

# Breaking Debate: Should We Disclose Off-Site Conditions to Buyers?

by Isaac Benmergui, Esq on February 18, 2014

There was a time in real estate law that the term *caveat emptor* had specific meaning: “Buyer Beware.” That’s obviously not the case for issues *inside* a prospective home, as by law a real estate broker is supposed to fully disclose any issues within the dwelling. But what about *outside* the home? What about around the neighborhood? Should the seller, agent or broker be responsible to disclose that information to a prospective buyer? Traditionally, no....



Times do change, indeed. There’s been a debate on that as some situations definitely call for accountability on the seller, agent or broker to make sure any prospective buyer knows the specifics about any off-site conditions that can directly affect the quality of the home in question. Specifically, in a case with the New Jersey Supreme Court involving a developer over a tract of land, the case involved a real estate broker selling homes between 1984 and 1987 near a former hazardous waste site, a site the federal EPA warned could cause a future “Love Canal,” reminiscing about the deal Hooker Chemical sold to the Niagara Falls School Board, resulting in major health hazards throughout the community. The main point of the case was this: a 1980 EPA report was included in the developer’s files, and yet the buyers never were notified of the fact that their homes would be located right by this hazardous waste location.

Needless to say, a class action lawsuit was filed, the Supreme Court reviewed it, stating that the matter in question to be disclosed must be of “sufficient materiality, and unknown and unobservable by the buyer.” In essence, buyers need to know if their homes will be located near a hazardous dumpsite! Questions, of course, are now raised: What’s considered an “off-site” factor? Does it have to be next door? On the same block or street? Maybe the same neighborhood? What constitutes relevant *knowledge* of the off-site condition or hazard? Do newspaper reports count? Proceedings with government agencies, zoning boards, board of trustees, EPAs or energy committees? What can be considered “material,” as the Supreme Court states? Are common neighborhood crime rates or local academic achievement statistics considered “material”? Can this be a *potential* problem or an *actual* problem?

They’re all relevant questions to ask. Hopefully, it won’t muddy the waters of the real estate industry too much, as class action lawsuits against brokerage firms aren’t fun.

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