Real Estate Council Alberta

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RECA Resource
Information Bulletins

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# Material Latent Defects

## Purpose

This bulletin applies to real estate licensees. It describes the material latent defects in a seller's property that you must disclose to a buyer.

**Regulatory status**: Information Bulletins provide guidance on how RECA interprets and applies existing legislative requirements. They do not create new legal requirements or amend the *Real Estate Act* or the *Real Estate Act* Rules.

### Why this matters

Buyers must exercise great care when buying a property. The Latin expression caveat emptor, "let the buyer beware," reflects this. Buyers must satisfy themselves about the property's condition and its suitability for their needs, and must ensure their offers address their concerns. Sellers, in turn, cannot hide defects or mislead buyers about a property's condition or other attributes. They must honestly answer questions and disclose any material latent defects in their property that they know about.

### What is a material latent defect?

A latent defect is one that cannot be discovered with reasonable care during an inspection. A material defect is one that reasonable people would agree is significant in the circumstances of a transaction. Section 1(1)(t) of the Rules defines a material latent defect. Reviewing that definition will help you determine which problems you must disclose.

A material latent defect may be more than a physical defect in the property. It isn't possible to list every type, but they include defects that:

- make a property dangerous or potentially dangerous;
- make a property unfit to live in; or
- make a property unfit for the buyer's purpose, if the buyer has told their licensee or the seller's licensee that purpose.

A material latent defect may also exist where:

- the defect is very expensive to repair;
- the seller has received a notice from a local government or authority that a circumstance of the property must be remedied; or
- the seller does not have appropriate building or other permits for the property.

### What the Rules require

If you act for the **buyer**, you must help your client meet their duty to exercise care. This may include:

- asking specific questions about the property structure, the roof system, water seepage, the condition of mechanical systems and other equipment, and notices from a local or municipal authority;
- carefully analyzing the condition of each component of the property;
- verifying the condition of a component if the buyer thinks there may be a problem;
- asking a professional inspector to inspect the property; and
- including conditions on offers, for example, a satisfactory inspection by a professional.

RECA's Property Inspection Request Form is an excellent tool to help buyers determine a property's condition.

If you act for the **seller**, you must disclose to the buyer or the buyer's representative any material latent defects in the property that you know about. Do not participate in hiding or disguising known defects.

### Examples

- The seller finished the basement, and in the process covered a large crack in the basement wall that affects the structure.
- The seller finished the basement, or built an addition or a garage, without the appropriate permits.
- The seller knows that water enters the house whenever it rains.
- The home was a former marijuana grow-op, and repair of the property has not occurred. The growing conditions for marijuana create an ideal environment for potentially dangerous mould and mould spores, some of which may linger after the grow-op ceases and continue to make the property unfit to live in.

## Related Information

| Legislation | Relevant Sections |
|---|---|
| *Real Estate Act* Rules | ss. 1(1)(t), 57(i), 59(4)(e), 59.1(4)(b)(v) |
| Guides | Property Inspection Request Form |
| Additional Resource:<br>Information Bulletins | Stigmatized Properties<br>Protection of Client Information |