



**A REALTOR® Guide to the BCREA
Property Disclosure Statements
Section 5-13 of the Council Rules– Disclosure of Material Latent Defects**

Sellers are required by common law to disclose to a buyer material latent defects about the property that are known to the seller.

Material latent defects are those which are not discoverable by the buyer through a reasonable inspection of the property and include:

- A. defects which render the real estate:
 - (i) dangerous or potentially dangerous to the occupants;
 - (ii) unfit for habitation; or
 - (iii) unfit for the purpose for which the buyer is acquiring it, if:
 - (a) the buyer has made the purpose known to the seller, or
 - (b) the seller has otherwise become aware of this purpose.
- B. a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the seller indicating that the circumstance must or should be remedied.
- C. a lack of appropriate municipal building and other permits respecting the real estate.

Licensees acting for a seller now have a statutory duty under section 5-13 of the Council Rules to disclose to a buyer material latent defects that are known to the licensee.

An exception to that duty is found in section 5-13 (4) which relieves a licensee of their obligation to disclose material latent defects known to them where the buyer has already received written disclosure of the material latent defect directly from the seller. Written disclosure to satisfy section 5-13 (4) can now be found in the various standard form Property Disclosure Statements (PDS). Since its inception the PDS has always provided disclosure regarding notices from public bodies and lack of appropriate permits. Two new questions have recently been added concerning whether the seller is aware of material latent defects that would render the property dangerous to occupants or unfit for habitation.

Accordingly if a PDS, which discloses the presence of a material latent defect, is completed by the seller and delivered to the buyer prior to the parties entering into a contract of purchase and sale, no disclosure is required from the licensee except where the licensee is or becomes aware of a material latent defect that has not been disclosed.

The timing of the delivery of a PDS which discloses the presence of a material latent defect is important. Section 5-13(2) requires the disclosure to be delivered “promptly but in any case before any agreement for the acquisition or disposition of the real estate is entered into...” Listing representatives should ensure that, where a seller has disclosed the presence of a material latent defect in a PDS, the PDS is delivered to the buyer before an offer is prepared by the buyer. Such delivery can be achieved through a variety of methods including:

- (a) the listing representative setting out the material latent defect(s) in the REALTOR® remarks
- (b) the listing representative indicating in the REALTOR® remarks that the seller has disclosed the presence of a material latent defect in the PDS and encouraging buyer’s agents to contact the listing representative to obtain a copy of the PDS
- (c) providing a copy of the PDS to every possible buyer at open houses and first contacts.

If a licensee knows of a material latent defect affecting a property and a PDS has not been completed by the seller and delivered to the buyer prior to the parties entering into a contract of purchase and sale, the licensee will have an obligation under section 5-13 to personally disclose in writing to the buyer such material latent defect. If a seller instructs the licensee not to make such disclosure, the licensee must refuse to provide services to the seller. If that occurs, the licensee should immediately seek brokerage and/or legal advice to protect themselves.

Licensees should remember that the duty to disclose material latent defects is an on-going obligation which might arise during the course of the transaction after the PDS has been completed and delivered to the buyer. This is particularly possible where, during the course of the transaction, the purpose for which the buyer is acquiring the property becomes known to the licensee and that purpose is inconsistent with the existing condition of the property.

Despite the general categories of material latent defects described in section 5-13 of the Council Rules, it is important to remember that a question as to whether a certain condition or set of circumstances constitutes a material latent defect will be determined on the basis of the individual facts and circumstances pertaining to that matter and may require legal advice. Licensees should be wary, except in the most obvious of circumstances, of advising sellers as to whether a certain set of facts and circumstances constitutes a material latent defect. A seller should be referred to their legal counsel if there is any doubt.

Licensees acting for sellers should advise their client, the seller, of the following:

1. Any material defects about the property known to the licensee.
2. The seller's legal obligation to disclose to the buyer material latent defects known to the seller.
3. The questions regarding disclosure of material latent defects contained in the Property Disclosure Statements.
4. The statutory obligation of the licensee to disclose to the buyer material latent defects known to the licensee unless disclosure has been made by the seller.
5. The statutory obligation of the licensee to refuse to act for the seller if the seller instructs the licensee to withhold disclosure of material latent defects.
6. The on-going nature of the obligation to disclose and the duty of the seller and the licensee to advise the buyer of any material latent defects that may arise or become known during the course of the transaction.

INFORMATION ABOUT THE PROPERTY DISCLOSURE STATEMENT
RESIDENTIAL

If this disclosure statement is being used for bare land strata, use the Property Disclosure Statement – Strata Properties along with this form.

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE PROPERTY DISCLOSURE STATEMENT.

EFFECT OF THE PROPERTY DISCLOSURE STATEMENT:

The property disclosure statement will not form part of the Contract of Purchase and Sale unless so agreed by the buyer and the seller. This can be accomplished by inserting the following wording in the Contract of Purchase and Sale:

“The attached Property Disclosure Statement dated
_____ yr. _____ is incorporated into
and forms part of this contract.”

ANSWERS MUST BE COMPLETE AND ACCURATE:

The property disclosure statement is designed, in part, to protect the seller by establishing that all relevant information concerning the premises has been provided to the buyer. It is important that the seller not answer “do not know” or “does not apply” if, in fact, the seller knows the answer. An answer must provide all relevant information known to the seller. In deciding what requires disclosure, the seller should consider whether the seller would want the information if the seller was a potential buyer of the premises.

BUYER MUST STILL MAKE THE BUYER’S OWN INQUIRIES:

The buyer must still make the buyer’s own inquiries after receiving the property disclosure statement. Each question and answer must be considered, keeping in mind that the seller’s knowledge of the premises may be incomplete. Additional information can be requested from the seller or from an independent source such as the Municipality or Regional District. The buyer can hire an independent, licensed inspector to examine the premises and/or improvements to determine whether defects exist and to provide an estimate of the cost of repairing problems that have been identified on the property disclosure statement or on an inspection report.

FOUR IMPORTANT CONSIDERATIONS:

1. The seller is legally responsible for the accuracy of the information which appears on the property disclosure statement. Not only must the answers be correct, but they must be complete. The buyer will rely on this information when the buyer contracts to purchase the premises. Even if the property disclosure statement is not incorporated into the Contract of Purchase and Sale, the seller will still be responsible for the accuracy of the information on the property disclosure statement if it caused the buyer to agree to buy the property.
2. The buyer must still make the buyer’s own inquiries concerning the premises in addition to reviewing a property disclosure statement, recognizing that, in some cases, it may not be possible to claim against the seller, if the seller cannot be found or is insolvent.
3. Anyone who is assisting the seller to complete a property disclosure statement should take care to see that the seller understands each question and that the seller’s answer is complete. It is recommended that the seller complete the property disclosure statement in the seller’s own writing to avoid any misunderstanding.
4. If any party to the transaction does not understand the English language, consider obtaining competent translation assistance to avoid any misunderstanding.

PROPERTY DISCLOSURE STATEMENT RESIDENTIAL



Date of disclosure: January 27, 2011

The following is a statement made by the seller concerning the premises or bare-land strata lot located at:

ADDRESS/BARE-LAND STRATA LOT #:

(the "Premises")

<p>THE SELLER IS RESPONSIBLE for the accuracy of the answers on this property disclosure statement and where uncertain should reply "Do Not Know." This property disclosure statement constitutes a representation under any Contract of Purchase and Sale if so agreed, in writing, by the seller and the buyer.</p>	<p>THE SELLER SHOULD INITIAL THE APPROPRIATE REPLIES.</p>			
1. LAND	YES	NO	DO NOT KNOW	DOES NOT APPLY
A. Are you aware of any encroachments, unregistered easements or unregistered rights-of-way?			 	
B. Are you aware of any past or present underground oil storage tank(s) on the Premises?			 	
C. Is there a survey certificate available?			 	
D. Are you aware of any current or pending local improvement levies/charges?			 	
E. Have you received any other notice or claim affecting the Premises from any person or public body?			 	
2. SERVICES				
A. Indicate the water system(s) the Premises use: Municipal <input type="checkbox"/> Community <input type="checkbox"/> Private <input type="checkbox"/> Well <input type="checkbox"/> Not Connected <input type="checkbox"/> Other _____				
B. Are you aware of any problems with the water system?			 	
C. Are records available regarding the quantity and quality of the water available?				
D. Indicate the sanitary sewer system the Premises are connected to: Municipal <input type="checkbox"/> Community <input type="checkbox"/> Septic <input type="checkbox"/> Lagoon <input type="checkbox"/> Not Connected <input type="checkbox"/> Other _____				
E. Are you aware of any problems with the sanitary sewer system?			 	
F. Are there any current service contracts; (i.e., septic removal or maintenance)?			 	
G. If the system is septic or lagoon and installed after May 31, 2005, are maintenance records available?			 	
3. BUILDING				
A. To the best of your knowledge, are the exterior walls insulated?				
B. To the best of your knowledge, is the ceiling insulated?				
C. To the best of your knowledge, have the Premises ever contained any asbestos products?				
D. Has a final building inspection been approved or a final occupancy permit been obtained?				
E. Has the fireplace, fireplace insert, or wood stove installation been approved by local authorities?				
F. Are you aware of any infestation or unrepaired damage by insects or rodents?			 	
G. Are you aware of any structural problems with any of the buildings?			 	
H. Are you aware of any additions or alterations made in the last sixty days?			 	
I. Are you aware of any additions or alterations made without a required permit and final inspection; e.g., building, electrical, gas, etc.?			 	

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INITIALS

DATE OF DISCLOSURE

ADDRESS/BARE-LAND STRATA LOT #:

3. BUILDING (continued):	YES	NO	DO NOT KNOW	DOES NOT APPLY
J. Are you aware of any problems with the heating and/or central air conditioning system?			X	X
K. Are you aware of any moisture and/or water problems in the walls, basement or crawl space?			X	X
L. Are you aware of any damage due to wind, fire or water?			X	X
M. Are you aware of any roof leakage or unrepaired roof damage? (Age of roof if known: _____ years)			X	X
N. Are you aware of any problems with the electrical or gas system?			X	X
O. Are you aware of any problems with the plumbing system?			X	X
P. Are you aware of any problems with the swimming pool and/or hot tub?			X	X
Q. Do the Premises contain unauthorized accommodation?				
R. Are there any equipment leases or service contracts; e.g., security systems, water purification, etc?			X	X
S. Were these Premises constructed by an "owner builder," as defined in the <i>Homeowner Protection Act</i> , with construction commencing, or a building permit applied for, after July 1, 1999? (If so, attach required Owner Builder Declaration and Disclosure Notice.)			X	X
T. Are these Premises covered by home warranty insurance under the <i>Homeowner Protection Act</i> ?			X	
U. Is there a current "EnerGuide for Houses" rating number available for these premises? i) If yes, what is the rating number? _____ ii) When was the energy assessment report prepared? _____				X
4. GENERAL				
A. Are you aware if the Premises have been used as a marijuana grow operation or to manufacture illegal drugs?			X	X
B. Are you aware of any material latent defect as defined in Real Estate Council of British Columbia Rule 5-13(1)(a)(i) or Rule 5-13(1)(a)(ii) in respect of the Premises?			X	X

For the purposes of Clause 4.B. of this form, Council Rule 5-13(1)(a)(i) and (ii) is set out below.

5-13 Disclosure of latent defects

(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

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INITIALS

DATE OF DISCLOSURE

ADDRESS/BARE-LAND STRATA LOT #:

5. ADDITIONAL COMMENTS AND/OR EXPLANATIONS (Use additional pages if necessary.)

The seller states that the information provided is true, based on the seller's current actual knowledge as of the date on page 1. Any important changes to this information made known to the seller will be disclosed by the seller to the buyer prior to closing. The seller acknowledges receipt of a copy of this property disclosure statement and agrees that a copy may be given to a prospective buyer.

PLEASE READ THE INFORMATION PAGE BEFORE SIGNING.

SELLER(S)

SELLER(S)

The buyer acknowledges that the buyer has received, read and understood a signed copy of this property disclosure statement from the seller or the seller's brokerage on the _____ day of _____ yr. _____. The prudent buyer will use this property disclosure statement as the starting point for the buyer's own inquiries.

The buyer is urged to carefully inspect the Premises and, if desired, to have the Premises inspected by a licensed inspection service of the buyer's choice.

BUYER(S)

BUYER(S)

The seller and the buyer understand that neither the listing nor selling brokerages or their managing brokers, associate brokers or representatives warrant or guarantee the information provided about the Premises.

INFORMATION ABOUT THE PROPERTY DISCLOSURE STATEMENT
STRATA TITLE PROPERTIES

THIS INFORMATION IS INCLUDED FOR THE ASSISTANCE OF THE PARTIES ONLY. IT DOES NOT FORM PART OF THE PROPERTY DISCLOSURE STATEMENT.

EFFECT OF THE PROPERTY DISCLOSURE STATEMENT:

The property disclosure statement will not form part of the Contract of Purchase and Sale unless so agreed by the buyer and the seller. This can be accomplished by inserting the following wording in the Contract of Purchase and Sale:

“The attached Property Disclosure Statement dated
_____ yr. _____ is incorporated into
and forms part of this contract.”

ANSWERS MUST BE COMPLETE AND ACCURATE:

The property disclosure statement is designed, in part, to protect the seller by establishing that all relevant information concerning the property has been provided to the buyer. It is important that the seller not answer “do not know” or “does not apply” if, in fact, the seller knows the answer. An answer must provide all relevant information known to the seller. In deciding what requires disclosure, the seller should consider whether the seller would want the information if the seller was a potential buyer of the Unit.

BUYER MUST STILL MAKE THE BUYER'S OWN INQUIRIES:

The buyer must still make the buyer's own inquiries after receiving the property disclosure statement. Each question and answer must be considered, keeping in mind that the seller's knowledge of the Unit and the Development may be incomplete. Additional information can be requested from the seller or from an independent source such as the Municipality or Regional District. The buyer can hire an independent, licensed inspector to examine the Unit or the Development and/or improvements to determine whether defects exist and to provide an estimate of the cost of repairing problems that have been identified on the disclosure statement or on an inspection report.

SIX IMPORTANT CONSIDERATIONS:

1. The seller is legally responsible for the accuracy of the information which appears on the property disclosure statement. Not only must the answers be correct, but they must be complete. The buyer will rely on this information when the buyer contracts to purchase the property. Even if the property disclosure statement is not incorporated into the Contract of Purchase and Sale, the seller will still be responsible for the accuracy of the information on the property disclosure statement if it caused the buyer to agree to buy the Unit.
2. The buyer must still make the buyer's own inquiries concerning the Unit in addition to reviewing a property disclosure statement, recognizing that, in some cases, it may not be possible to claim against the seller, if the seller cannot be found or is insolvent.
3. Anyone who is assisting the seller to complete a property disclosure statement should take care to see that the seller understands each question and that the seller's answer is complete. It is recommended that the seller complete the property disclosure statement in the seller's own writing to avoid any misunderstanding.
4. If any party to the transaction does not understand the English language, consider obtaining competent translation assistance to avoid any misunderstanding.
5. The buyer should personally inspect both the parking space(s) and storage locker(s) assigned to the Unit.
6. “Unit” is defined as the living space, including limited common property, being purchased. “Common Property” includes buildings or spaces accessible to all owners. “Lands” is defined as the land upon which the Unit, all other strata lots and Common Property are constructed. “Development” is defined as the Lands, the Unit and all other strata lots and Common Property.

PROPERTY DISCLOSURE STATEMENT

STRATA TITLE PROPERTIES



Date of disclosure: January 27, 2011

The following is a statement made by the seller concerning the property or strata unit located at:

ADDRESS/STRATA UNIT #: _____ (the "Unit")

THE PROPERTY CONTAINS THE FOLLOWING BUILDINGS:

_____ Principal Residence _____ Residence(s) _____ Barn(s) _____ Shed(s)
 _____ Other Building(s) Please describe _____

THE SELLER IS RESPONSIBLE for the accuracy of the answers on this property disclosure statement and where uncertain should reply "Do Not Know." This property disclosure statement constitutes a representation under any Contract of Purchase and Sale if so agreed, in writing, by the seller and the buyer. "Unit" is defined as the living space, including related limited common property, being purchased. "Common Property" includes buildings or spaces accessible to all owners. "Lands" is defined as the land upon which the Unit, all other strata lots and Common Property are constructed. "Development" is defined as the Lands, the Unit and all other strata lots and Common Property.

**THE SELLER SHOULD INITIAL
THE APPROPRIATE REPLIES.**

	YES	NO	DO NOT KNOW	DOES NOT APPLY
1. LAND				
A. Are you aware of any past or present underground oil storage tank(s) in or on the Development?			 	
B. Are you aware of any current or pending local improvement levies/charges?			 	
C. Are you aware of any pending litigation or claim affecting the Development or the Unit from any person or public body?			 	
2. SERVICES				
A. Are you aware of any problems with the water system?			 	
B. Are you aware of any problems with the sanitary sewer system?			 	
3. BUILDING Respecting the Unit and Common Property				
A. Has a final building inspection been approved or a final occupancy permit been obtained?				
B. Has the fireplace, fireplace insert, or wood stove installation been approved by local authorities?				
C. (i) Has this Unit been previously occupied?				
(ii) Are you the "owner developer" as defined in the Strata Property Act?			 	
D. Does the Unit have any equipment leases or service contracts; e.g., security systems, water purification, etc.?			 	
E. Are you aware of any additions or alterations made without a required permit; e.g., building, electrical, gas, etc.?			 	
F. Are you aware of any structural problems with any of the buildings in the Development?			 	
G. Are you aware of any problems with the heating and/or central air conditioning system?			 	
H. Are you aware of any damage due to wind, fire or water?			 	
I. Are you aware of any infestation or unrepaired damage by insects or rodents?			 	
J. Are you aware of any leakage or unrepaired damage?			 	
K. Are you aware of any problems with the electrical or gas system?			 	
L. Are you aware of any problems with the plumbing system?			 	
M. Are you aware of any pet restrictions?			 	

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INITIALS

DATE OF DISCLOSURE

ADDRESS/STRATA UNIT #:

3. BUILDING Respecting the Unit and Common Property. (continued)	YES	NO	DO NOT KNOW	DOES NOT APPLY
N. Are you aware of any rental restrictions?			X	X
O. Are you aware of any age restrictions?			X	X
P. Are you aware of any other restrictions? If so, provide details on page 4, Section 5 Additional Comments.			X	X
Q. Are you aware of any special assessment(s) voted on or proposed? (i) For how much? _____			X	X
R. Have you paid any special assessment(s) in the past 5 years? (i) For how much? _____			X	X
S. Are you aware of any agreements that provide for future payment or possible payment of monies to you in your capacity as the current owner of the Unit?			X	X
T. Are you aware of any pending strata corporation policy or bylaw amendment(s) which may alter or restrict the uses of the Unit?			X	X
U. Are you aware of any problems with the swimming pool and/or hot tub?			X	X
V. Are you aware of any additions, alterations or upgrades made to the Unit that were not installed by the original developer?			X	X
W. Are there any agreements under which the owner of the Unit assumes responsibility for the installation and/or maintenance of alterations to the Unit or Common Property?				X
X. Was this Unit constructed by an "owner builder," as defined in the <i>Homeowner Protection Act</i> , with construction commencing, or a building permit applied for, after July 1, 1999? (If so, attach Owner Builder Declaration and Disclosure Notice.)				
Y. Is this Unit or related Common Property covered by home warranty insurance under the <i>Homeowner Protection Act</i> ?			X	X
Z. Is there a current "EnerGuide for Houses" rating number available for this unit? i) If so, what is the rating number? _____ ii) When was the energy assessment report prepared? _____				X
AA. Nature of Interest/Ownership: Freehold <input type="checkbox"/> Time Share <input type="checkbox"/> Leasehold <input type="checkbox"/> Undivided <input type="checkbox"/> Bare Land <input type="checkbox"/> Cooperative <input type="checkbox"/>				
BB. Management Company _____ Name of Manager _____ Telephone _____ Address _____				
CC. If self managed, Strata Council President's Name _____ Telephone _____ Strata Council Secretary Treasurer's Name _____ Telephone _____				
DD. Are the following documents available?	Yes	No	Can be obtained from:	
Bylaws				
Rules/Regulations				
Year-to-date Financial Statements				
Current Year's Operating Budget				
All Minutes of Last 24 Months Including Council, Special and AGM Minutes				
Engineer's Report and/or Building Envelope Analysis				
Strata Plan				
EE. What is the monthly strata fee? \$				

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INITIALS

DATE OF DISCLOSURE

ADDRESS/STRATA UNIT #:

3. BUILDING Respecting the Unit and Common Property. (continued)									
Does this monthly fee include:	YES	NO	DO NOT KNOW	DOES NOT APPLY		YES	NO	DO NOT KNOW	DOES NOT APPLY
Management?					Recreation?				
Heat?					Cable?				
Hot Water?					Gardening?				
Gas Fireplace?					Caretaker				
Garbage?					Water?				
Sewer?					Other?				

GG. (i) Number of Unit parking stalls _____ included and specific numbers _____
 (ii) Are these: (a) Limited Common Property? (b) Common Property? (c) Rented? (d) Long Term Lease? (e) Other?

HH. (i) Storage Locker? Yes No Number(s) _____
 (ii) Are these: (a) Limited Common Property? (b) Common Property? (c) Rented? (d) Long Term Lease? (e) Other?

4. GENERAL	YES	NO	DO NOT KNOW	DOES NOT APPLY
A. Are you aware if the Unit, or any other unit, or the Development has been used as a marijuana grow operation or to manufacture illegal drugs?			X	X
B. Are you aware of any material latent defect as defined in Real Estate Council of British Columbia Rule 5-13(1)(a)(i) or Rule 5-13(1)(a)(ii) in respect of the Property or Unit?			X	X

For the purposes of Clause 4. B. of this form, Council Rule 5-13(1)(a)(i) and (ii) is set out below.

5-13 Disclosure of latent defects

(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

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INITIALS

DATE OF DISCLOSURE

ADDRESS/STRATA UNIT #:

5. ADDITIONAL COMMENTS AND/OR EXPLANATIONS (Use additional pages if necessary.)

The seller states that the information provided is true, based on the seller's current actual knowledge as of the date on page 1. Any important changes to this information made known to the seller will be disclosed by the seller to the buyer prior to closing. The seller acknowledges receipt of a copy of this disclosure statement and agrees that a copy may be given to a prospective buyer.

PLEASE READ THE INFORMATION PAGE BEFORE SIGNING.

SELLER(S)

SELLER(S)

The buyer acknowledges that the buyer has received, read and understood a signed copy of this property disclosure statement from the seller or the seller's brokerage on the _____ day of _____ yr. _____.
The prudent buyer will use this property disclosure statement as the starting point for the buyer's own inquiries.

The buyer is urged to carefully inspect the Development and, if desired, to have the Development inspected by a licensed inspection service of the buyer's choice.

The buyer acknowledges that all measurements are approximate. The buyer should obtain a strata plan drawing from the Land Title Office or retain a professional home measuring service if the buyer is concerned about the size.

BUYER(S)

BUYER(S)

The seller and the buyer understand that neither the listing nor selling brokerages or their managing brokers, associate brokers or representatives warrant or guarantee the information provided about the strata Unit or the Development.