

MATERIAL LATENT DEFECTS

Purpose: This bulletin describes material latent defects in a seller's property you must disclose to a buyer.

This bulletin applies real estate brokerages, brokers, associate brokers and associates.

Buyers must exercise great care

Buyers must exercise great care when buying a property. We are used to hearing the Latin expression *caveat emptor*, which means "let the buyer beware."

Buyers must satisfy themselves about:

- the property's condition
- whether the property is suitable for their needs

Buyers must also make sure their offers include their particular concerns.

What is a material latent defect?

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.

Section 1(1)(t) of the *Real Estate Act* Rules defines material latent defect. Read it, because it will help you decide what kinds of problems you must disclose. Do not forget a material latent defect may be more than a physical defect in the property.

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

If you act for the buyer

If you act for a buyer, you must help your client meet their responsibilities to be careful. This may include:

- asking specific questions about things like 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 analyze the condition of each component of the property
- verify the condition of a component of the property if the buyer thinks there may be a problem
- ask a professional inspector to inspect the property
- putting conditions on offers (for example, a satisfactory inspection by a professional)

RECA's *Property Inspection Request Form* is an excellent tool to use to assist buyers to determine the condition of the property.

If you act for the seller

Sellers cannot hide defects or mislead buyers about the property's condition or other attributes. They must honestly answer questions they are asked. They must also disclose material latent defects in their property that they know about.

If you act for a 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 of material latent defects

- the seller has finished the basement of their house and in the process covered the large crack in the basement wall that affects the structure
- the seller has finished the basement of their house, or built an addition or a garage, without the appropriate permits
- the seller knows that whenever it rains, water enters the house
- 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 these may linger after the grow-op ceases to operate and continue to make the property unfit to live in

Related information

Legislation

- *Real Estate Act* Rules - sections 1(1)(t), s.57(i), s.59(4)(e), s.59.1(4)(b)(v)

Guides and tools

- Property Inspection Request Form