

STIGMATIZED PROPERTIES

Summary: The *Real Estate Act* and Rules do not define the term “stigmatized property.” The term “stigmatized” means different things to different people but generally it relates to an unfavorable quality in a property or to something that makes the property less attractive or unattractive.

For those industry members who represent buyers, it is recommended they discuss their buyer clients’ specific needs and requirements and any concerns related to purchasing a property in order to be prepared to make adequate inquiries. Likewise, buyers are advised to carefully consider their concerns and discuss them with their real estate broker to ensure inquiries are made. This will help avoid the purchase of a property a buyer may not feel comfortable living in.

For those industry members who represent sellers, if the circumstance is not a material latent defect, there is no legal obligation to disclose. For more information refer to RECA Information Bulletin: *Material Latent Defects*.

Note: For the purposes of this Information Bulletin, and where the context permits, the term “real estate broker” includes all industry members authorized to trade in real estate by the Real Estate Council of Alberta including a brokerage, broker, associate broker and associate.

Introduction

When representing a buyer, it is the obligation of a real estate broker to use their best efforts to locate a property in a specified market area that meets the material requirements identified by the buyer and to generally promote the interests of the buyer.

How does the real estate broker know the material requirements of his or her buyer client? Real estate brokers should not make assumptions. The only way to find out the buyer’s requirements is through communication. Industry members must discuss in detail the buyer’s needs or property requirements, constraints or restrictions, and any other issues or concerns the buyer may have with respect to the purchase of a property. Real estate brokers are encouraged to communicate extensively and frequently with their buyer clients.

Accordingly, a real estate broker must obtain as much information from their buyer client as possible before the process of searching for a suitable property and representing them with third parties begins. As well, when engaging a real estate broker the onus will also be on the client to provide information to the real estate broker and to ask questions regarding issues of specific importance to them and their family, rather than relying on a real estate broker to try to anticipate all of their needs.

Significance of Property Circumstance: Whether a “Stigma” Exists

The significance of a potential “stigma” or any other circumstance will likely be affected by a person’s values and perceptions, ethnic background, religion, gender, age and other individual concerns. Given all the possible occurrences or circumstances that

might present for a client's consideration of a property as "stigmatized", it is impossible for an industry member to determine with any certainty what these might be.

Real estate brokers are advised to discuss their clients' specific needs or requirements and any concerns and issues related to purchasing a property. Buyers are advised to carefully consider the areas of concern they have, discuss them with their real estate broker and ensure the necessary inquiries are made to avoid purchasing a property they will not feel comfortable living in.

Concerns Not Physical, Structural, or Obvious

When selecting a property to buy, most often the physical appearance of a property and the neighbourhood will be obvious. If a buyer is concerned about the less obvious structural and mechanical aspects of the house, they can have a property inspection completed.

Consumers may have other concerns causing them to avoid a property. For example, certain events having occurred in a property may cause a property to be described as a "stigmatized property." Although the term is sometimes applied to a property that has had some circumstance occur in it the property may not be specifically affected with regard to appearance or function.

In some people's view, examples of "stigmas" causing a property to become "stigmatized" may include:

1. a former resident was suspected of being an organized crime gang member
2. a death occurred in the property
3. the property was robbed or vandalized
4. there are reports that the property is haunted
5. a former grow-op has been remediated according to the local health authority

Seller Disclosure of Stigma

While, under the doctrine of *caveat emptor*, buyers are ultimately responsible to satisfy themselves that the property they are acquiring is suitable for their purposes, many buyers look to the seller to provide them with information about the property.

In Alberta, it is important for consumers to know that while sellers are required by law to disclose to buyers material latent defects affecting a property that are known to them (as is the industry member representative on behalf of the seller if the material latent defect is also known by the representative), at this time there is no known Court case whereby sellers, and their industry member representatives, are required by law to disclose the existence of stigmas to buyers. Further this issue has not been addressed by a Real Estate Council of Alberta disciplinary panel.

It is highly recommended that Alberta buyers, who are concerned about specific property stigmas, conduct their own investigation, which could include inquiries of the real estate industry member representing them or direct inquiries of the seller or industry members representing the seller. When asked by a client buyer, a buyer's representative must make the appropriate inquiries.

When the seller or the seller's industry member is asked about the possible existence of stigmas that might affect the property, the seller or seller's industry member (after first consulting with the seller) may:

- refuse to answer the question and suggest the buyer ascertain the response for themselves;
- provide information but attach a disclaimer as to its accuracy, putting buyers on notice that they need to verify the information for themselves;
- provide the information without qualification; or
- when there is a situation of uncertainty ie. remediation but possible continued stigma, legal advice is recommended.

Real estate industry members acting for sellers who choose to answer such questions on behalf of sellers are expected to use reasonable care and skill to ensure the accuracy and completeness of the information conveyed to buyers.

If a seller's real estate industry member provides the information to buyers without qualification, they must conform to the standard of care demanded of members of the industry in ensuring the accuracy and completeness of the information conveyed to the buyer.

A refusal by the seller to answer questions may raise a warning flag for a prospective buyer. If the seller refuses to answer questions with respect to the existence of a stigma, the buyer's industry member representative is to provide options to the buyer. These may include an option to proceed with the purchase without having the stigma question answered or to research the property in other ways ie. typing the property address into Google to see if there is any information available online.

Stigmas Are Different for Different People

The following questions and responses may demonstrate the difficulty, in practical terms, of defining a stigma. For example, think about your response to this question: *Would it matter to you if a death had occurred in a property you were interested in buying?* Some would say "Yes, absolutely!" However, consider the following situations:

1. Would you find a death caused by a violent act or suicide unacceptable?
2. What if the family brought an elderly grandmother home to die in the comfort of her family and familiar surroundings?
3. Suppose it were a crib death of a newborn?
4. What if you learned the owner's pet had recently died in the home? Would you feel differently if the death was natural or if poison was suspected?
5. Would you be concerned if a person had been killed by a car on the street in front of the house?
6. Would you be as concerned by a death that occurred 50 years ago as you would with a recent one?

These examples illustrate how difficult it is to clearly define what a "stigmatized" property might be. What one person might find unacceptable may not be considered a stigma to another.

Treading Carefully

It is impossible to anticipate all the areas of sensitivity individuals may have. While the feelings and concerns of individual buyers are understandable, it's also easy to see that sellers might be unfairly damaged by a requirement to disclose such things. For instance, if the law required that all deaths in properties must be disclosed, regardless of how and when they occurred, the act of bringing a grandmother home to die may cause the owners to lose property value.

As noted earlier, sellers may refuse to answer questions about potential stigmas, or, if they do answer, would be expected to use reasonable care and skill to ensure the accuracy and completeness of the information they provide. Keep in mind as well that a seller may have no knowledge of events that occurred before their ownership or the property may have been rented out and the seller may not know of the events that occurred during the rental period. For serious concerns, consumers may consider making inquiries of the local police service.

Sellers who are concerned that some circumstances may cause the seller's property to be considered stigmatized will face a dilemma – do we disclose and risk harming our property value or do we not disclose and risk the buyer learning the information later and pursuing damages? Prudent sellers will discuss all the scenarios, including their rights and obligations, with their own lawyer.

Sellers are cautioned to keep in mind that issues concerning stigmas differ from the responsibility of sellers to disclose material latent defects. A material latent defect is a material defect not generally visible during a reasonable inspection, such as a serious crack in the foundation that has been panelled or improper wiring covered by drywall. Sellers and the industry members who represent them must disclose all known material latent defects about a property to potential buyers. For more information about material latent defects, please see RECA Information Bulletin: *Material Latent Defects*.

Summary

The *Real Estate Act* and Rules do not define stigmatized properties. They also do not require sellers or the industry members who represent them to disclose circumstances that some may consider as stigmas.

Buyers are advised to carefully consider the areas of concern they have, discuss them with their industry member representative, and ensure the necessary inquiries are made to avoid purchasing a property they will not feel comfortable living in. With regard to possible stigmas, sellers should consider the consequences of disclosure compared with no disclosure and seek legal advice.

Practice Tips

1. In an interview with a potential buyer, an industry member should discuss with that buyer any possible factors that may affect their decision to purchase a property, including possible stigma issues.
2. As a buyer's representative, if the seller via his/her industry member refuses to answer questions about any possible stigmas about the property, provide your buyer client with other options (purchase the property without the information, search for information elsewhere, pursue a different property, etc.)