

What to do if you encounter latent defects

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Buying a home is one of the largest investments most Canadians will make in their lifetimes. But while there can be stressful moments throughout the purchasing process, moving to a new home is often an exciting prospect for one's whole family. The promise of more space and a new neighbourhood are just some of the highlights people look forward to when moving.

But what happens if, after you move in, you discover potentially expensive and previously unknown problems with the home? You may have run into what is known as a latent defect.

Latent defects, sometimes called hidden defects, are faults with a property that were present at the time of the transaction, but weren't apparent during the inspection and purchasing process. These defects render the property unfit for use, or diminish its usefulness to the point that buyers would not have bought it — or paid so high a price — if they had been aware of the problems at the time of sale.

"Some examples of hidden defects could be foundation cracks hidden beneath the soil or behind insulation, rotted beams or wood

“This situation can ... ruin the experience of owning a new property.

framing concealed behind finishing or other materials, issues with plumbing or sewer waste systems, piping, issues with mould, and infestation of vermin such as insects or rodents," said Gary Bloomfield, building inspector and co-owner of EnSpeco. "Buried oil tanks are common, too, as well as issues with heating, ventilation and air-conditioning systems resulting in discomfort, condensation damages, and so on."

Hidden defects are not uncommon and can occur in both newer and older properties, but more often they're found in older homes as the age of the property has allowed the effects of the hidden defect to become apparent. Regardless of the age of the property, the discovery of latent defects can have a devastating impact on buyers.

"It's generally recommended that two per cent of the purchase price be set aside to do minor improvements or repairs that have already been identified," said Kevin Lantaff, building inspector and co-owner of EnSpeco. "But when a hidden defect appears, additional finances are required that have not been accounted for and many people do not have the resources to address the issues. This situation can be extremely stressful for families and ruin the experience of owning a new property."

Thankfully, buyers who find themselves in a latent-defect situation do have some recourse.

"In many jurisdictions outside of Quebec, homes are bought as-is with no recourse against a previous owner for latent defects," said Jay Deakin, real estate broker and owner of Deakin Realty. "In Quebec, our law allows a buyer to claim damages from the previous owner to cover the costs to repair latent-defect issues. There is a process to follow, but in the case of a legitimate hidden defect, our law protects the new owner and allows them full compensation to rectify the issue."

If you think you've discovered a latent defect in your property, the

most important thing to do is to seek out reliable advice as quickly as possible.

"Your real estate broker is a good resource to help find the right experts to help," Deakin said. "In most cases, they can help direct you to the right trades or contractors to evaluate the issue."

Homeowners experiencing a latent-defect issue would be well advised to seek legal counsel to guide them through the process as well.

"A lawyer specialized in this practice is the best way to help protect yourself and ensure that you retain your rights," Deakin said. "There is a very clear and defined notification process that must be followed in order to protect your rights. A good lawyer or broker can help guide the buyer through this process and Le ministère de la Justice also provides a good deal of quality information online."

Generally, the steps to follow after the discovery of a latent defect are to stop all renovation work and document the defect with photos and videos. It's also recommended to contact your building inspectors, as they may be able to help you with an expert report documenting the defect.

"The fact that they already have

prior knowledge of the property means they may be able to provide you with valuable insight as to the cause and solution to rectify the issue," Lantaff said. "Homeowners should then inform the vendors and allow them to inspect the defect, giving them reasonable time to react. It's then advisable to obtain quotes and a report that qualifies the defect."

At that point, the buyer and the seller can attempt to reach a written agreement. If successful, repair work can begin to resolve the issue. But if the two parties are unable to reach an agreement, legal counsel will have to be brought into the situation.

While speaking with a specialized lawyer is an important and informative step in the process, it's in everyone's best interest to try and resolve the situation together.

"When legal action is required, it adds additional stress and cost for all parties — and if it goes to court, it could be a few years before there is a resolution," Bloomfield said. "When dealing with a hidden defect, it is always best for the parties involved to resolve the situation amicably and quickly so that everyone can move forward with their lives."

MORTGAGE RATES*

Financial Institution	Type	Variable	6 months	1 year	2 years	3 years	4 years	5 years
Alterna Bank	Closed	4.95	4.40	3.64	3.84	2.79	4.94	2.84
Alterna Savings	Closed	4.95	4.40	3.69	2.19	2.84	4.99	2.89
Bank of Montreal	Closed	5.15	4.20	3.64	3.89	4.29	4.89	5.19
Bank of Nova Scotia	Closed	5.75	4.75	3.64	3.74	4.39	4.59	5.19
CIBC Mortgages	Closed	5.75	3.75	3.39	3.39	3.94	4.49	5.34
Desjardins - Caisses	Closed	—	4.40	3.69	3.89	4.34	4.89	5.19
Effort Trust	Closed	—	4.50	4.40	4.50	4.75	4.90	4.95
HSBC Bank Canada	Closed	5.14	3.19	2.94	2.69	2.69	2.74	2.69
Home Trust	Closed	—	—	3.99	3.54	3.79	3.84	2.74
Investors Group Trust	Closed	—	4.20	3.49	3.59	4.14	4.89	5.34
Laurentian Bank Canada	Closed	—	4.40	3.69	3.89	4.34	4.89	5.19
London Life	Closed	—	4.20	3.49	3.59	4.14	4.89	5.34
Manulife Bank	Closed	4.45	4.45	3.69	3.69	3.69	3.74	3.79
National Bank	Closed	—	4.50	3.39	3.49	3.94	4.89	5.19
Royal Bank of Canada	Closed	5.95	3.64	3.64	3.89	4.45	4.99	5.19
Simplii Financial	Closed	—	6.19	3.39	3.39	3.89	4.39	4.99
T-D Mortgage	Closed	5.10	3.34	3.59	3.74	3.89	3.94	5.34
Tangerine	Closed	—	—	3.49	2.64	2.69	2.84	2.74

*Rates as of Oct. 7, 2019

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