

ARIZONA'S STIGMATIZED PROPERTY LAW

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In 1995 the Arizona Legislature passed A.R.S. § 32-2156, the stigmatized property law. This law addressed when a real estate broker or seller must disclose information to a buyer relating to facts that may psychologically impact the home, such as a suicide or murder. Until the legislation was passed, the broker's duty to disclose such stigmas was an area of much confusion. Those issues can still be a matter of concern to brokers in this State and many brokers are, in fact, unaware of exactly what A.R.S. § 32-2156 covers.

I. Background of A.R.S. § 32-2156

The law, as originally written, limited the protection to only those brokers acting on behalf of the seller or landlord, which excluded the buyer's broker and possibly dual agents. Subsequently, changes were made to correct this limitation and the statute applies to brokers acting on behalf of either the seller or the buyer.

A.R.S. § 32-2156 reads:

A. No criminal, civil or administrative action may be brought against a transferor or lessor of real property or a licensee for failing to disclose that the property being transferred or leased is or has been:

1. The site of a natural death, suicide or homicide or any other crime classified as a felony.
2. Owned or occupied by a person exposed to the human immunodeficiency virus or diagnosed as having the acquired immune deficiency syndrome or any other disease that is not known to be transmitted through common occupancy of real estate.
3. Located in the vicinity of a sex offender.

B. Failing to disclose any fact or suspicion as set forth in subsection A shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred or leased.

The statute does not **prohibit** a seller or broker from disclosing such facts, rather the statute provides that if such facts are not disclosed by a seller or the seller's broker, then no criminal, civil or administrative action may be brought against such person. The statute apparently does not protect a seller or real estate agent from making an intentional misrepresentation in response to a direct inquiry concerning the property.

The first reported court case to address the stigma issue occurred in the case of Reed v. King (Cal. App. 1983), where the California Court of Appeals held that a buyer of a home may recover damages for the non-disclosure of the fact that there had been a multiple murder in the house ten years earlier. In the Reed case the buyer alleged that neither the seller nor his real estate agent disclosed the murders, although they knew about it and knew that the murders had decreased the value of the property. The Reed court held that if the buyer could prove that the murders had a "significant and measurable effect on market value," and that the seller and his agent were aware of this effect, the seller and the agent had a duty to disclose even though the character of the information affecting the market value of the house was merely psychological.

In response to the Reed v. King case, in 1987 California became the first state to enact legislation addressing the disclosure of stigmas in real estate transactions. California's enacted statute bars legal action against a seller of real property or the seller's broker for the failure to disclose that an occupant of a home was afflicted with AIDS, and the statute also modified the Reed v. King decision by prohibiting legal action against a seller or a real estate broker for the failure to disclose the manner of any deaths on the property that occurred more than three years prior to the transaction.

Following in the footsteps of California, numerous other states have since enacted similar legislation protecting the broker and/or the seller from the non-disclosure of the fact that an occupant

was infected with AIDS or the HIV virus. The majority of these statutes, similar to the Arizona law, also cover other types of stigmas, such as deaths on the property and felonies.

II. Advantages of A.R.S. § 32-2156

The primary benefit to the public of A.R.S. § 32-2156 is the avoidance of the artificially created "stigma." If a licensee must disclose the events addressed in the statute, then a potential purchaser knows that he must in turn disclose the event when he sells the property. So, even if the purchaser does not consider the disclosure to involve a material fact, he will know that, upon the resale, he may be reducing the potential pool of purchasers.

The problem facing licensees in the past was to determine whether any of these events occurring on the property were material and adversely affected the consideration the buyer would pay. As an example, does the fact that the previous occupant of a residence died a natural death affect the consideration to be paid? After all, the event has nothing to do with the physical nature of the property itself. Unfortunately, licensees could not always predict who would be unusually sensitive to such information, and to be on the safe side would make disclosures routinely of matters which they themselves did not consider to be significant. The theory among licensees remained "when in doubt, disclose," thereby creating stigmas on the property which, but for the requirement of disclosure, would not be considered stigmatized. Of course, this created a hardship for the owner of property where some crime or other tragedy occurred.

A.R.S. § 32-2156 reduces the liability of real estate licensees for failing to make these uncomfortable, awkward and sometimes even illegal disclosures, and protects the property values of persons who may have simply had the misfortune of having an occupant of the property suffer a crime, a death, or an illness. And, of course, since none of these disclosures relate in any way to

the structure or function of the house, it is unlikely in the extreme that the public will suffer financially merely because these stigma items are not disclosed.

III. Negative Aspects of A.R.S. § 32-2156

Although many attorneys and real estate agents believe that A.R.S. § 32-2156 embodies excellent public policy, this view is not universally held. It has been argued that the statute unnecessarily sacrifices innocent home buyers in order to protect the interests of the real estate profession, and provides too broad of coverage in that it provides a blanket protection to sellers and brokers who do not disclose **known** information which many buyers would find material.

While it is true that most concerns over a psychologically impacted property are not rational, there is an argument that rationality should not be the ultimate test. Human beings are superstitious by nature and many of our fears are simply not logical. But these fears do exist, and as far as death is concerned, these fears do not rest with just a small minority of persons. Home buyers pay tens of thousands of dollars to view a mountain from the kitchen window. Is this really any more logical than the desire to not want to sleep in a bedroom where a murder occurred?

Aside from the stigma issue, this statute appears to permit a seller to lawfully conceal from the buyer criminal activity occurring on the property, even if such activity is a telltale sign of problems which could occur in the future. For example, if the home had been burglarized twice in the last month, this fact now need not be disclosed. Ironically if it was the **neighbor's** house that was burglarized, this fact would probably be required to be disclosed (if known), as it falls outside the protection of the new disclosure law.

IV. Conclusion

Real estate agents need to remember the stigmatized property law, regardless of whether it is

good public policy or not. A.R.S. § 32-2156 does not require a seller or a real estate agent to disclose information to a buyer relating to facts that may psychologically impact the home. Real estate agents and sellers, however, need to be cautious when asked a direct question about the property, which relates to matters covered by A.R.S. § 32-2156.