

ESSAY QUESTION NO. 4

Answer this question in booklet No. 4

In preparation for the sale of her house, Denise hired an engineer to perform a home inspection. The engineer inspected the foundation and noted no visible problems other than minor cracking consistent with the age of the house. The engineer noted no other major problems in the report. Unbeknownst to the engineer, Denise had experienced a severe water intrusion problem in the solarium of her house. She had recently hired a contractor to fix the problem. When the contractor took the siding off the solarium and discovered severe rot in the framing near the roof, Denise instructed the contractor to make superficial repairs and cover the rot back up with new siding. The contractor complied.

Just prior to listing her house for sale, Denise filled out the Residential Real Property Transfer Disclosure Statement, as required by Alaska Statutes 34.70.010 - 34.70.200. In the form's section for structural components, Denise was required to report "items that have known defects . . . or have had major repairs performed within the last five years," and to "[d]escribe the defect, malfunction, or repair"

The only thing Denise reported was: "Minor condensation problem in solarium. Vent regularly." Denise also attached her engineer's report to the disclosure.

After visiting the house and reviewing Denise's disclosure statement, Jim bought the house. Within a month, Jim noticed the smell of rotting wood in the solarium. He discovered the rot after pulling off some siding. Jim also noticed that what had been a small crack in the foundation at the time of sale seemed to be getting much larger. He hired an engineer who discovered that the water main was cracked somewhere near the foundation and was slowly eroding the soil supporting the foundation, causing it to fail. The engineer noted that the two problems with the house were unrelated.

Jim sued Denise for failing to note the rot and the foundation problem on the Residential Disclosure Form. Jim's suit seeks damages for replacing the solarium wood framing and glass with a new seamless glass system that costs twice as much as the traditional design and for damages for the cost of fixing the foundation.

Denise's response is that her notation on the disclosure form was sufficient to notify Jim of the rot problem in the solarium. She denied any knowledge of the foundation problem.

1. Discuss the likelihood of Jim's success on his claims under Alaska's Disclosures in Residential Real Property Transfers statute.

2. If Jim is successful on either his solarium or his foundation claim, what remedies are available to him under the Alaska Residential Disclosures statutes?