

**INFORMATION FOR SELLERS
DISCLOSURE OF MATERIAL LATENT DEFECTS [Section 5-13] | REAL ESTATE SERVICES ACT**

▶ The *Real Estate Services Act* [RESA] came into force on January 1, 2005. The statute is enacted by the legislature. The purpose of RESA is to protect the public by ensuring that Real Estate Licensees are competent and that they perform their work to certain standards.

▶ Sellers/Sellers Representatives are required by common law to disclose to a Buyer all Material Latent Defects about the property that are known or *ought to have been known*. All disclosures must be in writing, be separate from any agreement giving effect to a trade in real estate and acknowledgement of any/all Material Latent Defects must be signed by the Buyers. Written disclosure of a Material Latent Defect is required whether the real estate is offered for sale or for rent or lease. The Government’s view is that if something is important enough to require disclosure, it should be separate and in writing to ensure it is not buried in some other related document.

▶ The above required disclosures must also be made under Court Ordered Sales, Estate Sales, Powers of Attorney etc. Often these Sellers use an ‘as is, where is’ form, ‘Schedule A’ or a statement in the Contract but they must be fully advised and aware that they/their Representatives **are not able to Contract out of their obligation of separate written disclosure of Material Latent Defects**, as required under Section 5-13 of the Real Estate Council’s Rules.

▶ Timing of the disclosure is **critical**. Written disclosure of all known Material Latent Defects **must be provided to the Buyer before there is an accepted offer**. This applies whether the Property Disclosure Statement [PDS] or some other document is to be used to disclose these defects.*

★ Remember to Cross-Reference receipt of all Disclosures in the Contract of Purchase and Sale

The Buyers acknowledge having received separate written disclosure of any and all Material Latent Defects [E.G. unauthorized accommodation/illegal suite[s] or whatever] prior to executing this Contract of Purchase and Sale and have been afforded the opportunity and advised to seek independent Legal/Professional advice.

5-13 [1] for the purposes of this section:

Material Latent Defect means a material defect that cannot be discerned through a reasonable inspection of the property including any of the following:

- [a] a defect that renders the real estate
 - [i] dangerous or potentially dangerous to the occupants,
 - [ii] unfit for habitation, or
 - [iii] until for the purpose for which a party is acquiring it, if
 - [A] the party has made this purpose known to the Licensee, or
 - [B] the Licensee has otherwise become aware of this purpose;
- [b] a defect that would involve **great expense** to remedy| **IMPORTANT NOTE** | A **great expense** could be just \$100.00 to someone so disclose everything known
- [c] a circumstance that affects the real estate in respect of respect of which a local government or other local authority has given a notice to the client or the Licensee, indicating that the **circumstance must or should be remedied;**
- [d] a **lack of appropriate municipal building and other permits** respecting the real estate.

[2] A Licensee who is providing trading services to a client who is disposing of real estate must disclose to all other parties to the trade, promptly but in any case before any agreement for the acquisition or disposition of the real estate is entered into, any material latent defect in the real estate that is known to the Licensee.

[3] If a client instructs a Licensee to withhold a disclosure required by subsection [2], the Licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate.

[4] As an exception, disclosure to a party is not required under subsection [2] if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate.

A few other examples of Material Latent Defects that the Sellers/Sellers Representative must make are

- ▶ Something has to be remedied – e.g. a notice from the Government or City/Municipality
- ▶ Lack of permits for the real estate ** Unauthorized accommodation **
- ▶ Major renovations, renovations without permits, loft areas opened up, etc.
- ▶ Plumbing problems ▶ Structural issues
- ▶ Grow-op’s, labs, etc., mold etc. ▶ Buried oil tanks
- ▶ Electromagnetic fields [EMF] ▶ Strata assessments
- ▶ Renovations without Strata approval ▶ Other Strata Lots have leaked and the Owners know because of a



building envelope study and Council asks for an engineering firm to confirm. If the Sellers know about significant building deficiencies, whether confirmed or under investigation, they must disclose the problems to Buyers.

[This list is not all encompassing]. Please seek independent legal/professional advice if further information/clarification is required.

The Sellers acknowledge that [Brokerage] _____ and Representative[s] _____ discussed and reviewed the above information in full with them including their obligations of disclosure.

In Witness Whereof I have hereunder set my hand and seal

Signed, Sealed and Delivered in the Presence of

 _____ [Signature of the Sellers]	_____ [Date]	_____ [Witness]
 _____ [Signature of the Sellers]	_____ [Date]	_____ [Witness]