



## Duty to Accurately Report Square Footage and Buyer Remedies for Misrepresentation

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John Wait, Martin & Gifford, PLLC

**QUESTION:** I measured one of my listings and calculated that the home had 2,450 square feet of heated living area. About 300 square feet of that calculation was a finished bonus room above the attached garage that had a mini-split air conditioner but no source of heat. I received an offer with a Due Diligence Fee and an Earnest Money Deposit from an out of state buyer, and my seller accepted it. The buyer is now claiming that I misrepresented the square footage, and he is demanding either a substantial price reduction or a refund of the EMD and the DDF. My seller is furious at me. Is the buyer entitled to a reduction or a refund because of my square footage calculations?

**ANSWER:** The buyer is likely entitled to some relief. Square footage is a material fact, and it must be accurately reported by the listing agent if square footage is provided in a listing. In a recent [case study](#) published by the North Carolina Real Estate Commission, a listing agent violated the License Law by including about 1,300 square feet of non-living area, located in a basement, in the heated living area calculation. The Commission found that the listing agent had misrepresented a material fact, committed false advertising, and was unworthy or incompetent to act in a manner which protects the public.

In your case, you knew that this bonus room did not have a heat source. The Commission's [Residential Square Footage Guidelines](#) state that "living area," also called "heated living area," must be heated "by a conventional heating system or systems (forced air, radiant, solar, etc.) that are permanently installed in the dwelling — not a portable heater or fireplace — which generates heat sufficient to make the space suitable for year-round occupancy." Without a qualifying heat source, this bonus room could not meet the definition for heated living area and should have been reported as "other area" and not "heated living area."

Generally speaking, a buyer and their agent are entitled to rely on a listing agent's square footage calculations, so long as the reported square footage is not obviously incorrect. You can read our Q&A on this point [here](#). Since the square footage was misrepresented in this case, the buyer has a good argument to make that absent your misrepresentation about a material fact, they would not have made the offer they submitted. In such circumstances, the law provides that the buyer may be entitled to damages and/or rescission or reformation of the contract.

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