

# REAL ESTATE FRAUD!



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William Myre engaged an engineer to prepare a plat for Hunt County property he owned. Although there were no drainage plans as required by county regulators, Hunt County approved it anyway and the property became Cole Estates. Thereafter, Craig Development, Inc. purchased Cole Estates from Myre.

Carl Meletio and others bought some Cole Estates lots from Craig Development, Inc. ("CDI") between 2000 and 2002. Cole Estates became a residential subdivision.

Some of the properties in Cole Estates flooded during significant rainstorms between 2002 and 2006. Meletio sued CDI and Myre. The jury determined that Myre had committed fraud by failing to disclose to Meletio and others that Cole Estates might be inundated by floodwaters. Judgment was rendered for Meletio, and Myre appealed.

In the appeal Myre claimed that he could not have committed fraud, since he did not owe a duty of disclosure to the individuals to whom he did not sell property. Myre reminded the appellate court that he sold the property to CDI, not Meletio. Myre served only as the developer, and claimed that Myre's duties were owed only to CDI. Therefore, if the property owners were damaged their recourse should be directed against CDI, not Myre.

The 5<sup>th</sup> District Court of Appeals ratified Texas law that ". . . a seller is under a duty to disclose material facts that would not be discoverable by the exercise of ordinary care and due diligence by the purchaser, or that a reasonable investigation and inquiry would not uncover." The Court cited a case providing that a party cannot be guilty of fraudulently concealing facts of which he is not aware.

Finding that Myre had no relationship with any of the plaintiffs and therefore Myre had no duty of disclosure to them, the Court concluded that Myre could not be liable for fraud. The fraud portion of the judgment was reversed. See Myre v. Meletio, 05-08-00576, Fifth District Court of Appeals, Dallas Division; judgment rendered February 26, 2010.

### **Bottom line:**

1. Real estate disclosure duties are typically owed to property purchasers and tenants by their immediate sellers and landlords.
2. Disclosure duties are also owed by brokers and agents to their principals and to their opposing parties as well.
3. It is surprising that real estate brokers and agents were not sued. If CDI's broker and agent were sued in this case, both the trial court and appellate court could have asserted liability against them if they had knowledge of the flooding issue, and failed to disclose.

### **Contact:**

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