



Real Estate Council of Ontario

April 5, 2018

Statement on Stigmatization of Property

Real Estate Council of Ontario (RECO)

RECO regulates Ontario's real estate salespersons, brokers and brokerages by administering and enforcing the *Real Estate Business and Brokers Act, 2002* (REBBA), which includes a Code of Ethics. REBBA requires all salespersons and brokers in Ontario to be registered with RECO. RECO does not regulate the conduct and decisions of real estate buyers and sellers.

Disclosing the History of a Home

Ontario's laws place the onus on buyers to determine whether they wish to purchase a property. Ontario's property sellers are not required to disclose the personal history of their home. Providing that information is purely voluntary. The single exception to this rule is the seller's obligation to disclose, to a buyer, latent physical defects in the property that they know about, which render the property uninhabitable or inherently dangerous to occupy. Latent defects are physical deficiencies that are dangerous but may not be readily apparent to an untrained eye.

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 (for example, if a residence was the site of serious criminal activity). These are subjectively perceived defects that do not affect the property's appearance or function, but, rather, are founded on an individual's response to an event that impacts on their personal histories, sensitivities, cultures, and beliefs. While some people may be perfectly fine with a home with a particular past, others may be offended by the same property.

The disclosure of a home's history where an activity occurred that may be considered stigmatizing to potential buyers is at the discretion of the seller. Registered real estate representatives with seller clients are fiduciaries to their client's best interests. Therefore they are expected to obtain a clear client direction on whether or not to disclose any issue of potential stigma and to abide by their seller client's direction.

REBBA's Code of Ethics prohibits a registered real estate representative from acting dishonestly. Therefore, if a buyer or their representative inquire about potential stigma issues, a seller's representative must either answer truthfully or decline to answer.

Recommendations to Buyers

A buyer is ultimately responsible for making sure that a property suits their needs, RECO encourages buyers to conduct open and frank discussions with their salesperson about what they are looking for in a property, and then take the necessary steps to identify the quality of the home as well as its history. The term *caveat emptor* – the principle that places sole responsibility on the buyer to ensure the quality and suitability of a product prior to purchase – is integral to home buying. RECO recommends that buyers research the history of any home they consider purchasing. By conducting online searches of the address and the neighbourhood, asking questions of their representative and the seller's representative, speaking to neighbours, and conducting a thorough home inspection with a certified professional, buyers will protect themselves and obtain important information about the home.

Recommendations to Sellers

Sellers who are aware of potential stigma with their property should speak to their representative to determine whether or not to disclose the information to potential buyers. Some sellers may feel a moral obligation to disclose the identified stigma. Although Ontario's Courts have ruled that stigma is not a required disclosure, some buyers may resort to a law suit in an attempt to obtain compensation for non-disclosure after the trade closes. This risk would be eliminated by the seller directing full disclosure at the commencement of any real estate trade negotiations.

Seek Legal Advice

Buyers or sellers who are concerned about the history of a home, and their obligations, should discuss options with their real estate representative and also consider seeking advice from a real estate lawyer.

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Real Estate Council of Ontario