

Trades Involving Stigmatized Properties

From Buyer Beware to Buyer Be Aware

The principle of *caveat emptor* (Latin for "let the buyer beware"), applies to trades in real estate. The modern trend in laws protecting consumers; however, has minimized the importance of this rule. Although the buyer is still required to make a reasonable inspection of goods upon purchase, increased responsibilities have been placed upon the seller; and the doctrine of *caveat venditor* (Latin for "let the seller beware"), has become more prevalent. As a result, the common law and legislation have mandated that a seller and any registrant acting on behalf of a seller cannot withhold information about material defects on the property that are not readily observable.

Under Saskatchewan real estate legislation, a stigma associated with a property is not considered to be material to the transaction unless the stigma constitutes a material latent defect or the buyer specifically indicates that certain activities in a premise would be unacceptable to him or her or the premise is being used for illegal activities.

This circumstance has led to questions about "stigmatized properties". The term, though not defined in *The Real Estate Act*, the Regulations or Bylaws, generally refers to a property that bears certain unfavorable characteristics that may make the property less attractive to buyers. The stigma may be any one of a number of circumstances which renders the property unacceptable in the eyes of a particular buyer.

It is impossible to know what activities or events constitute an unacceptable stigma in the mind of a buyer. The following are examples of some common types of stigmas that may be associated with a property:

- Public stigma – when the stigma is known to a wide selection of the population and any reasonable person can be expected to know of it. For example, the property in Port Coquitlam, British Columbia owned by former pig farmer and convicted serial killer, Robert Pickton.
- Criminal stigma – the property was used in the ongoing commission of a crime. For example, the property has been used as a chop shop, drug den or brothel.
- Murder/suicide stigma – when a person has died in the home as a result of a murder or a suicide, regardless of whether or not this fact is known to the public.
- Debt stigma – debt collectors are not aware that a debtor has moved out of a particular residence and may continue their pursuit at the same location, resulting in harassment to innocent subsequent occupiers.
- Phenomena stigma – a property is renowned, locally or on a large scale, as being the site of a haunting, ghost sightings, etc.
- Minimal stigma – a stigma is known to or is taken seriously by only a small select group and, as such, is unlikely to significantly affect the ability to sell the property.

(Source: Wikipedia – "Stigmatized property") < http://en.wikipedia.org/wiki/Stigmatized_property >

Obligations of a Registrant Acting on Behalf of a Seller

A seller is obligated to disclose any and all material latent defects on the property of which he or she has knowledge.

- If the seller decides to disclose information about a stigma attached to the property, he/she should carefully consider the source and extent of his/her knowledge of the situation. If there is any uncertainty about the circumstances giving rise to the perceived stigma, he/she may wish to provide the information accompanied by a qualifying statement about the source and/or extent to his/her knowledge. Provided the stigma is not material to the transaction, the seller may choose not to disclose his/her knowledge of the stigma.
- If the seller decides to disclose information about a potential stigma, it may be prudent to include this disclosure in the listing itself. Remember; that information presented in a listing should indicate the source of the information, as this can protect listing agents from claims of inaccurate advertising. Identifying the source of information provides the recipient with a means by which to gauge the likelihood that the information is accurate and to determine the level of reliance he/she is willing to place on the accuracy of that information.
- If the seller decides not to disclose information about a potential stigma, the onus then falls on the registrant representing the buyer to determine whether or not certain activities in a premise would be unacceptable to the buyer and if any of those certain activities have occurred at a particular property.

A seller should be encouraged to seek legal counsel about any potential stigma attached to the property regarding the necessity and/or extent of any disclosure.

A registrant is obligated to disclose any and all material latent defects within his/her knowledge, but is not required to disclose his/her knowledge of a potential stigma attached to the listed property.

- The disclosure of a potential stigma by a registrant acting on behalf of a seller is subject to the requirement in Bylaw 714 that listing agents take reasonable steps to discover facts pertaining to the property for which they have accepted an agency agreement that a prudent registrant would take in order to fulfil the obligation to avoid error, misrepresentation or concealment of pertinent facts.
- As a listing agent, with information about a potential stigma attached to the property, a registrant cannot tell a buyer or buyer's agent that no potentially stigmatizing event has occurred. If approached by a buyer or buyer's agent and asked about the occurrence of a stigmatizing event, the registrant must seek direction from the seller, who may direct the registrant to disclose the stigmatizing event or decline to provide an answer.

Where there is uncertainty as to whether or not a potential stigma is attached to a property, a registrant acting on behalf of the seller should advise the seller to seek independent legal advice about the necessity and scope of the disclosure. This uncertainty can occur in cases where the seller has heard a rumour about a stigmatizing event, but is not aware of any evidence confirming or disputing the rumour, or where measures have been taken to lessen or eliminate the stigmatization of the property, but it is not known whether or not those measures have been successful.

Obligations of a Registrant Acting on Behalf of a Buyer

When acting on behalf of a buyer, a registrant is obligated to protect and promote the interests of that buyer. Implicit in this obligation is the requirement that the registrant take steps to determine what the client's material interests are. Part of the initial conversation with a client should include a discussion about potentially stigmatizing events or circumstances at a property that are unacceptable to the client.

If the buyer identifies any stigma(s) that would affect his/her willingness to purchase or occupy a property or a general desire to know if there are any stigmas attached to a property, the registrant must make inquiries with the seller of a property or the seller's agent, about any potential stigma(s) associated with that property.

A registrant acting on behalf of a buyer should advise his/her client that the seller is only required to disclose material latent defects and is under no obligation to provide the buyer with information about potential stigmas attached to the property.

If the seller or seller's agent refuses to answer questions about potential stigma(s), a registrant acting on behalf of a buyer should report back to the buyer and advise him/her that he/she can continue the purchase of the property without that information or make his/her own inquiries.

If the seller or seller's agent discloses knowledge of a potential stigma attached to the property, a registrant acting on behalf of a buyer should note that the seller may have learned of the potential stigma from another source and advise the buyer that he/she may wish to consider looking to other sources of information, such as a local police service or media outlet, for confirmation.

Obligations of a Registrant Acting as a Limited Dual Agent on Behalf of Seller and Buyer

A registrant who is acting as a limited dual agent for both the buyer and the seller of a property, who has information about a potential stigma attached to the property, is obligated to disclose such information to the buyer. As a result, a registrant should inform the seller of this obligation as soon as he/she learns of a stigmatizing event and prior to the creation of a dual agency.

And lastly, pursuant to Section 65 of *The Real Estate Act*, a registrant selling a property in which he/she holds a material interest is required to disclose any information within his/her knowledge that could materially affect the value of the real estate.