

STIGMATIZED PROPERTIES

Purpose: This bulletin defines stigmatized property and explains how real estate professionals should deal with sellers of properties that may have a stigma and buyers who may have concerns unrelated to the physical condition or features of a property.

This bulletin applies to all real estate professionals.

What is a stigmatized property?

The term “stigmatized” means an unfavorable quality in a property or makes the property less attractive or unattractive. It is a property that a buyer or tenant may shun for reasons that are unrelated to the physical condition or features. Examples of a stigma issues may include:

- a suicide or death in the property
- the property was the scene of a major crime
- the address of the property has the wrong numerals
- reports that a property is haunted
- the property was vandalized
- a former grow op that has been remediated

Obligations of real estate professionals to assist a buyer

When you represent a buyer client, you must use your best efforts to locate a property in a specific market area that meets the buyer’s material requirements and to protect and promote the interests of the buyer. You must take reasonable steps to discover relevant facts about the property and to disclose those relevant facts to the buyer.

How does the real estate professional know the material requirements of the buyer? The only way to find out the buyer’s requirements is through communication and real estate professionals should not assume any buyer requirements. Real estate professionals must ask questions and 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. These discussions should include any stigma issues.

Buyers should consider their concerns and discuss them with their real estate professional to ensure they or their real estate professional ask the right questions.

Significance of property circumstance

A person’s values and perceptions, ethnic background, religion, gender, age and other individual concerns will affect the significance of a

potential “stigma” or any other circumstance. Given all the possible occurrences or circumstances that might be a stigma for a buyer, a real estate professional must take reasonable steps to determine if the buyer has any stigma concerns.

Concerns not physical, structural, or obvious

When a buyer selects a property to buy, the physical appearance of a property and the neighbourhood will be obvious. If a buyer has concerns about the less obvious structural and mechanical aspects of the house, they can insert a condition in the offer for a property inspection or other report.

There may be no effect on a property with regard to appearance or function resulting from a circumstance that occurs in the property. Consumers who have other concerns that prevent them from buying a property should ask questions prior to completing an offer or insert conditions in the offer to satisfy their concern.

Seller disclosure of stigma

Under the doctrine of caveat emptor, buyers are responsible to satisfy themselves that the property they are buying is suitable for their purposes. Many buyers look to the seller to give them the information about the property.

It is important for consumers to know that common law requires sellers to disclose to buyers material latent defects affecting their property, known to the sellers. This also applies to material latent defects known to the buyer or seller’s real estate professionals.

If a property has a defect that cannot be discovered with reasonable care during an inspection, that is a latent defect. A material defect is a defect that reasonable people would agree is significant in the particular circumstances of a transaction.

It is not possible to list every type of material latent defect, but they include defects that make:

- a property dangerous or potentially dangerous
- make a property unfit to live in
- make a property unfit for the buyer’s purpose (if the buyer has told their industry member or the seller’s industry member the purpose)

A material latent defect may also exist if:

- the defect is very expensive to repair
- the seller has received a local government or authority notice that a circumstance of the property must be remedied

- the seller does not have appropriate building or other permits for the property

Buyers who have concerns about specific property stigmas should conduct their own investigation. This may include inquiries of their real estate professional or direct inquiries of the seller or their real estate professional. When asked by a client buyer, a buyer's representative must make the appropriate inquiries.

Sellers do not have to answer stigma questions

When you ask the seller or the seller's real estate professional about the possible existence of stigmas, the seller or seller's industry member must answer honestly, if they choose to answer. There is no requirement to answer inquiries that are not material latent defects. They may:

- refuse to answer the question and suggest the buyer determine the answer to their question from other sources
- answer the question with a disclaimer that the buyer should not rely on the accuracy of the information and to verify the information for themselves
- answer the question without qualification
- legal advice is recommended when there is uncertainty about a stigma or a stigma that may be remediated

A seller may have no knowledge of events that occur before their ownership of the property or events that occur during a rental period. For serious concerns, consumers may consider making inquiries of the local police service.

The seller and their real estate professionals who answer inquiries on behalf of their seller must use reasonable care and skill to ensure the accuracy and completeness of their answers. You should only answer inquiries with the permission of your seller.

Sellers may face a dilemma to disclose a circumstance that may negatively affect the value of their property. Do they disclose and risk harming our property value or do we not disclose and risk the buyer learning the information later and pursuing damages? We all have heard of the scenario where the neighbour tells the new owner every negative issue with the property shortly after they move... Prudent sellers will discuss the circumstances of a stigma, their rights and obligations, with their own lawyer.

If the seller refuses to answer questions, this may raise a "red flag" for a prospective buyer. If the seller refuses, the buyer's real estate professional should give options to the buyer. These may include:

- proceed with the purchase without an answer to the stigma question

- research the issue further through the Internet, neighbours or other sources
- find another home to purchase

Stigmas are different for different people

The following questions may assist in determining if a death stigma is relevant. If a death takes place in or near the property, it is a more common stigma for some buyers. If you ask a person if a death in a property would matter to them, you will have responses from no to they could not live in the property. Others may want to know the circumstances of the death to determine their response. Consider the following death situations:

- a death caused by a violent act or suicide
- an elderly grandmother passed away at home with her family
- a crib death of a baby
- a pet recently died in the home of natural causes or by poisoning
- a person was killed by a car on the street in front of the house
- a death in the home that occurred 50 years ago compared to a recent death

These examples illustrate the degree a death may affect the buyer and the stigma for the property. What one person might find unacceptable may not be a stigma to another.

Related information

Legislation

- *Real Estate Act Rules* - sections 1(1)(t), s.44, s.57(g)(i)(k), s.58(a)(e)(i)(j)

Information bulletins

- Material Latent Defects