

Material facts

This bulletin provides guidance to real estate agents with respect to determining material facts and disclosing them to clients.

Summary

What constitutes a material fact will depend on the specific circumstances of a trade. When representing a buyer, it might be the intended use for the property. When representing a seller, it might be a new hospital or other neighbourhood improvement that may increase the value of the property that the agent is or should be aware of.

An agent's basic obligations are fulfilled in four steps:

1. Take reasonable steps to determine the material facts;
2. Promptly disclose the material facts to the client;
3. Advise the client to consider if the material facts might affect their decision; and,
4. Make best efforts to obtain an acknowledgement indicating that the disclosure and advice were received. If acknowledged, the agent must provide a copy of the acknowledgement to the client.

Material facts

WHAT IS A MATERIAL FACT?

RECO is often asked for a list of facts that would be considered material. But what is a material fact to one buyer or seller may not factor into another client's decision-making process for many different reasons, not the least of which is the intended use of the property.

Items that are often considered to be material facts include:

- The type of insulation and wiring (for example, knob and tube wiring);
- The type of plumbing (for example, lead piping or galvanized plumbing);
- The age, condition, and ownership status of any major home systems (for example, heating, air-conditioning, roof, and windows);
- A history of flooding, structural damage, or any previous dwelling fire;
- Renovations and improvements made to a property and whether the required permits were obtained;
- Property tax amount and if there are any special assessments or local improvement charges;
- Zoning by-laws, established by the municipality, region or other governmental agency, impacting the legal use of the property;
- Whether a property had been used as a marijuana grow operation or for other illicit purposes;
- Any rights-of-way, allowances, or restrictions on the use of the property established by the municipality, region, or other governmental agency, or otherwise on title; and,
- Existence of nearby businesses or facilities that may impact quality of life (for example, quarries, industrial facilities, airports, rail lines, etc.).

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WORKING WITH A SELLER

When representing a seller client it is possible that the material facts may already be known to the seller, but the obligation to determine and disclose material facts to the client still exists. The seller might already know of a fact, but they might need the agent to explain how it could affect the sale of the property.

The “reasonable steps” required for determining those material facts is not met by simply accepting the seller’s verbal representations. Some research, verification, and supporting documentation will be necessary to fulfill the agent’s obligations.

WORKING WITH A BUYER

When representing a buyer client, agents often have checklists or questions to ask the buyer to determine their needs and what type of property will best suit them. This is the ideal time to discover the interests and sensitivities of the buyer and help determine what the buyer might consider a material fact about a property.

If an agent is aware of something that might be considered a material fact by their buyer client, the agent must disclose it to them and to help the client understand the implications of the issue and the extent to which it might impact their decision to purchase the property.

When in doubt about whether something may constitute a material fact to the client, disclose and explain it to them. Failing to do so can have significant consequences, both in terms of the risk of civil liability and potential prosecution under the legislation.

Related information

Bulletin No. 3.1 Disclosures, consents, and acknowledgements

Bulletin No. 7.4 Facts a seller has a legal obligation to disclose

Bulletin No. 7.5 Stigmas