Real Estate Council Alberta

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RECA Resource
Information Bulletins

LAST REVISED
July 2026
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Stigmatized Properties

Purpose

This bulletin applies to real estate licensees. It defines stigmatized property and explains how licensees should deal with sellers of properties that may carry a stigma and with buyers who may have concerns unrelated to a property's physical condition or features.

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.

Stigmatized Property

A "stigmatized" property has an unfavourable quality that makes it less attractive to a buyer or tenant for reasons unrelated to its physical condition or features. Examples of stigma issues may include:

- a suicide or death occurred in the property;
- the property was the scene of a major crime;
- the property's address includes numbers some buyers consider unlucky;
- reports that a property is haunted;
- the property was vandalized; or
- the property is a former grow operation that has been remediated.

Why this matters

A person's values and perceptions, ethnic background, religion, gender, age, and other individual concerns all affect the significance of a potential stigma. What one person finds unacceptable may not be a stigma to another, and unlike physical or structural concerns, a stigma cannot be discovered through a property inspection. Given the many possible circumstances that might be a stigma for a buyer, a licensee must take reasonable steps to determine whether the buyer has any stigma concerns and must understand what sellers are and are not required to disclose.

What the Rules require

When representing a buyer, you must use your best efforts to locate a property in the buyer's market area that meets their material requirements and to protect and promote the buyer's interests. You must take reasonable steps to discover relevant facts about the property and disclose them to the buyer.

The only way to learn the buyer's requirements is through communication. Never assume them. Ask questions and discuss in detail the buyer's needs, property requirements, constraints or restrictions, and any other issues or concerns, including any stigma issues. Buyers should consider their concerns and discuss them with their licensee to ensure the right questions are asked.

When answering inquiries for a seller, a seller or a licensee answering on the seller's behalf must answer honestly if they choose to answer (see below). Licensees who answer inquiries on behalf of their seller must use reasonable care and skill to ensure the accuracy and completeness of their answers and should answer inquiries only with the seller's permission.

Seller disclosure: stigma versus material latent defect

Under the doctrine of caveat emptor, buyers are responsible for satisfying themselves that a property is suitable for their purposes. However, common law requires sellers to disclose material latent defects affecting the property that are known to them, and this obligation extends to material latent defects known to the buyer's or seller's licensees.

A latent defect 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 the transaction. It isn't possible to list every type of material latent defect. Still, they include defects that make a property dangerous or potentially dangerous, unfit to live in, or 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.

A stigma is not a material latent defect. That distinction drives everything below.

Sellers do not have to answer stigma questions.

There is no requirement to answer inquiries about matters that are not material latent defects. When asked about a possible stigma, the seller or the seller's licensee may:

- refuse to answer the question and suggest the buyer determine the answer from other sources;

- answer the question with a disclaimer that the buyer should not rely on the accuracy of the information and should verify it themselves; or
- answer the question without qualification.

A seller may not know about events that occurred before their ownership or during a rental period. For serious concerns, buyers may consider contacting the local police service.

Sellers may face a dilemma: disclose a circumstance that may negatively affect the property's value, or stay silent and risk the buyer learning the information later and pursuing damages. The scenario where a neighbour tells the new owner about every negative issue with the property shortly after they move in is not hypothetical. Prudent sellers will discuss the circumstances of a stigma and their rights and obligations with their own lawyer, and legal advice is recommended wherever there is uncertainty about a stigma or about one that may have been remediated.

If the seller refuses to answer, that may raise a red flag for a prospective buyer. The buyer's licensee should present the buyer's options, which may include proceeding with the purchase without an answer, researching the issue online, with neighbours, or through other sources, or finding another property to purchase.

Stigmas are different for different people.

Death stigmas illustrate the range. Ask whether a death in a property would matter, and responses run from "not at all" to "I could not live there", with many people wanting to know the circumstances before deciding. Consider how differently buyers might react to: a death caused by a violent act or suicide; an elderly grandmother who passed away at home with her family; a baby's crib death; a pet that died in the home from natural causes or poisoning; a person killed by a car on the street in front of the house; or a death that occurred fifty years ago compared to a recent one. The degree to which a death affects a buyer, and therefore whether it functions as a stigma at all, varies with the buyer.

Related Information

Legislation	Relevant Sections
Real Estate Act Rules	ss. 1(1)(t), 44, 57(g)(i)(k), 58(a)(e)(i)(j)

Additional Resource: Information Bulletins	Material Latent Defects