

Disclosure

There are several requirements created by *The Real Estate Act* and, in turn, the Saskatchewan Real Estate Commission Bylaws that make it necessary for sellers, agents or brokers to research and/or disclose pertinent facts about a property. Sections 714 and 715 of the Bylaws state:

714 - *A registrant shall take reasonable steps to discover facts pertaining to every property for which the registrant accepts an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.*

715 - *Prior to obtaining an offer to purchase on a property from a client, a registrant shall take reasonable steps to discover facts pertaining to the property that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.*

So whether you are representing a buyer or seller, you have an obligation to inquire about the property and ask the right questions. But what is “pertinent”? Are there structural defects? Was there ever water damage? Sure, those seem obvious and certainly relevant. But was the property used for a grow operation? Does the neighbour’s dog bark all night long? Was there environmental waste ever disposed of nearby? Or is there a sex offender in the neighbourhood? A buyer would certainly want to know, but a seller may not want to disclose this type information.

The Saskatchewan Real Estate Policy Register 2012 states that, “Pertinent facts include a property that was or is knowingly used for criminal activity ...; known material latent defects including but not limited to defects that render a property dangerous or potentially dangerous, unfit for habitation or unfit for the buyer’s disclosed purposes.”

A latent defect is something that is hidden or not readily apparent on inspection but something that could make the property uninhabitable. For the most part, real estate transactions are governed by caveat emptor or buyer beware. Therefore, it is very important that the buyer and buyer’s agent ask all the right questions and follow up to get answers. And as important, that the seller and seller’s agent respond fully and honestly to any inquiries.

It may be difficult to show that a latent defect would go so far as to include the disclosure of neighbourhood sex offenders or issues with dangerous properties nearby; however, the argument has been put forth in Ontario Courts. A couple with three children bought a property next to occupants who were convicted of possessing child pornography. The Court is yet to decide if this would make the property unfit for habitation or unfit for the buyer’s disclosed purposes, but we are sure the answer is clear for the parents of the children. The same can be said for the buyers who were not advised that radioactive material was being stored nearby. If the matters are not concluded by settlement, it will be interesting to hear the reasoning of the Courts and what obligations they place on the real estate agents involved, one way or the other.

A Property Condition Disclosure Statement (“PCDS”) may be of use in obtaining pertinent information; however, it is often only useful if the party completing the same has been properly instructed. It is the responsibility of the seller’s agent to properly provide instruction regarding the PCDS and its truthful completion. It is the responsibility of the buyer’s agent to ask for information that is not included in the PCDS or to ask follow-up questions to the information provided in the PCDS. Further, you will be best protecting yourself and your client if you request and receive this information in writing and keep it on file.

So what are agents to do? If you want to know – then ask. And if you are asked – answer honestly and encourage your clients to do the same.