



Does a seller need to disclose a death which occurred on their property?

A: A death which occurred on a property, and the manner of the death, are always material facts to be disclosed to potential buyers when:

- the death occurred within three years prior to the date of the buyer's offer to purchase; or
- the death affects the property's value or desirability to the buyer.

However, the seller and their agent have no affirmative duty to voluntarily disclose information to a potential buyer regarding a prior occupant who was afflicted with the HIV virus or died from AIDS-related complications.

For a death which occurred on the property more than three years before the date of the buyer's offer to purchase, neither the seller's nor buyer's agent owes an affirmative duty to voluntarily disclose information regarding a prior occupant whose death, from any cause, occurred on the property.

On direct inquiry by the buyer or their agent, regardless of whether a death occurred within three years of the buyer submitting a purchase offer, the seller's agent must disclose their knowledge of any deaths on the property.

Further, an inquiry by the buyer into deaths indicates a death on the premises is a fact which might affect the buyer's use and enjoyment of the property. On an inquiry into deaths by a buyer, an affirmative duty is imposed on the buyer's agent to either:

- investigate the death; or
- recommend an investigation by the buyer before an offer is made, unless the offer includes a further-approval contingency on the subject of death.

Thus, every agent has an affirmative duty to voluntarily disclose a prior death on the property when it is known the death might affect the buyer's valuation or desire to own the property — a material fact.

An agent who discloses, on inquiry, that they do not know whether a death occurred on the property needs to hand the buyer a memorandum stating:

- the buyer has made an inquiry about deaths on the property;
- the agent has disclosed all their knowledge concerning the inquiry; and
- whether the agent or others will further investigate any deaths on the property.