

What should buyers of a house be told about it?

Written by Patricia Lane, Senior Lecturer, University of Sydney

Buying a house is probably one of the most important purchases a person will make. Many people think the vendor is required to disclose matters that affect the property value, particularly if the buyer has no other means of finding out the full history of the house. For instance, if someone was murdered in the house, do the buyers have a right to be told?

The solicitor or conveyancer who acts for a buyer will probably tell them the law is “[buyer beware](#)”. It is up to buyers to satisfy themselves that the property is not affected by any defects in title, that it can be used for the purposes the buyer intends, and that any building on the property is sound.

Read more: [Home ownership foundations are being shaken, and the impacts will be felt far and wide](#)

If a vendor actively conceals a known defect, then that might amount to fraud. Examples include [painting to conceal serious termite damage](#), or [giving a deliberately false answer to a question from a buyer](#) about the property.

A purchaser would need to show, though, that the vendor was deliberately dishonest or at least reckless. That’s a high standard of proof to meet.

The law requires vendors in some states, including [New South Wales](#) and [Victoria](#), to disclose the title documents and any registered encumbrances such as easements and covenants. The vendor’s mortgages will be discharged on settlement.

In [NSW](#) and some other states, vendors [must attach to the contract](#) a certificate from the local council that sets out whether the land is affected by administrative or regulatory matters. This includes issues like zoning, subdivision, contaminated land or identified bushfire or flood

What should buyers of a house be told about it?

Written by Patricia Lane, Senior Lecturer, University of Sydney

hazards. These council certificates can give buyers a good idea of whether they will be able to use the property as they wish.

[Where certain statutory requirements have not been disclosed](#), the buyer can rescind the contract and get their deposit back if the matter was so important that they would not have entered into the contract had they known about it.

In many states, though, there is no duty to disclose matters relating to the title or the use of the land. If the property is a commercial or investment property, the [Australian Consumer Law](#) gives remedies to buyers who are induced to enter into contracts by [misleading or deceptive conduct](#) in trade or commerce by the vendor or the vendor's agent. Even if the vendor is selling privately, an agent might still be liable if they [misrepresent the property](#), or tell half-truths that [give a misleading impression](#).

But there is still no general duty on vendors or their agents to disclose matters that affect the property value and may be significant to buyers, but which do not amount to defects in title that can't be discovered by reasonable inspection.

Read more: [Explainer: how the paperless property market works](#)

How far should disclosure go?

Should vendors be obliged to disclose all matters that might influence a buyer? There is probably a good case for all state and territory governments to follow NSW with a requirement to disclose council information. But, beyond that, just how far should a duty of disclosure go?

What should buyers of a house be told about it?

Written by Patricia Lane, Senior Lecturer, University of Sydney

For instance, if something terrible, such as murder or other violent and upsetting events, has happened at a property, should a vendor be required to tell potential buyers about this? In some US states, [courts have held](#) that a vendor should disclose the history of the house where a murder has been committed. US brokers call these “stigmatised properties”.

In a [case in NSW](#), a house where three members of a family were murdered was sold to unsuspecting buyers, who later found out about this history. They refused to proceed, but as the vendors were not required to disclose the history, the buyers lost their deposit. The estate agent who handled the sale was ultimately fined for glossing over the history of the house. The agent also met the cost of the forfeited deposit, but that depended on the particular facts involved.

Such horrible events are rare, but buyers might be very distressed by that kind of history. Shouldn't buyers have complete information?

One problem is just how far any duty of disclosure would reach. Should any matter at all that affects the value of the property be disclosed?

Some buyers might be particularly sensitive and consider that they should be given comprehensive information about the history of the property. Would it be necessary to disclose that a person had died at the property, even if of old age or natural causes?

Just as vendors might not know about any structural defects in the property, they might not know much about the history of the property. A landlord vendor, for example, might not have information about what went on in the house while tenants were living in it. It might be unfair, then, to shift to the vendor the risk of any decline in value caused by sensitive buyers.

Estate agents are usually responsible for marketing the property. So, if any duty is to exist for making statements about it, perhaps this should lie on the agent, and not the vendors, and should be confined to compensation rather than the ability to get out of the sale. Purchasers can always on-sell a bad bargain, but vendors might be stuck with the property through no fault of their own if they have to bear the responsibility of disclosing everything about its history.

What should buyers of a house be told about it?

Written by Patricia Lane, Senior Lecturer, University of Sydney

Read more: [Spring selling season and other gimmicks](#)

Patricia Lane does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

Authors: Patricia Lane, Senior Lecturer, University of Sydney

Read more <http://theconversation.com/what-should-buyers-of-a-house-be-told-about-it-102196>