

Stigmas

This bulletin provides guidance to real estate agents on understanding stigmas and the impact stigmas may have for buyer clients.

Summary

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.

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, and other circumstances unique to them.

Stigmas are not explicitly addressed in the legislation. However, when representing a buyer, an agent is obligated 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.

What is a stigma?

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 making the property less desirable or undesirable.

Unlike a latent or patent defect, which may exist at a property, there might be nothing physically observable or measurable associated with a stigma.

The legislation does not define “stigma,” but examples may include:

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

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Considering the numerous potential situations that could lead a buyer to view a property as “stigmatized,” it’s challenging for agents to predict them in advance. This is why it is vital that an agent and a buyer engage in early communication regarding these types of concerns. Agents representing the buyer are advised to discuss the buyer’s specific needs or requirements and any concerns and issues related to purchasing a property.

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In its communication to consumers, RECO advises buyers to carefully consider the areas of concern they may have and discuss them with their agent. Proactive communication and timely inquiries can provide valuable information that helps buyers avoid purchasing a property that they would not feel comfortable living in.

STIGMAS ARE DIFFERENT FOR DIFFERENT PEOPLE

The following questions and responses 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 single death or multiple deaths?
- 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.

Tread carefully

An agent cannot anticipate all the areas of sensitivity that an individual buyer may have. Agents 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.

WHEN REPRESENTING SELLER CLIENTS

Agents should have a full and frank discussion with seller clients regarding stigma. If it is determined that there may be stigmatizing issues associated with the property, the agent should advise the seller client 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.

WHEN REPRESENTING BUYER CLIENTS

Agents should have detailed conversations with buyer clients 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 some cases, a buyer's agent may insert a protective clause in an offer.

Taking a proactive, 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.

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