

TALES FROM THE TRENCHES™

BY BARRY C. MCGUIRE

March 2021

“(UN)ATTACHED GOODS, DEFECTS, AND STIGMAS.”

WHEN BUYING AND SELLING REAL ESTATE, BE PREPARED FOR THIS TRIO OF CONCERNS

Negotiating an Offer to Purchase for a piece of real estate is about more than just the price. In this blog post, I'll start by looking at two key points that must be worked out between buyer and seller: unattached goods and material latent defects. Then I'll include a third topic that can be very important—but is often overlooked.

Hey... They Took the Bidet!

I was acting for a buyer purchasing her dream home. She was allowed a walk through 24 hours before the closing/possession day and, you guessed it, I got a call. "They've taken the bidet," said my very upset client. I immediately called the seller's lawyer but had to give my client the bad news that the bidet was gone and wasn't coming back.

The bidet was an unattached good (what used to be called a chattel) and was not included in the sale. You can buy these products at Costco or Home Depot or online. It's very simple: take off the old toilet seat, add a new splitter valve so water can get to the toilet tank and the bidet, plug it in, and voilà! an operating bidet. More importantly for this discussion, removing the bidet is just as easy. The seller removed it, replaced the old toilet seat, and, regrettably, my client is out of luck.

Getting this call reminded me that there are some basic principles that govern many parts of buying and selling a home, such as our bidet example. What is attached and what is unattached, in other words, what has to stay and what can the seller legally take?

Thinking about my client's issue led me to other key topics for discussion when you are buying and selling homes. The other two things we'll look at in this blog post are about knowledge. What does the seller know and isn't telling you? What are they responsible to disclose upfront vs. what will the buyer have to ask about? What is the seller required to tell the buyer when asked?

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Household Goods, Hidden Problems, and the Harshness of Infamy in Real Estate Transactions

Here is some basic information on buying and selling regarding what stays and what goes as well as who has to say what to whom. Let's look at the guidance on those issues provided by the Real Estate Council of Alberta, to which I'll add my own commentary.

Attached & Unattached Goods

Attached goods are items you cannot remove from the property without causing damage or that are physically attached to the property via pipes, screws, bolts, or nails. Attached goods stay with the property unless there is a specific exclusion in the listing agreement or in a buyer's offer to purchase. These include:

- garburator
- water softener
- kitchen cabinets
- built-in appliances
- central vacuum system
- garage door opener

Unattached goods are movable items. Sellers usually take unattached goods from the property before the buyer takes possession. These include:

- wall art
- area rugs
- drapes hooked on curtain rods
- attachments for central vacuum system
- remotes for a garage door opener
- movable kitchen island

Attached goods are typically included with the property while unattached goods are not.

<https://www.reca.ca/consumers/property-considerations/attached-unattached-goods/>

Inclusions/exclusions: Inclusions are unattached goods that are packaged with the sale of a home. Naturally, exclusions are the things that aren't part of the deal. Both buyer and seller must be specific with inclusions/exclusions in any offers and counter-offers.

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If as buyer you want any unattached goods to be bundled into the transaction, make sure to list them as an inclusion on the Offer to Purchase.

If you are the seller, you can either agree to the inclusion when you accept the offer or else you need to remove the unattached good in your counter offer. You can also specifically list exclusions to make it clearer.

Material Latent Defects

A material latent defect is a physical defect that is not discernible through a reasonable inspection, and makes a property:

- dangerous or potentially dangerous to the occupants
- unfit to live in
- unfit for a buyer's purpose, should that purpose be known to the sellers or by the industry professional

These are defects that may not be discoverable during a reasonable 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

<https://www.reca.ca/consumers/property-considerations/material-latent-defects/>

It's illegal for a seller to hide the above kinds of problems. The seller's realtor wouldn't know about these details unless told, and so they must be disclosed during the listing process. If the buyer discovers defects during a home inspection or document review that should have been disclosed but weren't, it could sink the deal.

Property Stigma

A property stigma is an unfavourable quality in a property or one that makes the property less attractive or unattractive, but that is unrelated to the physical condition or features of the property. Stigmas may include:

- a suicide or death that occurred in the property
- the property was the scene of a major crime

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- the address of the property has the wrong numerals
- reports that a property is haunted

What one person finds unacceptable may not be a stigma to another.

<https://www.reca.ca/consumers/property-considerations/property-stigma/>

As a seller you are not legally required to disclose stigma to potential buyers because they are not material latent defects. Buyer's may ask about possible stigma, but sellers are not required to answer. But if you as seller choose to answer, you must be honest. If you refuse to answer, the buyer will have to decide if they're comfortable proceeding without the information...

LESSONS LEARNED:

1. Attached and Unattached Goods

Despite the rules and definitions around attached and unattached goods (formerly fixtures and chattels, respectively), there is often confusion about what stays and what goes. The best policy as a buyer is to say specifically (include) what you want. For a seller, exclude anything you want to keep. Be specific.

2. Material Latent Defects

Not revealing known problems can cause a seller serious harm. Discuss this issue carefully with your realtor when listing the property.

3. Property Stigmata

Stigmatized properties are rare but certainly not unknown. As a buyer think about how you would feel if you discovered that a murder or crime had been committed in your dream home. Why not ask the questions? As a seller with a stigmatized home, think about how you would answer those questions.

LET US HELP YOU BUY & SELL REAL ESTATE IN ALBERTA!

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