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## Disclosing defects to buyers a problem area

*Asbestos, former pot-growing houses a concern*

### An aware agent must legally make full disclosure

I recently received two emails from readers on the subject of disclosing home defects to potential buyers, and purchasing homes with problems or stigmas.

One reader is a real estate agent who is listing a house containing vermiculite insulation.

Thousands of houses built between 1940 and 1984 used vermiculite insulation, but virtually all of it came from a mine in Montana that was contaminated with tremolite, an extremely carcinogenic form of asbestos.

The reader wanted to know whether she had an obligation to disclose it in the real estate listing materials.

A second email was from a buyer who was interested in purchasing a home that had been a marijuana grow house for six months. The house has been cleaned and environmentally certified, and is selling at a "bargain price."

The reader wanted to know whether there would still be health problems inside. Would the foundation still be solid? Is it "worthwhile" to buy a former grow-op? How long will the house carry the stigma of having been a grow-op?

For answers to these difficult questions, I turned to Barry Lebow, a veteran Toronto appraiser and educator. He has been appraising properties, testifying in court as an expert, and lecturing to real estate agents for more than 30 years.

Lebow told me there are so many grow houses around that they are a very hot topic in today's market.

Caveat emptor is the watchword. There is no law requiring a vendor to disclose the existence of vermiculite or a grow-op operation, but if the agent knows, he or she must make full disclosure, according to the licensing requirements of the Real Estate Council of Ontario.

Here are Lebow's rules for anyone contemplating buying or selling a house with vermiculite insulation or a former grow-op.

- Ensure that you have well-documented professional reports. Hire someone you can rely on to do your own independent testing.
- Make sure that the professionals who have reports carry errors and omissions insurance.
- Do not pay full price for someone else's problem.
- Logic dictates not to pay a high price for a house with problems but instead go down the road to find a similar house without problems.
- Never lie to anyone about the house. Make full disclosure to your mortgage lender so the deal won't blow up at the last minute. Verify that there are lenders willing to advance on stigmatized houses.
- The same advice applies to insurance. Make sure you can obtain insurance on the problem house before the deal becomes firm.
- If you're doing remedial work, photo and video every step of the process.
- Don't buy a problem house without a vision toward the future and eventual resale. A photo album of work done will give a buyer confidence that there are no hidden problems.
- Disclose and create enough documentation to support the fact you did everything possible to clean up a previous mess.

One question that neither Lebow nor I have an answer to: How long after buying a problem house is it necessary to disclose it to potential buyers three years, five years, 10 years, forever?

Although agents are required to disclose problems if they know about them, Ontario has no laws requiring owners to disclose the nature of stigmatized real estate.

By contrast, California has a law requiring disclosure that a house was a murder site, but this is only for three years after the event.

Lebow says the public will accept a good quality restoration program if it is documented and presented well.

Above all, he says, there are no real estate secrets. Neighbours talk and eventually new purchasers will find out what was hidden from them. This is when anger takes over, followed by a visit to the lawyer to see if there is a case based on misrepresentation.

Should homeowners be required to disclose the nature of a problem like vermiculite insulation or the existence of a grow-op?

Readers are invited to share their views. Contact me by fax or email.

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