Disclosure and stigmatized properties

Stigmatized properties present a special challenge in real estate, and REALTORS® should be aware of their obligations around disclosure.

When there has been an issue such as a death at a property, it’s important to understand your responsibilities around disclosure of that stigma. The industry regulator, the Real Estate Council of Ontario (RECO), provides guidance on the topic, while several experienced Ontario REALTORS® also weigh in.

“In the context of real estate,” notes RECO in a recent *Registrar’s Bulletin* on stigmatizing issues, “a ‘stigma’ is a non-physical, intangible attribute of a property that may elicit a psychological or emotional response on the part of a potential buyer.

RECO states that, unlike a latent or patent defect, “there is nothing physically observable or measurable associated with a stigma.” The legislation governing REALTORS®, the *Real Estate and Business Brokers Act of 2002*, does not define stigma. However, the RECO Registrar’s *Bulletin* offers some examples of stigmas that may affect some buyer’s decisions to purchase:

- the property was used in the ongoing commission of a crime (e.g., drug dealing, chop shop, brothel);
- a murder or suicide occurred at the property;
- the property was previously owned by a notorious individual (e.g., organized crime leader, known murderer);
- there are reports that the property is haunted;
- it housed a former grow-op which has been remediated, according to the local health or building authority.

Buyer’s representatives need to be as aware as possible of the buyer’s attitudes and concerns about a property, including their feelings about
stigma, says RECO. “When representing a buyer, it is the obligation of a registrant to use their best efforts to identify properties that meet the buyer’s criteria and to generally promote and protect the interests of the buyer.”

Stigma is partially a matter of perspective. One person’s stigma is another person’s opportunity, since a property’s value generally decreases if a stigma becomes common knowledge.

“Every buyer is different. I once had a client who was looking at a property and he liked it but wanted to think about it overnight,” says Nancy Bloom, a Toronto REALTOR® and instructor at the Ontario Real Estate Association (OREA). “Meanwhile, I found out that the owner had been shot and killed in his car while driving on the street in a contract killing. When I shared these facts with my buyer the next day, he wasn’t bothered at all. His reaction was, ‘I’m getting a deal’.”

To some people, however, the murder would make the thought of buying such a property too grisly and disturbing. Stigma may be a personal aversion or a cultural sensitivity, but either way, the client’s views should not be dismissed as unimportant, says Anthony Allen, a Newmarket REALTOR® with 27 years’ experience and an OREA instructor.

“For example, a lot of people won’t live beside a graveyard,” Allen says. “By disclosing the presence of a graveyard to the buyer, you are respecting their attitude or culture. If you fail to disclose something that will offend your buyers’ sensitivities, you may end up losing them as a client.”

Both REALTORS® advise you to ask many questions of your buyers in order to ascertain whether they have particular sensitivities. Bloom notes that stigma is “not about you – it’s about what matters to the buyer.” The onus is on the REALTOR® to ask the buyer about what might bother them. It’s important to ask these questions, especially in a multicultural region with people of different cultures and religions. Something that doesn’t bother me might well be an issue for someone else.”

Disclosure obligations differ, depending on whether the REALTOR® represents the buyer or the seller. RECO takes something of a “buyer beware” approach to the issue of disclosure and stigmas, and notes that
the representative for the seller has no legal requirement to disclose a stigma; in that case, it’s up to the buyer and their representative to find out.

As the RECO Registrar’s Bulletin notes, if there are material latent defects on a property the seller is required to disclose those defects. The seller’s representatives are also required to disclose material latent defects if they are aware of those defects.

Stigmas are different from defects, however. The Bulletin states that “there is no legislation or case law in Ontario to suggest that a seller, or his or her representative, is required to disclose the existence of stigmas to buyers. Registrants representing sellers should advise their clients to seek legal advice if they believe that stigmatizing issues may become a factor in selling the property.”

However, to avoid problems for the seller in the future, REALTORS® are advised to have a discussion with their seller about stigmatizing issues and disclosure. Even though the seller and seller rep have no legal obligation to disclose a stigma, the safest route may be to disclose it in order to prevent problems with the transaction in the future.

The Ontario Real Estate Association (OREA) takes the position that, “when in doubt, disclose.” REALTORS® are held to a higher standard than the general public and have an ethical obligation to disclose, says Cassandra Agnew Walker, the senior manager, standard forms. “Real estate professionals must follow a code of ethics that a member of the public who is selling their house doesn’t. When in doubt, we suggest that OREA members disclose a stigma because it is better to be safe than sorry. If a REALTOR® doesn’t disclose a stigma, there may be a lawsuit or a complaint to RECO afterwards. Disclosure is a way to prevent that argument and hassle later on.”

If you are a buyer rep, you must disclose the existence of a stigma to your buyer. If you are a listing or seller rep, there is no legal obligation to disclose. However, lawyer Merv Burgard, author of Legal Beat and Legal Forum and a former OREA instructor, notes that there may be a moral obligation. Burgard notes that although sellers and builders are not bound by the code, REALTORS® are. “My simple advice is: when in doubt, disclose.”
Some brokerages create their own clause to protect buyers by asking the sellers to sign an acknowledgement that, to the best of the sellers’ knowledge, there are no psychological (stigmatizing) issues with the property.

“Some seller reps disclose directly on the listing a stigma such as the existence of a former marijuana grow-op,” adds Bloom. “If they don’t disclose it directly on the listing, they may add some wording to the listing that suggests that the buyers contact the listing brokerage before submitting an offer. This alerts the buyer rep that they may want to dig deeper.”

As a REALTOR®, failure to disclose a stigma can have serious consequences, adds Agnew Walker. “If you don’t disclose a stigma, do you care about the loss of business in the future? Do you care about your reputation as a REALTOR®? If you do, it’s best to disclose, and OREA encourages our members to discover and disclose anything that would affect a reasonable person’s decision to purchase real estate.”

The buyers’ representatives must disclose anything they know about a property – all the material facts, says Allen. “Some REALTORS® may be afraid the deal will fall apart if they disclose a stigma, but you must give the buyers a chance to get out,” he says. “You can’t personalize it by arguing that the same issue wouldn’t bother you.”

Allen says that all REALTORS® who represent a buyer must disclose to the buyer any unnatural or sudden death that has occurred on a property, no matter how long ago, such as a child drowning in a pool. “If the stigma is universally known to affect the property’s value, you must disclose it,” he says.

A natural death at a property, such as a senior dying in bed at home, may not bother some buyers, but it may disturb others. In either instance, he says, it is best to ask your buyers in advance: Would it bother you if a death has occurred in the home?

Allen does not often come across properties that have been the site of murders, suicides or sightings of ghosts. In his Newmarket office, the most common stigma involves a property’s location near a graveyard. He always discloses the proximity of a graveyard to buyers interested in a property
that is near one. If you fail to disclose something that will offend your buyers’ sensitivities, you could expose yourself and your brokerage to a code of ethics infraction or be found not to have fulfilled your fiduciary duties. You may also end up losing that buyer as a client.

Bloom recalls an example she heard from a REALTOR® a few years ago. “The property was being sold after the woman who owned it had passed away. The registrant asked her son whether the woman had died on the property, and the son said no, she had died in the hospital. However, the buyer later discovered that the woman’s husband had previously died in the house. In that case, the questioning wasn’t thorough enough.”

That was a good lesson about just how thorough a buyer’s representative should be in asking questions, Bloom notes. “That buyer wanted to make sure that no-one had ever died in the house, and in that case, the question was too narrow. The buyer and their REALTOR® should have asked not just whether the owner had died in the house, but whether anyone had died in the house, since this mattered to the buyer.”

“As REALTORS®, you must be careful and thorough because it’s easy to miss something, even if you think you are doing everything you are supposed to do,” she notes. With the advent of the internet and Google searches, consumers now have easy access to much more information about a property. If a buyer’s representative doesn’t disclose stigma information, that buyer could complain to RECO or file a lawsuit.”

It's a good idea to research the history of a property on the MLS®, whether you are representing the buyer or seller, Bloom adds. A REALTOR® would also be well advised to look up properties and do a Google search of an address to determine whether a stigma may exist. An address can also be searched on a website called housecreep.ca to determine whether a stigma is associated with a specific property.

Bloom adds that, “If I was working with the seller of a property where there’s a stigma such as a murder committed there, I would advise that seller to speak to a lawyer and to follow their lawyer’s advice.

“Some buyers include a clause in the contract stating that there are no psychological issues with the property,” she adds. “If the sellers are hiding something, that can come back at them and be a problem later on.”
After listing a house, Bloom often knocks on neighbour’s doors in that area to let them know that she is listing a nearby house, which is both a prospecting opportunity and a chance to learn more about the listed address. “Not all sellers will tell their REALTOR® about a stigmatizing issue that has occurred on a property, but the neighbours will often fill you in. This is very useful information for us that can prevent problems later on.” A discussion about stigmas and the disclosure obligations of REALTORS® can be seen in the Legal Materials section of the OREA website. The participants are two lawyers, Merv Burgard, author of OREA’s Legal Beat column, and Lou Radomsky, legal counsel to OREA’s standard forms committee.

**New ad campaign promotes REALTOR® value**

An exciting new advertising campaign that promotes the value of using a REALTOR® was launched by the Ontario Real Estate Association (OREA).

Building on the recent success of the REALTORS® we do the homework™ campaign, the new phase of this campaign began last week and is scheduled to continue until the end of November. It will feature a refreshed consumer website, two full-length videos, two mini-videos, infographics, and advertising that is promoted and disseminated through digital and social media.

“We’re very excited about this fantastic new phase of the campaign,” says Ray Ferris, president of OREA. “Our members have told us time and time again that one of the most important things our association can do for them is to promote REALTOR® value to the public, and we plan to continue delivering on that. This new initiative is part of an ongoing effort to showcase the tremendous value that REALTORS® bring to the real estate transaction for the people in our province.”

The campaign has been a tremendous success in recent years. Surveys revealed a significant increase in the public opinion of REALTORS® among consumers who saw the ads. Perceptions after the last phase rose significantly, with increased growth in the number of consumers who saw REALTORS® as providing market knowledge, saving time and helping them avoid complications. Although the scope of this new phase is more
modest than its 2015 counterpart, the goal is to continue to build on the momentum of recent years.

The consumer website, www.wedothehomework.ca, has been revised with a new look and feel. Various venues will host the ads. YouTube, Facebook, Twitter and Google are among the platforms where the ads can be seen. Two new videos are being created -- the first geared to buyers and a subsequent offering targeted to sellers.

The ads convey the message that REALTORS® are experts who advise and guide consumers wisely. All components of the multi-pronged campaign take a unique approach that focuses on the training, wisdom and expertise of REALTORS®. It aims to highlight the benefits of using an experienced, educated professional.

“Our members have asked for this and we’re delighted to deliver on this priority,” says John Oddi, a Brantford REALTOR® and the chair of the OREA Marketing & Communication Committee. “The new phase of the campaign is aimed at consumers who are planning to buy or sell a home in the next two years. Buyers and sellers alike will gain a new understanding of the value that we, as REALTORS®, add to what is for most people the biggest transaction of their lives. We encourage our members to check out the ads and to share them with others.”

To view the videos, click here. To see the refreshed website, visit www.wedothehomework.ca.

Commercial real estate the focus of upcoming events

Do you work in commercial real estate? Would you like to expand your business to include commercial transactions? Do you want to learn more about commercial trades?

If you answered yes to any of the above, the Ontario Real Estate Association (OREA) has organized two upcoming events to meet your needs.
For the first time, OREA has organized professional development events within the Emerge series that are geared specifically to commercial real estate. The Commercial Emerge days are scheduled to take place on Thursday, Nov. 17 in Ottawa Thursday, Nov. 24 in Toronto. The respective venues are the Centurion Conference Event Center and the Toronto Real Estate Board office. These events are part of OREA’s ongoing series called Emerge: Moving You Forward with the Tools for Tomorrow.

“This is fantastic,” says Eavan Travers, commercial director at OREA and a commercial REALTOR® from London. “The event encompasses and reaches out to all members. Many are involved in commercial transactions and are interested in learning more about the process and to get some tools to help them facilitate commercial trades.

“Our members have been wanting this for a long time,” says Travers. “Research has told us that there is a great need for this. In response, OREA has put together these one-day, action-packed events to allow the members to learn more and feel confident with commercial real estate.”

“These events will have something for everyone across a broad spectrum -- from seasoned commercial pros to those who handle just one or two commercial transactions a year,” she adds. “The lineup and content will enable our members to become much more educated and confident in dealing with client requests, whatever their volume of commercial trades.”

Both events are part of this fall’s Emerge series designed to develop your skills and knowledge of real estate. The commercial events complement the other six events for residential REALTORS®. This year’s events urge you to “unlock your business potential with a client-centric strategy.”

Topics for Commercial Emerge include: what you need to succeed in commercial real estate; the changing economy; ins and outs of commercial lending; what it’s really worth; tools that improve investment analysis; trends in multi-residential; environmental assessments; what’s new in business brokerage; legal pitfalls in commercial transactions; and haves and wants networking.

Both events will feature commercial real estate experts. The cost per person for each Emerge event is $79 for OREA members and $109 for
non-members. To check out a previous Emerge event, visit OREA’s YouTube channel at www.youtube.com/oreainfo and click on OREA Emerge. To register or for more information, visit www.orea.com/emerge.

Legal Beat: Have a FINTRAC plan to prevent money laundering

by Merv Burgard

Does your brokerage have a plan to prevent money laundering and other suspicious transactions?

“At least 85 real estate companies have not implemented a plan showing how they are trying to detect money laundering and other suspicious transactions, nearly 15 years after they were required to do so, according to data obtained by The Canadian Press.”

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), Canada’s financial intelligence unit, was created in 2000. Its goal is to facilitate the detection, prevention and deterrence of money laundering and the financing of terrorist activities, while ensuring the protection of personal information under its control.

FINTRAC is an independent agency reporting to the Minister of Finance, who is accountable to Parliament for its activities. It was established and operates within the ambit of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA) and its regulations. It aims to enhance cooperation and information exchange in support of member countries' anti-money laundering and terrorist financing regimes.

Some real estate brokerages have as yet failed to comply with the legislation by developing a FINTRAC plan. See the Toronto Star article at: https://www.thestar.com/business/2016/05/24/at-least-85-real-estate-firms-not-complying-with-anti-money-laundering-rules.html
MERV'S COMMENTS

Is FINTRAC really chasing people? Here are some recent examples of the consequences of the failure to implement compliance policies.

- Howell Investment Management Inc., a securities dealer in Etobicoke, was imposed an administrative monetary penalty of $13,500 on March 11, 2016, for violating the PCMLTFA and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* (PCMLTFR). Howell was found to have the following deficiencies: Failure to develop and apply written compliance policies and procedures; failure to assess and document the risks related to money laundering and terrorist financing; and failure to develop and maintain a written, ongoing compliance training program.

- Becksley Capital Inc., a securities dealer in Toronto, was imposed an administrative monetary penalty of $28,500 on Dec. 9, 2015, for violating the PCMLTFA and the PCMLTFR for similar failures.

- Diamond Exchange Toronto Inc., a dealer in precious metals and stones in Toronto, was imposed an administrative monetary penalty of $12,750 on March 9, 2016, for violating the PCMLTFA and the PCMLTFR for similar failures.

- Victoria Jewellers Ltd. a dealer in precious metals and stones in Regina, Saskatchewan, was imposed an administrative monetary penalty of $13,500 on Feb. 19, 2016 for violating the PCMLTFA and the PCMLTFR for similar failures.


*Merv Burgard, QC*
Maintain integrity with electronic signatures: Join seminar

Electronic signatures are bound to be used more and more in real estate transactions, since they have been allowed within all transactions as of 2015. To make sure you maintain your trading integrity while using e-signatures, you can take part in an upcoming web seminar (webinar) being offered by the Ontario Real Estate Association (OREA).

A live webinar, “Watch Out for E-Signatures Integrity” is being offered on **Tuesday, October 18 at 1:00 p.m.** It will be hosted by Cassandra Agnew Walker, senior manager, standard forms at OREA. Guest participants are: Lou Radomsky, a lawyer and the legal counsel for OREA standard forms; and John Burnet, John Burnet, manager of complaints, compliance and discipline at the Real Estate Council of Ontario (RECO).

Changes to provincial laws took effect on July 1st, 2015, enabling electronic signatures to be used within key real estate forms, including the Agreement of Purchase and Sale (APS) and related documents. The government approved an amendment to the Electronic Commerce Act that allowed for e-signatures to be used in the APS.

“Since the statute amendment affecting electronic signatures for the APS came into force in 2015, we’ve seen them used more in real estate transactions and we expect that trend to continue,” says Agnew Walker. “This practice is often convenient for consumers and REALTORS® alike, cutting down the time and distance required to complete forms. At the moment, we see and hear about members using a combination of in-person and electronic signing within their transactions. However, as e-signature use continues to grow, we want to make sure that REALTORS® maintain their integrity while working with e-signatures during trading activity and that they adopt best practices and implement brokerage policies to serve consumers well.”

The webinar will explore the following questions:

- Is there a difference between electronic transmission and electronic signatures?
- Are you riding the e-signature wave?
- Does paperless mean no paper ever, and no paper trail?
• What protocols should be followed to ensure integrity while using e-signatures and OREA forms?

Participants will have the opportunity to submit questions and share their own experiences. This webinar is just one in a series related to standard forms that is being presented by OREA this year. To join in, all you need is a computer with working speakers and internet access.

Like all webinars, the format for this topic will be interactive. You can submit questions, listen to speakers and watch slides related to the topic. If you can’t participate in the seminar on the date offered, you can watch a recorded version at a later date and time convenient to you.

OREA members can register in advance in order to obtain a login link for the webinar. On the day of the webinar, members can log in up to 30 minutes before the scheduled start time. Participation in this and other webinars will be on a first-come, first-served basis. Log in to the Members’ section and click on Standard Forms in www.orea.com.

Fall technology and strategy series features exciting topics

This fall, come to one or more in a series of events designed to develop your skills and knowledge of real estate technology and strategy. The Ontario Real Estate Association (OREA) has organized events as part of the series called Emerge: Moving You Forward with the Tools for Tomorrow.

This fast-paced and dynamic series features events across the province to help you excel in real estate and business. It aims to inform REALTORS® about the latest strategies, tools and technologies in real estate. Industry experts and top performers assemble at each event to share their insights on a variety of topics based on their proven track records. This year’s events urge you to “unlock your business potential with a client-centric strategy.” The one-day events each feature a consumer panel of buyers and sellers and breakout sessions.
Two Emerge events have already taken place in Sault Ste. Marie and Kingston. Upcoming events are scheduled on Oct. 6 (Oakville); Oct. 27 (Barrie); Nov. 10 (Windsor); and Nov. 30 (Niagara Falls). Topics and speakers are as follows:

Direct Mail Marketing – This session features real estate coach Ryan Hodge, who leads a top team of REALTORS® that successfully implements proven and market-tested strategies and systems.

Your Network is Your Net Worth – Seasoned REALTOR® Christina Kroner talks about leveraging social media, discussing personal relations, technology and lifestyle branding and how it can build a strong real estate business.

Growing Your Database – Former REALTOR® Andrew Fogliato now runs a digital marketing agency that focuses on helping real estate professionals to grow their business digitally.

Breakthrough Video Tips – All REALTORS® can implement video to engage today’s consumer, says Annette Anthony, vice-president of technology engagement at Exit Realty, who shares tips on emerging technologies that enhance productivity.

Working Any Database – Online lead generation, marketing and technology are the topics to be discussed by Danny Wood, who delivers a one-on-one coaching service.

Targeting via Facebook – Precision targeting through Facebook will be discussed by Remi Morvan, broker and co-owner of Capital Homes Realty in Ottawa. In five years he has grown his business to the market’s top five per cent level using Facebook as the major driver to his brand.

Innovative Marketing Beyond Print and MLS® – This session will be covered by Richard Silver, who leads the Toronto team at Sotheby’s International Realty Canada, named by Inman News as one of the Top 100 Most Influential Real Estate People.

Master the Marketing Mindset – Award-winning Mississauga REALTOR® Jeff O’Leary produces a popular real estate blog, The Village Guru, that has helped him to earn a strong internet presence.
CREA Consumer Insights – Mary Van Buren, vice-president of marketing and technology at the Canadian Real Estate Association, delivers high quality technology and information services to REALTORS® and consumers.

For the first time, Emerge events geared specifically to commercial real estate have been organized. They will take place on Nov. 17 (Ottawa) and Nov. 24 (Toronto). Topics for Commercial Emerge include: what you need to succeed in commercial real estate; the changing economy; ins and outs of commercial lending; what it’s really worth; tools that improve investment analysis; trends in multi-residential; environmental assessments; what’s new in business brokerage; legal pitfalls in commercial transactions; and haves and wants networking. Opening remarks will be given by Eavan Travers, OREA commercial director, and both events will feature commercial real estate experts. For more details on Commercial Emerge, see the accompanying article. Click here.

The cost per person for each Emerge event is $79 for OREA members and $109 for non-members. To check out a previous Emerge event, visit OREA’s YouTube channel at www.youtube.com/oreainfo and click on OREA Emerge. To register or for more information, visit www.orea.com/emerge.

Gen Y’s intentions to buy real estate increase: Survey

More of Ontario’s younger generations are likely to buy a home in the next two years.

That’s according to new research from the Ontario Real Estate Association (OREA). One in four (24%) people in Generation Y (born between 1981 and 1995) said they are likely to purchase a home in the next two years (up eight points from last year), while 18% of people in Generation X (born between 1965 and 1980) said the same (a six-point increase from a year ago). These are findings from OREA’s Ontario Home Ownership Index, a survey of Ontarians’ perceptions of home ownership and real estate markets at the neighbourhood, city and provincial level.
In terms of their preferred housing type, half of Gen Y respondents said they are likely to purchase a detached house (51%), followed by ‘condo/apartment’ (28%), ‘semi-detached house’ (18%) and ‘row-house/townhouse’ (13%). Similarly, the majority of Gen X respondents selected ‘detached house’ (63%) as the housing type they are most likely to buy. Semi-detached houses were the second most popular choice (26%), followed by ‘condo/apartment’ and ‘row house/townhouse’ (each at 17%).

“Based on their intentions to buy, and the kind of real estate they’re looking at, it is evident that ‘stage-of-life’ is a motivating factor for Gen Y,” says Ray Ferris, president of OREA. “Also, given the strength of real estate markets lately, it is understandable that a growing number of millennials would like to own a (detached) home and why so many believe real estate is a good investment.”

‘Desire to own a home of my own’ (38%) is Gen Y’s main motivator for purchasing a home in the next two years, followed by the ‘desire for a larger home’ (28%). ‘Long-term investment value’ made it in the top three for both Gen Y and X, but for the latter group it was the biggest driver (35% compared to 28% for Gen Y). For Gen X, ‘desire to own a home of my own’ (28%) and ‘change in family situation’ (26%) made it into the list of top three reasons for buying a home.

Furthermore, a larger number of Ontario’s younger generations (X and Y) agree that real estate is a good investment – 81% of Gen X and 77% of Gen Y said it is a good investment, compared to 72% and 70% who said so last year. Moreover, the perception gap is narrowing between generations, as 85% of baby boomers admit to real estate being a good investment.

“This uptick in consumer confidence is likely driven by the very strong gains we’ve seen in home values in the last year,” says Ferris. “For those Gen Ys and Xs who plan to sell, they will surely experience those gains themselves.”

One in four people in Gen Ys (25%) say they are likely to sell their home in the next two years (up 15 points from one year ago), and 15% of Gen X plans to do so (up eight points). In comparison, 12% of baby boomers (up only three points from the previous year) say they are likely to sell their homes within the next two years.
Motorcycle ride a success

This year’s **Motorcycle Ride for Charity** was a great success, raising funds for a good cause. The 11th annual ride took place on July 6 and was organized by the Ontario REALTORS Care® Foundation, which supports shelter-based charities across the province. More than 30 riders took part in the ride from the Newmarket office of the Toronto Real Estate Board to Sudbury, with stops along the way at various real estate board offices, including: The Barrie and District Association of REALTORS®; Muskoka, Haliburton, Orillia – The Lakelands Association of REALTORS®; and the North Bay Real Estate Board. This ride demonstrates the commitment of Realtors to give back to their communities by supporting a good cause. So far, approximately $21,000 in pledges have come in. For more details or to make a donation, visit the Ride page at [www.realtorscareontario.ca](http://www.realtorscareontario.ca).

Stigmatizing issues: RECO

*The following article on stigmatizing issues appeared in the Registrar's Bulletin produced by the Real Estate Council of Ontario (RECO). It is reproduced with permission from RECO.*

When representing a buyer, it is the obligation of a registrant to use their best efforts to identify properties that meet the buyer’s criteria and to generally promote and protect the interests of the buyer.

**Representing the buyer**

Accordingly, a registrant representing a buyer must obtain as much information as possible from them before beginning the process of searching for a suitable property and representing them with third parties. Registrants must discuss in detail the buyer’s needs and wants regarding property requirements, including constraints or restrictions, and any other issues or concerns the buyer may have with respect to the purchase of a property.

Communication is a two-way street, of course, and RECO encourages buyers to be proactive and provide information to their representative and
to ask questions regarding issues of specific importance to them and their families. Nonetheless, registrants are encouraged to communicate extensively and frequently with their buyer clients to best understand their wants, needs, priorities and concerns. For the purpose of consistency and record keeping, a registrant should consider documenting their inquiries through the use of a questionnaire or similar tool.

**Dealing with “stigma”**

In the context of real estate, a “stigma” is a non-physical, intangible attribute of a property that may elicit a psychological or emotional response on the part of a potential buyer. There may have been an event or circumstance that occurred in or near the property that does not affect the property’s appearance or function, but might be considered by some as emotionally disquieting. Unlike a latent or patent defect, which may exist at a property, there is nothing physically observable or measurable associated with a stigma.

The *Real Estate and Business Brokers Act, 2002* (REBBA) does not define “stigma”, but examples may include:

- the property was used in the ongoing commission of a crime (e.g., drug dealing, chop shop, brothel);
- a murder or suicide occurred at the property;
- the property was previously owned by a notorious individual (e.g., organized crime leader, known murderer);
- there are reports that the property is haunted;
- a former grow-op which has been remediated according to the local health or building authority.

The relevance and impact of a potential “stigma” or any other such non-physical circumstance will be determined by a buyer’s personal values and perceptions, ethnic background, religion, gender, age and other individual concerns. Given all the possible occurrences or circumstances that might exist for a given buyer to consider a property to be “stigmatized,” it is impossible for registrants to determine in advance what these might be. Again, communicating openly and early is key.

Registrants representing the buyer are advised to discuss their specific needs or requirements and any concerns and issues related to purchasing
a property. In its communications to consumers, RECO advises buyers to carefully consider the areas of concern they may have and to discuss them with their real estate professional to ensure the necessary inquiries will be made to avoid purchasing a property they will not feel comfortable living in.

**Stigmas are different for different people**

The following questions and responses may demonstrate the difficulty, in practical terms, of defining a stigma. For example, think about the possible responses to this question: Would it matter to you if a death had occurred in a property you were interested in buying? Some would say “Yes, absolutely!” However, consider the following situations:

- Would it matter if the death was from natural causes, or accidental, versus being caused by a violent act or suicide?

- Would it matter if it was a crib death of an infant?

- Would you be as concerned by a death that occurred 20 years ago as you would with a recent one?

These examples illustrate how difficult it is to clearly define what constitutes a “stigma.” What one person might find completely unacceptable may not be of any concern to another.

**Seller disclosure of stigma**

Under the doctrine of *caveat emptor* (“buyer beware”), buyers are ultimately responsible to satisfy themselves that the property they are acquiring is suitable for their purposes. However, many buyers and their representatives will look to the seller and his or her representative to provide them with information about the property.

It is important for registrants to know that while sellers are required by law to disclose material latent defects affecting a property that are known to them (an obligation which also exists for the seller’s representative if the material latent defect is also known by the representative), there is no legislation or case law in Ontario to suggest that a seller, or his or her representative, is required to disclose the existence of stigmas to buyers.
Registrants representing sellers should advise their clients to seek legal advice if they believe that stigmatizing issues may become a factor in selling the property.

If a registrant is representing a buyer who is concerned about specific types of stigmas, it is highly recommended that the registrant and buyer conduct their own investigation, which could include an internet search and also making direct inquiries of the seller or registrant representing the seller.

To further protect the buyer, the registrant could include in any offer a representation/warranty regarding the status of the property. For example, “The seller represents and warrants that to the best of his/her knowledge and belief the property has not been the site of a murder.”

All registrants have an obligation to act with fairness, honesty and integrity when dealing with others in a real estate transaction. Similarly, registrants must use their best efforts to prevent error and misrepresentation while still promoting and protecting the best interests of their clients. Therefore, when the registrant representing the seller is asked about the existence of specific stigmas that might affect the property, that registrant may either answer the question and provide the information without qualification, or in the alternative, refuse to answer the question and suggest the buyer ascertain the answer for themselves.

The approach to be taken should be based on a detailed discussion with, and instructions from, the seller. Registrants are expected to use reasonable care and skill to ensure the accuracy and completeness of the information conveyed to the buyer and/or his or her representative, and should consider documenting such responses.

**Tread carefully**

A registrant cannot anticipate all the areas of sensitivity that an individual buyer may have. This fact, combined with the fact that a seller may refuse to answer questions about potential stigmas, means that registrants must approach this subject carefully. They should keep in mind that a seller may have no knowledge of events that occurred before he or she owned the property, or the property may have been rented out and the seller may not know of the events that occurred during the rental period.
Registrants representing sellers should have a full and frank discussion with the seller regarding stigma. If it is determined that there may be stigmatizing issues associated with the property, the registrant should advise the seller to seek legal advice regarding their rights and obligations related to the issue, and get written instructions regarding the disclosure of the stigma to buyers. Registrants representing buyers should have detailed conversations with the buyer to identify relevant stigmatizing issues, and be prepared to do some additional investigation or research if the buyer indicates sensitivity to one or more such issues.

In a multiple representation scenario, the issues become a little more complicated. Before a seller is asked to consent to multiple representation, it must be explained that any information about stigma will have to be conveyed to the buyer, as part of the brokerage’s duties to the buyer. If the seller objects to this, they should be advised that they do not have to consent to multiple representation. If consent is not given, the registrant must inform the buyer of this fact and the brokerage will have to release the buyer to seek alternative representation.

Taking a pro-active, communicative and well-documented approach to stigmatizing issues will minimize the risk of buyers being uncomfortable with their home and filing a complaint, failing to complete a transaction or initiating a lawsuit.

Acknowledgement: This bulletin makes use of information originally published by the Real Estate Council of Alberta (RECA).