



# The Real Estate Transaction: Important Information for Buyers

The purpose of this brochure is to provide general information to buyers on issues that should be considered in the purchase of residential real estate. This brochure and other material provided by a brokerage are **not a substitute for expert advice** from appropriate professionals.

## Disclosure

The purchase of a home is a major event in the lives of buyers and may be the most important financial investment they make. Buyers, therefore, must determine if the property meets their needs and expectations. This philosophy is supported in law by the principle *caveat emptor*, a Latin expression meaning "let the buyer beware".

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;
- ensuring their particular concerns are reflected in the terms of the offer they make.

The law imposes certain disclosure obligations on sellers. They cannot actively conceal defects or deliberately mislead buyers about the condition or other attributes of their properties. They are not obligated to answer questions they may be asked about their properties but any answer given must be honest. In addition, sellers have a legal obligation to disclose to buyers any known **material latent defects** that affect their properties.

A latent defect is one that is not visible or discoverable through a reasonable inspection of a property. It is not possible to provide a comprehensive list of latent defects that qualify as material latent defects, but it includes broad categories of defects that render the property:

- dangerous or potentially dangerous to the occupants;
- unfit for habitation;
- unfit for the purpose for which the buyer is acquiring it, at least where the buyer has made this purpose known to the seller or seller's brokerage;

and may include:

- defects that would involve great expense to remedy;
- local authority and similar notices received by the seller that prejudicially affect the property;
- the lack of appropriate municipal building and other permits.

In clause 6.1(h) of the Purchase Contract the seller represents and warrants to the buyer that "except as otherwise disclosed, the Seller is not aware of any defects that are not visible and that may render the Property dangerous or potentially dangerous to occupants or unfit for habitation". If the seller has not disclosed any material latent defects but you have concerns that some may exist, you or your REALTOR® should make specific enquiries of the seller to address your concerns. You can also discuss with your REALTOR® the addition of specific warranties to the Purchase Contract to protect your interests.

Because sellers are not required to reveal every problem known by them to affect their property and yet are required to respond honestly to any questions they choose to answer, prudent buyers should ask questions about the property. Here are some examples of lines of inquiry you may wish to consider:

- Ask specific questions about the structure, the roof, any water seepage, the condition of mechanical systems and other equipment;
- Ask about the existence of any notices from a local or municipal authority and permits for any renovations or additions;
- Verify the condition of any suspect component of the property;
- Enlist the services of professional inspectors to assist in determining the condition of the property – especially if you have any special issues or concerns (for example, allergies or health concerns).

If information disclosed to you by the seller or the seller's REALTOR®, whether through the listing data, answers to direct questions or otherwise, is critical to your decision to make an offer, you must make that information part of the Purchase Contract. That is because the Purchase Contract provides that there are no representations, warranties or collateral agreements except as described in the Purchase Contract. Except in the case of fraud, buyers cannot later rely on oral or written representations by the seller or their agents that are not embodied in the Purchase Contract. You should discuss with your REALTOR® whether any information is critical to you and how your offer can be written to allow you to rely on that information if it turns out to be inaccurate.

## Inspection Reports

Hiring a qualified property inspector to check the overall condition of the property is recommended to all home buyers. The inspector will report on: the structural components, including the foundation; exterior features, including attached decks, steps, eaves, grading, drainage and driveways; the roof; the plumbing, electrical, heating and air conditioning systems; interior features; insulation and ventilation; and fireplaces. However, home inspections do not cover all aspects of the property and are subject to disclaimers made by the inspection company. Be aware of the limitations on the scope of the inspection.

If the home inspection indicates there is a concern or if you and your REALTOR® suspect there might be a problem, additional professional inspections may be advisable:

- **Electrical Inspection:** an inspection of the electrical system and components of a property that will identify any deficiencies.
- **Engineering Report:** provides information on the structural integrity of any buildings.
- **Environmental Report** (e.g., a Phase one audit): assists in determining if there are any environmental problems related to the property.
- **Furnace and Chimney Inspection:** assists in determining if the furnace and the chimney meet current safety and insurance standards.
- **Gas Line Inspection:** the natural gas utility determines the integrity of gas lines and if any improvements to the property require relocation if they have been built over gas service lines.
- **Moisture Inspection:** checks for signs of mould and other problems caused by moisture; finds reasons for moisture and recommends appropriate action.
- **Plumbing Inspection:** outlines any deficiencies in the plumbing and drainage components of a property.

- **Septic/Sewer Inspection:** determines the condition of the sewer/septic system.
- **Water Quality/Quantity Test:** determines the quantity and quality of the water supply.
- **Wood Stove/Fireplace Inspection:** determines if the wood stove or fireplace meets insurance requirements.

This is not an exhaustive list. If particular problems are identified with the furnace or the roof, for example, you may request other inspections/reports from experts in these areas. It is common practice to ask your REALTOR® to make an offer that is conditional on receiving satisfactory inspections/reports and allowing for a reasonable length of time to make an informed decision based on all of the information available to you. You should be aware that despite the advisability of seeking expert inspections in certain circumstances, the desired inspections may not be available in your area.

### **Title Search**

Part of the due diligence process undertaken by you and your REALTOR® should include a title search of a property you are interested in buying. Once your REALTOR® has the information to identify the legal description, title is something that can be verified online through the provincial government's website, [www.spin.gov.ab.ca](http://www.spin.gov.ab.ca). The title search confirms the ownership of the land and whether there are any easements, restrictive covenants, leases, mortgages and encumbrances or charges registered against the land.

### **Municipal Compliance and Encroachments**

Sellers are required by the Purchase Contract to provide buyers with a real property report (RPR) that shows property boundaries and the location of buildings and other immovable structures on the land. The RPR should also indicate whether the location of all structures complies with municipal bylaws. If the seller does not intend to provide an RPR, then the Warranties and Representations section of the Purchase Contract may become a negotiating point in your transaction and you should seek the advice of your lawyer.

Cost and delay may be factors in the seller's decision not to provide an RPR with evidence of compliance. This is particularly true in more remote areas of the province, where access to the services of a land surveyor is difficult or the municipality does not provide evidence of compliance. Some municipalities make obtaining an RPR with compliance a costly and lengthy process.

The suspected existence of an encroachment might be another reason for the seller's decision not to obtain an RPR. The seller may know or suspect that there is a problem, such as a fence on the neighbour's property or a roof overhanging city land, that would be expensive to fix. In the event that the seller refuses to provide an RPR, you will have to decide with the help of your lawyer whether you want to take on the risk of proceeding without an RPR – with or without the benefit of title insurance.

The practice of buying title insurance began in the United States and our eastern provinces where the land registry systems are more complex and do not lend themselves to certainty of title. In Alberta, the Torrens land registry system guarantees to owners and prospective buyers that what they see on title is accurate and complete as far as ownership of the property is concerned. If mistakes have been made, the Land Titles Assurance Fund is designed to compensate injured parties.

Title insurance companies operating in Alberta may have a role to play in some real estate transactions if, for example, compliance with municipal bylaws is an issue (as described above). Lawyers may also recommend the use of title insurance to avoid delays in transferring title.

Like any other insurance policy, title insurance is subject to conditions and exclusions so it is important to be well informed before opting to buy it. Your lawyer is best qualified to assist you in reviewing the risks and your options.

## **Grow Ops and Meth Labs**

The proliferation of marijuana grow operations and methamphetamine labs in homes or other buildings on properties for sale is causing increasing concern for REALTORS® and their clients. Buyers, with the help of their REALTOR®, should be on the lookout for any signs that such activity has taken place. Your REALTOR® may be able to assist you in identifying signs that a home has been used for drug operations. Some of the more obvious clues are:

- Vents have replaced windows;
- There is extra ventilation and/or the fireplace chimney has been rerouted;
- Windows show signs of having been covered;
- There are signs of heavy condensation and/or mould;
- The electrical panel and wiring are unusual;
- Lighting is brighter than normal;
- There is a skunky smell (marijuana) or the odour of ammonia or acetone (methamphetamine).

In conjunction with one or more of these red flags, you should be suspicious if the home is a vacated rental property or the owners have moved out, and if there is an attached double garage that allows access to the home to be hidden from the neighbours.

Sellers are not required by law to reveal the historical use of their property unless the past activity has created a material latent defect. If asked directly, they are required to answer truthfully, but it may not be prudent to rely on a reassuring response if you have any suspicions whatsoever. A professional property inspection is recommended as the next step and a warranty by the seller should be added to the terms in the Purchase Contract stating that, to the best of the seller's knowledge, the property has never been used to grow marijuana or to manufacture drugs.

If a property has been used as a grow op or meth lab, the seller may advise that the property has been remediated to the standards of the health authorities. In this case, further inspections are justified and it will be your decision as to whether you wish to purchase the property in spite of its history.

## **Due Diligence**

The "Buyer Beware" principle requires buyers and their REALTORS® to undertake active investigation of any property the buyer is serious about purchasing. Your due diligence involves knowing what you want and what you want to avoid, asking questions to gather the information you need to make a fully informed decision and relying on a team of professionals — including a real estate agent, a lawyer and trained inspectors — to provide expertise in specialized areas. By exercising due diligence, you have the ability to ensure that your home purchase is a satisfactory experience for you.