

Shedding light on hidden defects

A defect is considered hidden if it the following conditions apply:

- it existed when the property was purchased
- it is unknown to the buyer
- it is not apparent
- it is so serious that if the buyer was aware of it, he would probably not have bought the property or would have asked for a price reduction

Here is an example

As a buyer you visit a house where the walls of the basement are covered with Styrofoam for insulation. As everything seems in perfect condition, you proceed with the purchase. The following Spring water seeps into the basement of your new home. When removing the Styrofoam you discover a significant crack dating back several years. The seller had declared in the Seller's Declaration that you acknowledged when you prepared your offer that he had never had water infiltration. Since there was no indication suggesting that this problem existed at the time of purchase you find yourself having to now deal with a hidden defect.

In this situation, your real estate broker's obligations and his limits

From the signing of a Promise To Purchase or a Brokerage Contract to the signing at the notary, a real estate broker has a duty to advise and inform you and also to detect factors that may adversely affect the parties or the object of the transaction. The broker must complete among other forms, the Declarations by the Seller of the immovable form. The use of this form may decrease the risk of prosecution for the seller and allows the buyer to be fully aware of all the facts during a transaction. The broker must also recommend to the buyer to have a professional or a building inspector carry out a full inspection of the property. However, the broker's "after-sales" service has its limits. Although he can be called in to see the damage and problems with you, his role at this stage is limited. The broker is not authorized to give you a legal opinion, draft a formal demand or act as a substitute for a building professional to suggest remedial work to the property. He may however recommend competent professionals who will help you such as a legal expert, architect, building engineer, etc.

Steps you should take if faced with a hidden defect situation

If you believe you are facing a hidden defect this link contains information on how to proceed.

<https://www.educaloi.qc.ca/en/capsules/hidden-defects-buildings-what-can-you-do>



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