

# Radon Issues In Land Transactions



**LEGAL PITFALLS TO AVOID**

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# Radon as a Latent Defect



- The general rule of real estate transactions is that the buyer has the obligation to inspect the property and the seller really has no obligation to reveal anything.



# Latent Defects



- The exception to this rule is where there is a **latent** (hidden) defect and some act of concealment on the part of the seller.
- An example of this could be a seller being aware of a termite infestation but covering up the evidence of their presence or painting over a spot where there was clearly a water leakage issue or mold.

# The duty to disclose

- To address the practical problem of the purchaser having difficulty spotting defects, the industry produced a “Property Condition Disclosure Statement”

## PROPERTY DISCLOSURE STATEMENT RESIDENTIAL

PAGE 1 of \_\_\_\_\_ PAGES

Date of disclosure: \_\_\_\_\_

The following is a statement made by the seller concerning the premises or bare-land strata lot located at:

ADDRESS/BARE-LAND STRATA LOT #: \_\_\_\_\_ (the “Premises”)

THE SELLER IS RESPONSIBLE for the accuracy of the answers on this property disclosure statement and where uncertain should reply “Do Not Know.” This property disclosure statement constitutes a representation under any Contract of Purchase and Sale if so agreed, in writing, by the seller and the buyer.		THE SELLER SHOULD INITIAL THE APPROPRIATE REPLIES.			
1. LAND	YES	NO	DO NOT KNOW	DOES NOT APPLY	
A. Are you aware of any encroachments, unregistered easements or unregistered rights-of-way?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
B. Are you aware of any past or present underground oil storage tank(s) on the Premises?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
C. Is there a survey certificate available?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
D. Are you aware of any current or pending local improvement levies/charges?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
E. Have you received any other notice or claim affecting the Premises from any person or public body?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
<b>2. SERVICES</b>					
A. Indicate the water system(s) the Premises use: Municipal <input type="checkbox"/> Community <input type="checkbox"/> Private <input type="checkbox"/> Well <input type="checkbox"/> Not Connected <input type="checkbox"/> Other _____					
B. Are you aware of any problems with the water system?			<input checked="" type="checkbox"/>		
C. Are records available regarding the quantity and quality of the water available?			<input checked="" type="checkbox"/>		
D. Indicate the sanitary sewer system the Premises are connected to: Municipal <input type="checkbox"/> Community <input type="checkbox"/> Septic <input type="checkbox"/> Lagoon <input type="checkbox"/> Not Connected <input type="checkbox"/> Other _____					
E. Are you aware of any problems with the sanitary sewer system?			<input checked="" type="checkbox"/>		
F. Are there any current service contracts, (i.e., septic removal or maintenance)?			<input checked="" type="checkbox"/>		
G. If the system is septic or lagoon and installed after May 31, 2005, are maintenance records available?			<input checked="" type="checkbox"/>		
<b>3. BUILDING</b>					
A. To the best of your knowledge, are the exterior walls insulated?					
B. To the best of your knowledge, is the ceiling insulated?					
C. To the best of your knowledge, have the Premises ever contained any asbestos products?					
D. Has a final building inspection been approved or a final occupancy permit been obtained?					
E. Has the fireplace, fireplace insert, or wood stove installation been approved by local authorities?					
F. Are you aware of any infestation or unrepaired damage by insects or rodents?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
G. Are you aware of any structural problems with any of the buildings?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
H. Are you aware of any additions or alterations made in the last sixty days?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
I. Are you aware of any additions or alterations made without a required permit and final inspection, e.g., building, electrical, gas, etc.?			<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

INITIALS

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# Effect of a False Disclosure



- The effect of a false statement on this form has been considered an act of concealment by the courts.
- This at least covers some of the major issues like problems with septic systems, sewer, infestations, structural problems and the like.



# The addition of Radon

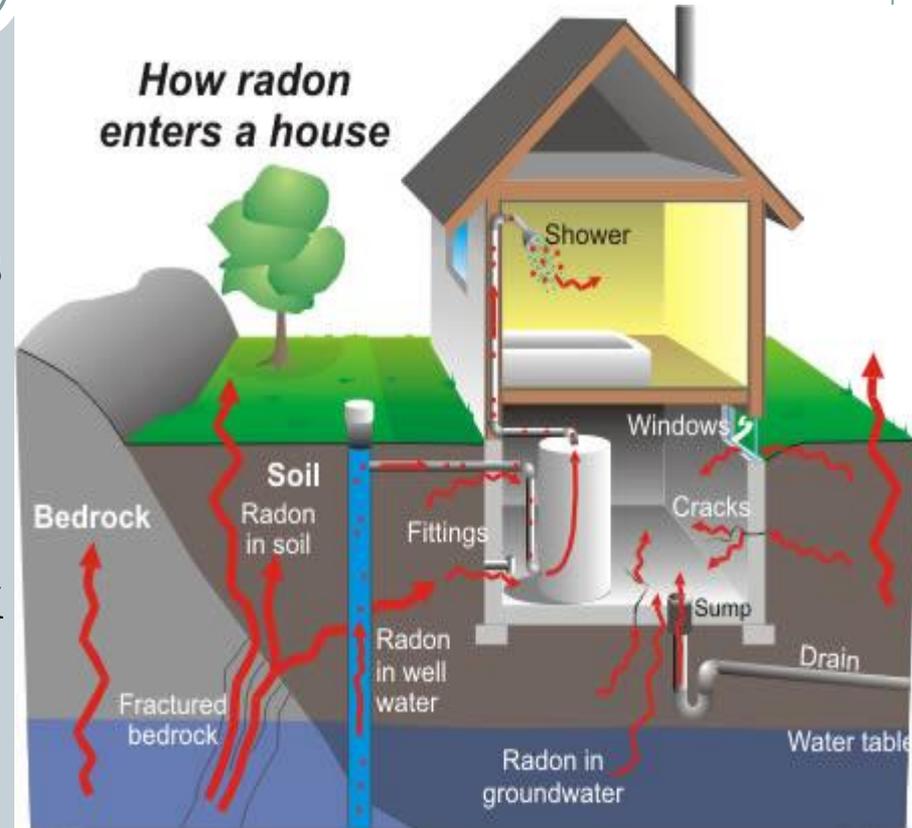


- While the disclosure statement has limitations (“Are you aware” is not a clear representation of fact), it has allowed for more and better disclosure of property condition to this point.
- However, if a question like “Are you aware of the presence of radon gas in the home” were added, a homeowner could quite honestly answer “no” and there could still be radon present.....but

# Awareness



- This would be an issue to which homeowners would turn their minds and help them address the health risks associated with the presence of radon.
- It would also then require homeowners aware of radon gas to disclose same and seek some assurance and/or testing prior to purchasing a home in an area where radon is present.



# Legal Ramifications



- The remediation costs to limit radon exposure in the home are in the order of magnitude of hundreds to a few thousand dollars.
- It would generally be an affordable remedy that would be within the reach of a typical homeowner if they were made more aware of radon.
- However, unless you could establish that the homeowner was aware of radon being present and failed to answer the disclosure statement correctly, it would be difficult to pursue these costs from a former owner.