

## Duty to Disclose Off-Site Defects

REALTORS® are often faced with the question of what, if anything, needs to be disclosed to prospective buyers when the condition exists outside the property bounds. A real estate licensee's obligation to disclose comes from the Massachusetts Consumer Protection Act, Chapter 93A of the General Laws, which requires disclosure to a prospective buyer of any fact that would influence a prospective buyer's decision to purchase that property.

Although, there is no bright line test for disclosure of conditions outside the physical boundaries of the listed property, the 1997 SJC decision in *Urman v. South Boston Savings Bank* created a three-prong analysis which provides guidance in these situations. The Court stated that, in appropriate circumstances, off-site physical conditions which are known to a seller may require disclosure under Chapter 93A if:

- The condition is unknown and not readily observable by the buyer, **and**
- If the existence of those conditions is of sufficient materiality to affect the habitability, use, or enjoyment of the property, **and** as a result,
- The property is substantially less desirable or valuable to the objectively reasonable buyer.

The Court further found that there is no need to disclose “transient social conditions” and the obligation to disclose off-site conditions is limited to those conditions which are “rooted in the land.”

Agents should discuss the duty to disclose with their sellers and explain the potential liability for failing to disclose certain facts. All disclosures should be made in writing so that there is documentation of when and to whom disclosure was made.