



BC Court of Appeal case takes a twist on ‘stigma’ property

The BC Appeals Court have just overruled a key legal decision involving disclosure of so-called ‘stigmatized’ real estate.

A year ago we published a story about sellers and agents’ obligations to disclose stigmas on properties such as homes where suicides or murders once took place or ghosts are said to haunt the premises.

We referred to a BC Supreme Court case brought by Vancouver house buyer Feng Yun Shao who attempted to recover a large payment on a \$6.1 million purchase in 2009, after learning that an alleged Chinese triad leader had lived in the house before being gunned down at the front gate.

Shao testified that when she asked Wang why she was selling the home, Wang claimed she was moving due to her daughter’s changing schools. Shao argued that the non-disclosure of the murder amounted to lying by omission. The Supreme Court decided in favour of Shao on the basis that the seller—Mei Zhen Wang—had an obligation to reveal the murder had taken place at the property, before selling it to Shao

But Wang appealed the earlier court decision in front of the BC Court of Appeal and has been successful in a ruling last week (April 23).

Of course there is a legal obligation to disclose material latent defects when asked about them. But though a stigma such as murder or suicide can certainly affect the perceived value of a property, there is no obligation for the seller to disclose it.

As lawyer Jennifer Clee pointed out in a [*Legally Speaking* article](#), “Failing to disclose a stigma may expose the seller to an expensive and time consuming lawsuit if the buyer subsequently learns of the stigma; disclosing a stigma will avoid that risk.”

In this case, the Appeals court comprising three judges, ruled that the seller was not shown to be lying because in reality the daughter had to change schools because the private school she had attended didn’t want the publicity associated with her father’s murder.

Presumably if the buyer had asked Ms. Wang specifically if there had ever been a shooting on the property, she would either fess up, or not answer the question. In other words, you can decline to answer the question, but you must not lie.

So, what does this decision mean for disclosure of stigmatized listings, if anything?

It suggests that it's very important to know what matters to your clients, and if it's important to your buyer, you need to learn about it and keep them informed.

It also demonstrates how prudent it is for Realtors to Internet search addresses of listings you are presenting to buyers to rule out anything that would negate your client's interest in a listing.

Read more about the Court of Appeals decision in the Times Colonist newspaper article [History of murder no reason to bail](#).

A closer look at disclosing stigmas

We know that Fraser Valley REALTORS® are required to disclose a history of drug production, heritage designation, or material latent defects of properties — as listed on the *Property Disclosure Statement*. But what is your professional obligation for disclosure when the property carries a stigma that can't be seen, smelled, touched or measured — and yet could have a significant negative response from potential buyers?

Stigmatized properties are those that have a history generally viewed as negative and disturbing, even in the absence of a physical condition or material latent defect. A stigmatized home can be any home with a history of murder, suicide, criminality, stories of haunting (ghosts), or location over or next to an old burial ground or cemetery.

Psychological effects

Alberta-based broker Lorri Brewer who specializes in stigmatized real estate points out, “Stigmas are based on an individual's perception and emotional spiritual belief system so the stigma will vary from each person.”

The most common stigma in the Fraser Valley market is homes that were used to produce cannabis or chemical drugs, so the decision to disclose is already made. But what about those other negative stigmas?

On her website Brewer writes, “The psychologically traumatizing event doesn't directly affect the functionality or appearance of the [stigmatized] home, but may trigger a negative psychological effect on a potential buyer that would prevent them from buying the home.”

So while most property stigmas are not physical in nature, some may be based on significant events and potential threats. For example, a home that was used for illegal drug trafficking may still attract criminal interests after the traffickers have left the premises. There have been cases of homes that were cleaned up, with new occupants, and later broken into or visited by people looking for illegal drugs — based on the property's past.

When not disclosing carries liability

A home that has been the site of violent or criminal behaviour can carry stigmas — regardless of the original circumstances that made it so. Consider a recent BC Supreme Court decision that went in favour of homebuyer Feng Yun Shao of Vancouver. She agreed to pay \$6.1 million for a sprawling mansion in Vancouver's upscale Shaughnessy neighbourhood, but had no idea that an alleged Chinese triad leader had lived there before he was gunned down at the front gate.

Shao backed out of the 2009 deal when she learned the house's history and ultimately a BC Supreme Court judge agreed that Shao had been misled and was not in breach of her contract when she reneged on the deal.

In the judgement the court said the home's previous owner had relied on "fraudulent representation" to sell the house, and ordered her to return Shao's \$300,000 deposit — plus interest.

And this is where disclosure on the part of the seller and the Realtors is essential. There is no statute that requires Realtors to disclose a property's history of crime, suicide or purported ghosts, however — if a prospective buyer or their agent specifically asks questions about a property's history, and the Realtor fails to disclose it, they can be held liable if the history is later revealed.

In Shao's case, the seller did not answer truthfully when asked why she was moving. Apparently it was the specter of potential violence at the property following her son-in-law's murder there — not the desire to change her granddaughter's school, as she had claimed.

When "new" is not enough

Mark Weisleder of the law firm Real Estate Lawyers.ca LLP said, "Most appraisers will tell you that if a home has had a murder or suicide in it, it will likely affect the home's market value, whether it occurred in the past year or even up to 20 years earlier. People still disclose what occurred many years ago when selling the old Paul Bernardo home in St. Catharines, Ontario, even though the home where the murders took place was demolished and a new home built."

Professional standards

Canadian Realtors practice under common law and there is no legislation that defines or deals with stigmatized properties. Although it may be morally and ethically appropriate, many Realtors do not disclose psychological stigmas of properties for fear they will not be able to sell it.

But as Paul Cowhig, FVREB's Professional Standards Advisor, points out, "The standards of disclosure required by law are lower than what is required by professional standards of ethics. I would always inform a potential buyer of a stigma like violence or crime on a property from the very beginning."

The creep factor

Recently Toronto police reported the discovery of human remains at several residential properties where accused serial killer Bruce McArthur worked as a landscaper — arguably the ultimate definition of a property stigma. But would that affect the market value of those properties and the saleability? And if so, for what period of time?

However, not all stigmatized properties are so negative. In some cases there's something to gain by selling a spooky past. Here's the ad copy from the American Realtor — the "Master of Disaster"— Randell Bell of Bell, Anderson & Saunders:

"In today's steeply priced housing market, bargain homes are a rarity. However, if you aren't bothered by superstition and bad juju, then a stigmatized sale property might offer the cost savings you're looking for."

There is no failure to disclose in that ad. ❖