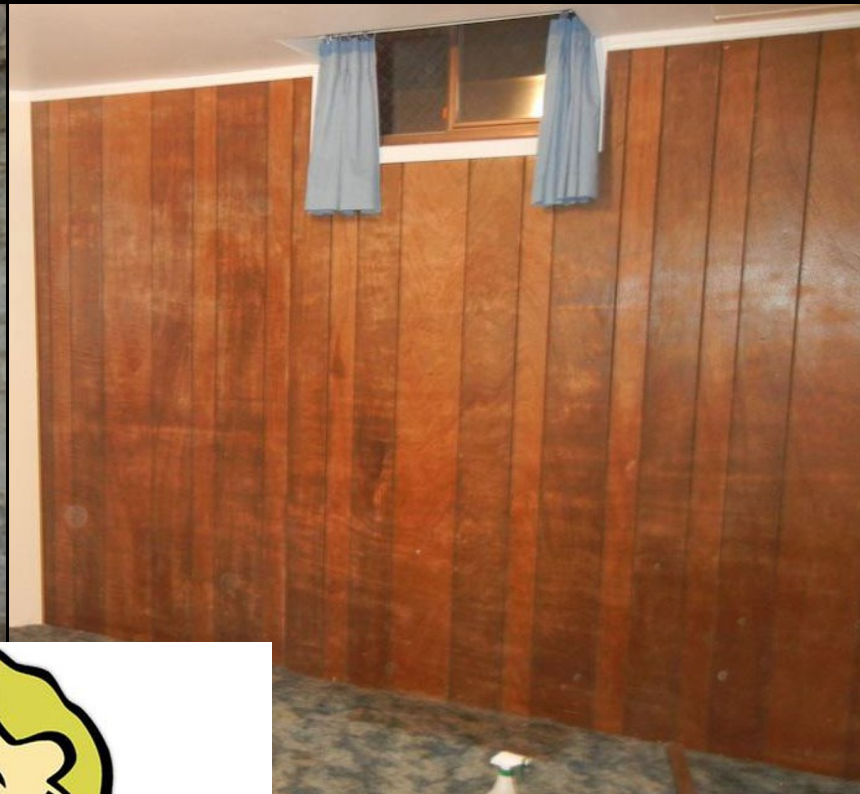


## *Engelhart v. Kramer*



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- “property condition disclosure statement”
- “Have you experienced water penetration in the basement ... within the past two years?” Kramer replied, “Small amt of H<sub>2</sub>O penetration in NW + NE corners [when it] rains.”
- “[a]re there any cracked walls or floors?” Kramer responded “basement floor, some spots in basement walls, East bedroom walls.”
- Any additional problems?— “basement cement walls have some crumbling, behind paneling, basement floor cracked [and] uneven in spots.”

## *Engelhart v. Kramer*

- Under disclosure law, if “truthfully completes” disclosure statement, no liability
- But must complete disclosure in “good faith”
  - “an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious;”
- Good faith disclosure here?

## *Engelhart v. Kramer*

- No longer *caveat emptor*
  - Previous, only liable for disclosures made
    - Affirmative Misrepresentation
  - Now can be liable for non-disclosure
  - How change real estate deals?
    - “as is” clauses
- Still some mandatory disclosures cannot avoid
  - Can you still *de facto* avoid them?
  - Some not waiveable