

# NOTES FROM THE LEGAL HOTLINE

Massachusetts Association of Realtors®

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**Q. I've listed a house that is rumored to be haunted – does this need to be disclosed to prospective buyers?**

**A.** Disclosure in this situation is only required if asked. Massachusetts General Laws Chapter 93, Section 114 specifically states “[t]he fact or suspicion that real property may be or is psychologically impacted shall not be deemed to be a material fact required to be disclosed in a real estate transaction.” The definition of “psychologically impacted” includes properties that were the site of a felony, suicide, or homicide, or the site of parapsychological or supernatural phenomenon. If a consumer does ask, however, the broker or salesperson must answer the question regarding the stigma honestly and to the best of his or her knowledge. A seller or their REALTOR® who makes false or misleading statements in response to a direct inquiry may be subject to liability.

These “psychological impacts” do not require affirmative disclosure because they are not actual defects of the property itself. The Consumer Protection Act, commonly referred to as Chapter 93A, only requires disclosure of known defects that may influence a potential buyer not to enter into a real estate transaction. A REALTOR® is not under any obligation to investigate or otherwise discover defects. If you are representing a buyer, be sure to determine whether this is an important issue to your client. If it is, be sure that the question is asked.

**Q. Can listing photographs be photoshopped?**

**A.** A water stain on the ceiling, a barren front lawn, peeling paint, a dated fireplace façade ... all easily corrected with today’s technology. The temptation to enhance listing photographs to make a house seem more appealing to prospective purchasers may be strong but should be avoided. Any alterations to a listing photograph that substantially alter the physical appearance of a property may subject a REALTOR® to an ethics complaint and/or civil liability.

Article 12 of the REALTORS® Code of Ethics requires REALTORS® to “be honest and truthful in their real estate communications and ... present a true picture in their advertising, marketing, and other representations.” Any substantial alterations may result in the listing photograph no longer presenting a true picture of the property. Alterations should be limited to

minor items that are not a part of the property itself, such as minimal cropping or resizing, removing clouds from the sky or a garbage can from a driveway, or adding a twilight effect.

Further, Massachusetts Regulations under 254 CMR 3.00 states, “A broker shall not advertise in any way that is false or misleading.” Violation of this provision may jeopardize your license and expose you to civil penalties.

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