

**Summary: Real estate brokers must disclose to the buyer any known material latent defects respecting the seller's property. While it is not possible to provide a comprehensive list, material latent defects include defects that render a property dangerous or potentially dangerous, unfit for habitation, or unfit for the purpose for which the buyer is acquiring it (where the buyer has made this known), and may include defects that would involve great expense to remedy, local authority notices that prejudicially affect the property and lack of appropriate permits. [See: *Real Estate Act Rules*, s.1(1)(t), s.57(i), s.59(4)(e), 59.1(4)(b)(v)]**

*Note: For the purposes of this Information Bulletin, and where the context permits, "real estate broker" refers to all four categories of real estate licence i.e. brokerage, broker, associate broker and associate.*

Caveat emptor is a Latin expression meaning, "let the buyer beware" – that is, buyers must exercise great care when purchasing a property. It is the responsibility of buyers to take the necessary steps to satisfy themselves about such matters as:

- the condition of a property;
- its suitability for their particular needs; and,
- ensuring their particular concerns are appropriately reflected in the terms of the offers they make.

A "latent defect" is one that is not discoverable through the exercise of reasonable vigilance during an inspection of a property. A "material defect" is one that reasonable persons would agree is a significant shortcoming in a property in light of the particular circumstances of the transaction.

It is not possible to provide a comprehensive list of defects that qualify as "material latent defects," but they include the following categories of defects:

- defects that render a property dangerous or potentially dangerous to the occupants;
- defects that render a property unfit for habitation;
- defects that render a property unfit for the purpose for which the buyer is acquiring it, at least where the buyer has made this purpose known to his/her industry member representative or the seller's industry member;
- and may include:
  - defects that would involve great expense to remedy;
  - local authority and similar notices received by the seller that prejudicially affect a property; and
  - lack of appropriate municipal building and other permits for a property.

Real estate brokers who represent buyers should help their clients ensure their needs are being met in the purchase of any particular property. This may include:

- asking specific questions about such matters as the structure of the property, the roof system, any water seepage, the condition of mechanical systems and other equipment and any notices from a local or municipal authority;
- carefully analyzing the condition of each of the components of the property;

- verifying the condition of a component of the property where the buyer may be of the opinion that a problem may exist;
- enlisting the services of a professional inspector to assist in determining the condition of a property;
- making offers to sellers conditional, for example, on a satisfactory inspection of the property by a qualified individual.

Sellers, on the other hand, cannot conceal defects and cannot mislead buyers about the condition or other attributes of their properties; they must honestly answer questions they are asked. In addition, sellers must also disclose to buyers any “material latent defects” known to them that affect their properties.

Real estate brokers who are representing sellers are obligated to disclose to the buyer or the buyer’s representative any material latent defects known to the industry member or brokerage respecting the seller’s property. An industry member must not participate in hiding or disguising known defects.

The formal definition of material latent defect found in the *Real Estate Act Rules* [s.1(1)(t)] will assist industry members in determining the type of issues that must be disclosed. Material latent defects may be more than a physical defect in the property, such as a property that is unfit for the purpose for which the buyer is acquiring it, if the industry member has become or been made aware of this purpose.

## Examples

1. A seller has finished the basement of a house and in the process has covered the large crack in the basement wall that is deemed to affect the structure. This is a material latent defect and must be disclosed by the seller and the brokerage if known to the brokerage.
2. A seller has finished the basement of a house, or constructed an addition to a house, or built a garage and has not obtained the appropriate approvals or permits.
3. A seller knows that whenever it rains, a house leaks water. The seller knows repairs are necessary, but fails to disclose the defect.
4. The fact that a home was used as a former marijuana grow-op would be a material latent defect if the property has not been professionally remedied. The growing conditions for marijuana create an ideal environment for potentially dangerous mould and mould spores. Some of these dangers may linger after the grow-op has been shut down and though some damage may be covered up with fresh paint or new flooring, damage that is not visible can make a property unfit for habitation and therefore, such a material latent defect would have to be disclosed.