

Material Latent Defects

A material latent defect is a physical defect that is not visible and makes a property:

- dangerous or potentially dangerous
- unfit to live in
- unfit for a buyer's purpose

These are defects that may not be discoverable during a visual inspection of the property, even by a professional home inspector.

Material latent defects may also include:

- defects that would be very expensive to repair
- when a seller has received a notice from a local government or authority that something about the property must be fixed
- when the seller does not have appropriate building or other permits for the property

These are things your professional will not know unless you tell them. If defects are discovered by a buyer during an inspection, or by their own real estate professional or lawyer when they review permits, real property reports, or title, it could put the transaction in jeopardy.

Examples of material latent defects

- a seller finished the basement of their house and in the process covered a large crack in the basement wall that affects the structure
- a seller finished the basement of their house, or built an addition or a garage, without the appropriate permits
- a seller knows that whenever it rains, water enters the house
- the home was a former marijuana grow-op and the property hasn't been remediated. The growing conditions for a large marijuana grow operation create an ideal environment for potentially dangerous mould and mould spores and these may linger and continue to make the property unfit to live in if it hasn't been remediated
 - Up to four, legally grown marijuana plants are unlikely to cause the damage or mould necessary to create a material latent defect or require remediation. Real estate professionals do not have to disclose that four plants were legally grown in a property, unless they created damage enough to require remediation, which is unlikely. It's the scale of grow operations that causes the damage, not the type of plant.
- the home was a former production operation for fentanyl or other opioids. Particles of these substances can remain in homes and surfaces and can be extremely dangerous if touched or inhaled

Sellers cannot hide defects or mislead buyers about the property's condition or other attributes. You must disclose all material latent defects that you know about.

Your real estate professional must also disclose to buyers any material latent defects they know about. Real estate professionals cannot help hide or disguise material latent defects.