

# SCHWARTZ *Report*



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## THE MUNSTER'S HOUSE

**S**o you want to buy Herman and Morticia's house. How much disclosure is enough disclosure from them? What are you as the perspective buyer entitled to know about it? Each state's license law and real estate commissions espouse an obligation on its part to protect the public. For example, Chapter 29 "Professional Obligations" in the Delaware Code states: The primary objective of the Delaware Real Estate Commission, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are direct recipients of services regulated by this chapter, from unsafe practices..."



Sellers' disclosure laws are part and parcel of this effort. Those disclosure laws in place in most states require that the seller disclose to perspective buyers what they know or think they know about the actual physical condition of the property and its title thereto. The buyers are then entitled to rely upon the veracity and completeness of the statements contained in the disclosure documents.

In the Delaware, Maryland and Pennsylvania sales contracts buyers have the ability to go further and actually inspect or have an appropriate contractor inspect for them, the present condition of the property including its operating systems and for the presence of hazardous conditions, title defects, etc. In short, buyers are entitled to know the "material facts" about the property.

Now let's suppose that Herman and Morticia's house is in great physical condition, free from bats and other pests, with all systems performing up to par. Hence its "material facts" check out fine. However, you would also like to know what Uncle Fester has been up to in the basement or if the place might be haunted. Here you are asking about what the non-physical or psychological status of the property might be.

*\*The Delaware Statute states: "The owner, landlord or licensee shall not make any disclosure concerning those psychological impacts of HIV, AIDS, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place even if a customer or client specifically asks about such psychological impacts."*

As noted in the August, 2017 Schwartz Report, a property could be considered psychologically impacted or "stigmatized" when it has been the scene of a murder or a suicide. It could also be considered similarly affected by a natural death, diseased death\*, the proximity to an ancient burial ground, cemetery, battlefield or previous use as a funeral home. Could it be haunted? Should the potential buyer, therefore, be entitled to a paranormal inspection to be conducted by some Ghost Buster outfit in addition to the contractually provided for inspections to uncover the material facts about the property?

Delaware states that the fact or suspicion that a property might be psychologically impacted is NOT a material fact that must be disclosed in a real property transaction. Therefore, "no cause of action shall arise against an owner or landlord of real property or a licensee for failure to inquire about, make disclosure about, or release information about the fact or suspicion that such property is psychologically impacted." There is one additional option. The customer or client may make a specific written request of the owner, landlord or licensee about the psychological impact regarding a specific property "and those named individuals shall answer the questions truthfully" and to the best of their knowledge. So if you are concerned about the stigmatized status of the Munster's house, you could write a letter to Herman and Morticia asking what they know about what Uncle Fester has been up to in the basement and what the psychological effect of happenings around the house might be.

The situation would be somewhat different should the Munster house be located just across the Mason-Dixon Line in Maryland or Pennsylvania. Maryland's stigmatized property statutes appear in both its Property Code and its Business Occupation and Professional Code. Sellers, buyers, and sellers' agents are protected from civil or

criminal liability should they fail to disclose “psychologically impactful” information. There is no option for a written request as in Delaware.

As noted in the August report, Pennsylvania has not firmly addressed psychologically impacted properties. The 2012 Pennsylvania court ruling (Miliken) is still on appeal. The ruling in the Miliken case points to the crux of the stigmatized property issue as it seeks to clarify the difference between material and paranormal fact finding. Pennsylvania Superior Court’s President Emeritus Kate Ford Elliot wrote in her opinion: “This sort of psychological damage to a house will obviously decrease over time as memory of the murder recedes from public knowledge. The passage of time has no similar curative

effect on structural damage, legal impairment or hazardous materials... Indeed, one could identify numerous psychological problems with any house.” She framed her argument with an observation about the digital age we live in: “...The internet and social media allow information about a house to be uncovered easily with a simple search. To consider possible psychological defects starts a descent down a slippery slope... It requires the seller to warn not only of physically quantifiable but also utterly subjective defects.” Though her judgement may fly in the face of common sense she may be correct. After all, one man’s haunted house is another’s historical site. So what’s a body going to do? Who you gonna call? For my part, let’s not add a paranormal inspection to the list that we already have. Happy Halloween!

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## 11 Critical Home Inspection Traps to be Aware of Weeks Before Listing Your Home for Sale

DE, MD, PA – According to industry experts, there are over 33 physical problems that will come under scrutiny during a home inspection when your home is for sale. A new report has been prepared which identifies the eleven most common of these problems, and what you should know about them before you list your home for sale.

Whether you own an old home or a brand new one, there are a number of things that can fall short of requirements during a home inspection. If not identified and dealt with, any of these 11 items could cost you dearly in terms of repair. That’s why it’s critical that you read this report before you list your home. If you wait until

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the building inspector flags these issues for you, you will almost certainly experience costly delays in the close of your home sale or, worse, turn prospective buyers away altogether. In most cases, you can make a reasonable pre-inspection yourself if you know what you’re looking for, and knowing what you’re looking for can help you prevent little problems from growing into costly and unmanageable ones.

To help homesellers deal with this issue before their homes are listed, a free report entitled “11 Things You Need to Know to Pass Your Home Inspection” has been compiled which explains the issues involved.

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