



Do you have to disclose a death in the home to buyers?



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Recently, friends asked if their new neighbour would know that the previous owner had committed suicide in the home. They asked if there was a legal duty by the family of the deceased to disclose that there had been a death in the home.

In Ontario, there is no legal duty to disclose to potential purchasers a death, murder or suicide that took place in the home. In some states in the United States of America there are laws requiring disclosure of deaths to potential purchasers. In Ontario, no such law exists.

There is very little case law that surrounds this issue, but a Quebec case determined that there is no obligation to disclose the fact that there has been a death in the home. In *Dionne and Le Buis*, Justice

Polomandy determined that requiring sellers to disclose to purchasers that certain events occurred in the home would “place an impossible burden on the shoulders of the sellers in assessing which of the events that had occurred in the house might be important in the minds of the buyers and therefore of consequence in terms of his decision.” He went on to say that “it seems more logical to us that it should be buyers who have the obligation to ask questions that will enable them to ascertain that nothing that would prevent their full enjoyment had occurred in the house.”

However, the Code of Ethics for real estate agents who are governed by the Real Estate Council of Ontario (RECO), says they “shall take

reasonable steps to determine the material facts relating to the acquisition or disposition and, at the earliest practicable opportunity, shall disclose the material facts to the client.” (Code of Ethics, s.21) If the real estate agent is not aware of the event in the home, the agent has no obligation to disclose the event. This puts the onus on the potential purchaser. If the fact that a death occurred in the home is particularly unsettling to the point where the purchaser would not want to complete the transaction or live in the home, the potential purchaser must make their real estate agent aware of this so that the agent can inform the potential purchaser.

Our firm recently assisted clients for whom knowing a death occurred in the home in particularly important in their culture. These clients ensured that their agent was aware of their concern and a clause was added to the Agreement of Purchase and Sale that the vendors would declare to the best of their

knowledge that no death had occurred in the home.

Many people are not concerned whether there has been a death in the home, especially in older communities where houses have long histories. However, if a seller is aware of a death in the home, it is best to disclose it to potential purchasers regardless that there is

no law requiring the seller to do so. For many, the fact that the sellers deliberately hid the death and the purchasers did not have an opportunity to discuss the matter will be more upsetting than the fact of the event itself. Sellers should always try to avoid issues and conflicts that could arise after closing and the first place to begin

to avoid conflicts is to disclose any potential issues at the time the Agreement of Purchase and Sale is being entered into.

Co-authored with Robin Goski

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