

What Is A Material Defect?

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A material defect is any item or concept that can alter a seller or buyer's decisions in a transaction. These defects can change the direction of a transaction and significantly impact the value of the property. All known defects are to be disclosed by any party within the transaction, given the knowledge of the defect.

Let's look at a simple defect, such as a faulty foundation. In this example, we know of an issue with the foundation because of a visible crack in the basement wall. Even though the crack is visible to the transaction's parties, it must still be disclosed. The crack could potentially change a seller's or a buyer's decision to proceed in a sale.

In another example, the same crack exists, but a piece of furniture unintentionally hides it. A buyer has an inspection performed, and the inspector discovers the crack. This would be written up in the inspector's report and disclosed at that time. The material defect is disclosed in a different manner but could still affect the decision to move forward with the sale.

All types of properties could have a material defect. For example, an agricultural parcel could have a site where some trash was buried at some point in time. Some agricultural properties might have an abandoned well that will need to be disclosed. A livestock facility could have environmental issues due to holding capacity or lagoon age and capacity. A commercial or industrial property could have had a chemical spill. A neighboring property might have some contaminants that have leached onto the subject property. All these need to be disclosed.

The status of the seller or buyer is also considered a material defect. Suppose either party is a real estate investor or a licensed agent. In that case, this can potentially change the decision of one or both of the

parties. If an investor is the buyer and offers the listing price, the property might be listed too low. The selling agent might have missed something when performing a market analysis. If the seller is a real estate agent, the buyer might want to know why they are selling. Is there something the agent sees in the market? Could there be a change in the market coming? These are both questions buyers and sellers might want to ask themselves during a transaction.

Defects that are not disclosed can cause issues for both the buyer and the seller of the property. If the seller is unaware of the issue, then there is a small chance they will be okay if the transaction ends up in court. If the seller's material defect was unknown, legal action might not be imposed. If the seller and the agent are aware of the issue and collectively do not make the appropriate disclosures, then both parties are liable. Both parties could be found guilty of fraud.

The bottom line is "disclose, disclose, disclose!" Issues such as easements, wells, burial sites, credit difficulties, and seller's status in the industry are all material defects that must be disclosed to all parties of the transaction. The key to material defects is to think if the known defect or status would make you as a buyer or seller change your decision about proceeding with the transaction.