

DEFERRED MAINTENANCE - MATERIAL FACT

Good question! Here is our more complete response and answer:

Which of the following statements would **NOT** be a material fact to be disclosed by a seller's agent?

1. Buyer's ability to make a higher offer
- 2. Disclosure of a roof that leaks**
3. Discussion of the advantages of an offer to purchase
4. Knowledge of active infestation of termites

CORRECT ANSWER is **#2 Disclosure of a roof that leaks.**

RATIONALE: This is a real property defect caused by *deferred maintenance*.

SELLER'S AGENT RESPONSIBILITIES:

- **honesty and fair dealing** - The agent may not deceive, defraud, or otherwise take advantage of a customer.
- **reasonable care and skill** - the agent will be held to the standards of knowledge, expertise, and ethics that are commonly maintained by other agents in the area.
- **proper disclosure** (to the Buyer's agent) - primarily concerns disclosure of agency, property condition (known material facts but not necessarily deferred maintenance), and environmental hazards.

The key points here are:

- The **Buyer's agent** would be MORE SO responsible to disclose to the buyer-client such a fact if known or learned from the seller's agent.
- The **Home Inspector** and associated Inspection-report would be relied upon to discover and disclose such a fact to the Buyer's Agent and Buyer-client, especially if not seen by the naked eye on the ceiling by the Seller's or Buyer's agent (which was not presented in the question)

DEFERRED MAINTENANCE:

One of the most common deferred maintenance items is roof repairs. If the roof appears to be in poor condition in the appraisal pictures, then often lenders will ask for a certification from a roof inspector estimating the remaining life of the roof.

Other *deferred maintenance* issues that may also get flagged:

- *broken/cracked window panes,*
- *leaking water lines,*
- *missing handrails, (also a violation in many building codes)*
- *broken heating systems, (also may be living-untenable by many lenders)*

- **noticeable electrical problems.**

Government-backed loans like FHA, VA, and USDA have some additional property standards than conventional loans. For example, all properties built before 1978 require repairs for peeling paint due to do lead paint concerns.

Generally, sellers **defer maintenance** to save costs, but often delaying these repairs can halt the sales process altogether. In fact, most lenders will ask that the repairs be fixed before issuing a mortgage loan.

MATERIAL (ADVERSE) FACT

A **material (adverse) fact** must be just that; a supportable fact. It must detract from the value of the property or pose a danger to occupants. But it could also simply be information that would affect the legitimacy and enforceability of the Purchase and Sales (Binder) contract. The precise details of what does or doesn't constitute a **material (adverse) fact** can vary somewhat by state. In Connecticut, it means anything that could dissuade a buyer from making an informed decision about purchasing the real property. Agents, brokers, and sellers have an obligation in all states to disclose information that could affect the salability of a property. As an example, an agent who showed a property in the past that had water damage at the time should disclose this information to potential buyers, even if the damage isn't visible years later.

SUMMARY and CONCLUSION

As you can see this is a grey area at best and given the four answers, '2. Disclosure of a roof that leaks' is the only answer that could or would apply and would generally (in many states) would be considered "**deferred maintenance**" not a "**material (adverse) fact**". The best answer is that the Seller's Agent should have informed the Buyer's Agent (if known) and the Home Inspector should have highlighted it in the Inspection Report making two forms of information notification to the prospective Buyer who would be better enabled to make an informed decision about purchasing the real property.

Thank you,

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