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## MARITIME LAW

By Danielle Butler,  
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# A Word to the Wise: Brokers, Be Careful What You Say

In Florida, brokers must disclose known and suspected material facts, including defects and deficiencies in a vessel. Failing to adhere to this duty in the listing and sale process can expose them to legal liability. The possible lawsuits a vessel buyer can sue for due to a vessel broker's failure to disclose are:

- ◆ Breach of Contract
- ◆ Breach of Warranty
- ◆ Violation of Magnuson-Moss Act
- ◆ Negligent Misrepresentation or Omission
- ◆ Breach of Fiduciary Duty
- ◆ Fraud in the Inducement/Concealment
- ◆ Deceptive and Unfair Trade Practices

The three most likely causes of action for a lawsuit against a broker are Negligent Misrepresentation, Fraudulent Misrepresentation and Deceptive and Unfair Trade Practices.

For Negligent Misrepresentation, the elements to determine liability are whether:

- ◆ The defendant ("broker") made a statement concerning a material fact that was believed to be true, but which was in fact false
- ◆ The broker was negligent in making the statement because he should have known the statement was false
- ◆ In making the statement re the material fact, the broker intended that the plaintiff ("buyer") would rely on the statement
- ◆ The buyer justifiably relied on the false statement concerning a material fact
- ◆ The buyer suffered loss or damage as a result

A material fact has such importance that the buyer would not have entered into the transaction, but for the false statement. Negligence equates to the failure to use reasonable care and produces loss or damage that would not have occurred without the negligence.

Concerning Fraudulent Misrepresentation, the elements to determine liability are whether:

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## A Word to the Wise: Brokers, Be Careful What You Say

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- ◆ *The broker knew at the time he made the intentional misrepresentation that it was false or he acted with reckless disregard for its truth or falsity*
- ◆ *The broker intended to induce the buyer to rely and act upon the misrepresentation or omission*
- ◆ *The reliance upon the misrepresentation or omission caused the buyer injury or damage*

Concerning Deceptive and Unfair Trade Practices, the elements to determine liability are whether:

- ◆ *The broker committed a deceptive and unfair act or practice in the conduct of trade or business*
- ◆ *The buyer relied on the deceptive and unfair act or practice and was induced to purchase the vessel*
- ◆ *The deceptive and unfair act or practice was the proximate cause of damage to the buyer*

A deceptive or unfair act or practice is one that is likely to mislead consumers by employing any immoral, unethical, oppressive, unscrupulous business tactics in dealing with consumers.

Lastly and most importantly, a broker can't limit liability for fraud, negligent misrepresentation, or deceptive or unfair acts or trade practices through the use of an "as is" provision or other disclaimers in a contract. Therefore, should the buyer prove any claims in a lawsuit, the "as is" provision in the Purchase Agreement and Conditional Acceptance documents are not a defense.

*\*The information offered in this column is a summary in nature and should not be considered a legal opinion.*

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