

## Residential Real Estate Disclosures Must Be Made in Sale to Living Trust

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I.C. Chapter 32-21-5 abrogates the common law rule of *caveat emptor* with regard to representations made in a statutorily required Sales Disclosure Form. Yesterday, the Court addressed a related issue in *Rex Breeden Revocable Trust v. Hoffmeister-Repp*, Case No. 03A04-1003-CT-18 -- whether these rules apply to any residential real estate sale to a living trust. The Court found the statute ambiguous and limited its language to sales from one person to that person's own living trust.

In this case, a homeowner sold a home to a buyer. However, the buyer did not buy the property directly; rather, he purchased it using a living trust. A dispute arose concerning whether the seller had made misrepresentations about the residence and the buyers eventually brought suit. The parties filed cross-motions for summary judgment and the trial court granted the seller's motion. The buyers appealed.

At issue was whether I.C. Chapter 32-21-5 applied to the sale. I.C. § 32-21-5-1(b)(9) states that this Chapter does not apply to "[t]ransfers to a living trust." The buyer argued that this language clearly exempted this sale from the Act. The seller argued that this could be illogical. The Court found this language ambiguous -- arguably because the parties disagreed over its interpretation.

Here, both parties propose widely different interpretations of the statute's seemingly plain-written ninth exception. ... Thus, even though the exception at issue here appears to be plain, it clearly is susceptible to more than one interpretation and therefore, ambiguous.

The Court concluded that interpreting the transfer to a living trust exception to include transfers to a living trust that is not related to the seller would be contrary to the purpose of the statute to allow parties to avoid its requirements.

Therefore, we conclude that exception nine—transfers to a living trust—enacted in I.C. § 32-21-5-1(9) only applies when the transfer occurs between a seller and the seller's own living trust.

The Court then looked to the facts of the case and concluded that there was evidence of neither fraud nor mutual mistake.

The manner in which the Court decided the issue regarding statutory construction will be of use to litigants arguing that any particular statute is ambiguous. It found the language ambiguous either because the parties disagreed over its application or because it agreed with the seller that an application of the statute's plain language would lead to an illogical result. Either of these rationales is better for the party arguing in favor of a statute's ambiguity.

### **Lessons:**

1. I.C. Chapter 32-21-5 applies to all sales of residential real estate to living trusts except those from a seller to the seller's own living trust.