

## What is the voetstoots clause?

The English equivalent is buying something “as is”, i.e., in the condition you find it. It’s up to you to test and make sure the thing is fit for the purpose you need it.

Originating in Roman-Dutch law, voetstoots is a Dutch phrase that translates as “testing something by shoving it with one’s foot”, and implies that when you buy something, what you see is what you get and it’s your responsibility to give it a kick with your foot, if that’s what you need to do to test it.

## What does voetstoots mean for the buyer?

It means that any complaints you have following the transfer of the property will not be entertained by the seller, as the responsibility is on you to check what you’re buying. Of course, you can only check for what you can see (and these are called patent defects – for example, a broken window).

## What about latent defects?

As opposed to patent defects, latent defects are issues with the property that will not be obvious upon inspection.

The seller is also protected by the voetstoots clause when it comes to latent defects.

However, there is an exception. If the seller knew about a latent defect, but did not disclose it to the buyer, then the buyer can claim damages as this is tantamount to fraud. Of course, the challenge here is proving that the home seller knew. If the seller concealed the defect in an obvious way, for example, leaving a bucket in the roof to cover up a leak.

## The moral of the story: Enlist a property inspector.

The cost of having a property inspection performed is worth it, as it will save you the cost and inconvenience of dealing with latent defects after they’ve been discovered. You can include the need for an inspection as a clause in the offer to purchase.

## What about the Consumer Protection Act?

Having come into effect on 1 April 2011, the Consumer Protection Act has altered the playing field somewhat. The seller can no longer feel completely secure under the protection of the voetstoots clause, as the CPA grants the buyer the right to receive goods that are of good quality, and suitable for the purpose for which they are generally intended. However, the complication for home buyers is that the CPA only applies to sales made “in the ordinary course of business”. A home being sold by an owner is a private sale and isn’t part of a business. This means no CPA protection for most home buyers. The position is different when you buy from a developer, builder or investor seller who makes property sales as a business.

## Defects disclosure form

This form allows the seller to document any known defects in the property, he is then indemnified from any claims that arise from any defects that have been disclosed. However, this report does not constitute a guarantee or warranty of any kind by the owner of the Property or by the property practitioners representing that owner in any transaction. This report should, therefore, not be regarded as a substitute for any inspections or warranties that prospective purchasers may wish to obtain prior to concluding an agreement of sale in respect of the Property.

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