 17
IOWA CODE CHAPTER 558A — ACTUAL DAMAGES

Actual damages include the cost of repairs and/or incidental costs associated with the ownership of the home.

The amount of damages need not be proved with exact precision, but there must be evidence providing a reasonable basis from which the amount may be inferred or approximated.

Damages may not be based on speculation, but uncertainty as to the exact amount does not prevent recovery if the fact of damage has been proved.

INSTRUCTION NO. 18
AVERAGING DAMAGES

In arriving at an item of damage, you cannot arrive at a figure by taking down the estimate of each juror as to the amount of damage, and agreeing in advance that the average of those estimates shall be your item of damage.

INSTRUCTION NO. 19
GENERAL INSTRUCTION TO JURY

Upon retiring, you shall select a foreman or forewoman. It will be his or her duty to see discussions carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved, and you may later hesitate to change an announced position even if it is shown to be incorrect. Remember, you are not partisans or advocates, but are judges of the facts. Your sole interest is to find the truth and do justice.

INSTRUCTION NO. 20
CAUTIONARY INSTRUCTION — JURORS' NOTES

During this trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room, and they will be destroyed.

INSTRUCTION NO. 21
USE OF ELECTRONIC DEVICES

You may not communicate about this case before reaching your verdict. This includes cell phones and electronic media such as text messages, email, electronic messaging applications, and any social media platform, including but not limited to Facebook, LinkedIn, YouTube, Twitter, X, Instagram, Snapchat, and any other social media applications you may use.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use internet maps, Google Earth, or any other program or device to search for or view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case has been tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about, and that has been introduced here in court. If you do some research, investigation, or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete, or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state, and you will have done an injustice. It is very important that you abide by these rules. Failure to follow these instructions may result in the case having to be retried and could result in you being held in contempt and punished.

It is important that we have your full and undivided attention during this trial.

INSTRUCTION NO. 22

QUESTIONS

Occasionally, after a jury retires to the jury room, the members have questions. I have prepared the instructions after carefully considering this case with the parties and lawyers. I have tried to use language which is generally understandable. Usually questions about instructions can be answered by carefully re-reading them. If, however, any of you feel it necessary to ask a question, you must do so in writing and deliver the question to the court attendant. I cannot communicate with you without first discussing your question and potential answer with the parties and lawyers. This process naturally takes time and deliberation before I can reply. The foreperson shall read my response to the jury. Keep the written question and response and return it to the court with the verdict.

The court attendant who has been working with me on this case is in the same position as I am. She has taken an oath not to communicate with you except to ask if you have agreed upon a verdict. Please do not put her on the spot by asking her any questions. You should direct your questions to the court and not the court attendant.

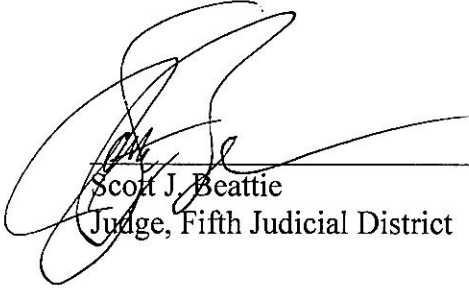
INSTRUCTION NO. 23

RETURN OF VERDICT

During the first six hours of deliberations, excluding meals or recesses outside your jury room, your decisions must be unanimous. If you all agree, the verdict must be signed by your foreman or forewoman.

After deliberating for six hours from 12:58 o'clock P.m., excluding meals or recesses outside your jury room, then it is necessary that only seven of you agree upon the verdict. In that case, the verdict must be signed by all seven jurors who agree.

When you have agreed upon the verdict, appropriately sign the verdict form and tell the Court Attendant.



Scott J. Beattie
Judge, Fifth Judicial District

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**MICHAEL HEILMAN AND SANDRA
HEILMAN,**
Plaintiffs,

v.

ROBERT HOYT AND CAROL HOYT,
Defendants.

Case No. LACL160592

VERDICT FORM

INSTRUCTIONS TO THE JURY: Answer each question in order. If your answer to any question is "NO," stop and sign the verdict form. Do not answer the remaining questions.

QUESTION 1.

Have Plaintiffs proven, by the preponderance of the evidence, that Defendants provided a Seller Disclosure Property Condition statement when transferring title to their residential real estate to Plaintiffs?

 X YES NO

If you answered YES, proceed to Question 2. If you answered NO, do not answer any further questions. Sign and return the verdict statement.

QUESTION 2.

Have Plaintiffs proven, by the preponderance of the evidence, that the Seller Disclosure Property Condition statement failed to disclose one or more material property conditions of the home?

 X YES NO

If you answered YES, proceed to Question 3. If you answered NO, do not answer any further questions. Sign and return the verdict form.

QUESTION 3.

Have Plaintiffs proven, by the preponderance of the evidence, that Defendants:

(A) had actual knowledge that the information in the Seller Disclosure Property Condition statement was inaccurate; OR

(B) failed to exercise ordinary care in obtaining the information needed to complete the statement?

_____ YES X NO

If you answered YES, proceed to Question 4. If you answered NO, do not answer any further questions. Sign and return the verdict form.

QUESTION 4.

Have Plaintiffs proven, by the preponderance of the evidence, that Defendant's failure to disclose one or more material property conditions caused damage to Plaintiffs?

_____ YES _____ NO

If you answered YES, proceed to Question 5. If you answered NO, do not answer any further questions. Sign and return the verdict form.

QUESTION 5.

State the total amount of damages that Plaintiffs sustained as a result of Defendant's failure to disclose material property conditions. If Plaintiff has failed to prove damages, or has failed to prove that the damage was caused by Defendant, enter 0.

Damages: 0

Catherine Maher
Foreperson*

*To be signed only if the verdict is unanimous.

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

Juror**

**To be signed by the jurors agreeing to it after six hours or more of deliberation.