

DOING BUSINESS

The Law & You

Put stigmas in their place

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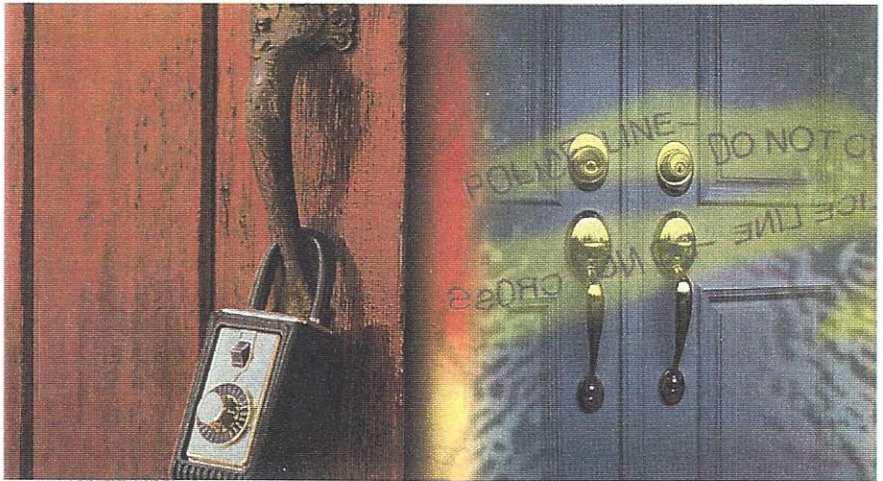
A stigmatized property puts you in the difficult position of wondering what facts, if any, you must disclose to prospective buyers. It's important to understand, because failing to disclose a stigma or disclosing it improperly is a frequent claim in lawsuits against real estate licensees.

A stigmatized property is one with a history that raises intangible fears or perceived future risk on the part of prospective buyers, which can decrease the property's value and its ability to be sold.

When most people think of stigmatized properties, they imagine a house where a murder took place or one that's believed to be haunted—a psychological rather than a physical issue. Should a buyer be told that a murder took place 10 years ago? Does that fact affect the value of the house?

For the answer, you should generally look to your state law. Some states have adopted statutes or regulations that explicitly establish certain psychological stigmas as not material to the transaction, which allows sellers and salespeople to omit disclosure of such stigmas without risk of liability. In California, for instance, a salesperson doesn't have to disclose a murder that took place more than three years ago.

But all stigmas aren't as intangible as haunted houses and murder sites. A stigma can arise from a physical condition. For example, a house with a history of foundation problems may suffer a loss of value, even if there have been repairs, because of a fear that the problems will recur.



Stigmas can spread to a group of houses or even an entire city. This “guilt by association” might affect every house in a subdivision known to have had foundation problems.

To help recognize a stigma, consider these situations:

- A property or its immediate surroundings have suffered major physical damage or have a strong negative psychological connotation.
- Properties suffering similar problems have sold at discounted prices compared with similar unstigmatized properties or have not sold at all.
- Real estate salespeople, lenders, and insurance companies may be wary of this property and discount its value or avoid it.
- The condition is unlikely to be curable or is likely to recur.

There's one exception to the last point: Stigmas can be temporary in certain circumstances. For instance, after the 1994 Los Angeles earthquake, home sales slowed and values plateaued or declined in areas near the earthquake, even in cases where

there was no physical damage to the home. Six years later, the memory of the earthquake has subsided and property values have rebounded, even though Los Angeles is just as likely to suffer an earthquake today as it was in 1994.

If you're faced with a stigmatized property, what should you do? The answer boils down to whether the stigma can be considered a material fact; that is, whether a buyer would want to know it and whether knowing might impact the buyer's decision to buy or the amount paid.

To protect yourself from liability:

- Know your state laws regarding psychological stigmas. If you're unsure what psychological stigmas need not be disclosed in your area, contact your state association of REALTORS® or a real estate attorney.
- Separate fact from fiction. If a stigma is based on rumor and can't be verified (as might be the case with a “haunted” house), you may have no duty to disclose it.
- If you decide a stigma is material

and must be disclosed, first discuss it with the seller; you can't disclose it without the seller's permission. If the seller refuses to disclose a material fact, consider dropping the listing.

■ If a fact is material, regardless of how long ago it took place, disclose it in writing and include *all available* documentation, reports, and permits. When disclosing a temporary physical problem, include documentation of correction, removal, or repair.

■ Disclose only facts, and avoid making any evaluations, conclusions, or predictions.

■ Refer buyers *in writing* to information sources and encourage them *in writing* to consult qualified experts. Don't rely solely on the seller's recol-

lections, potentially incomplete records, or outdated reports.

■ Ask sellers tough questions about the home, its history, and surroundings. Latent defects, such as foundation or soil problems, may not be easily discoverable by reasonable and customary visual inspection, but that doesn't mean they aren't present and shouldn't be thoroughly disclosed.

■ Documents or other information that suggests a past or potential stigma should be carefully examined to determine whether full disclosure or further investigation is necessary.

For example, title company documents might reveal that the property was taken back by the developer because of a history of problems, or

a search at the building department might reveal there were no permits on prior repairs.

■ Know the area where you work and be aware of any off-site stigmas you'd be expected to disclose.

Following these steps should protect not only your client's best interest but also yours and your broker's.

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