

Teaching stigmatized property: You don't have a ghost of a chance

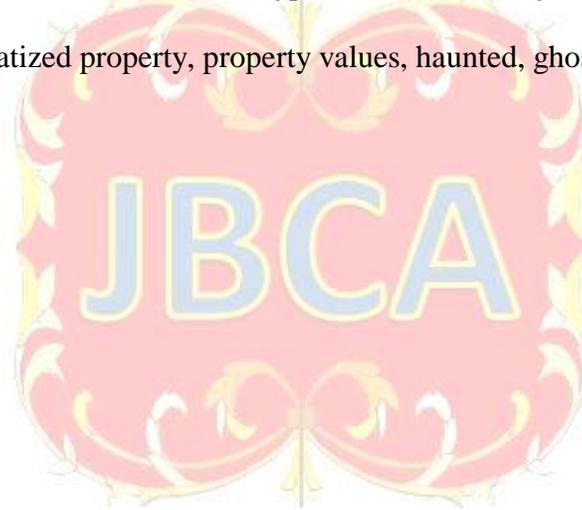
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ABSTRACT

This paper will explain the benefits of a stigmatized property discussion for your real estate classes. This paper will start by discussing the unusual case of *Stambovsky v. Ackley*, involving the sale of a house which the seller claimed was haunted. Next, the paper will explore the types of stigma, the notice requirements for stigmatized property, and the potential for a loss of value. Then, this paper will also explore cultural differences of stigma. The paper will conclude with the expected benefits from this type of discussion in your classroom.

Keywords: stigma, stigmatized property, property values, haunted, ghosts, *Stambovsky*



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Representing the seller is a traditional job for the real estate professional. A home needs to be sold, leave that task in the capable hands of a professional realtor. In the process of finding a buyer, the seller's agent must show the home (perhaps many, many times) and answer a great deal of questions about the property.

Typically the sellers and their agents are more than happy to reveal the information because that data will heighten the interest of the buyer. Realtors are trained to emphasize the key features of the home, the craftsmanship, the manicured lawn, the ample sized rooms, and the quality amenities nearby. However, there can be a conflict. Not all the information could be positive. Sometimes the details asked by potential buyers may drive away buyers or lower the value offered by the buyer.

This creates an ethical burden for the sellers and their agents. Should the seller/realtor disclose information which could harm both their financial interests? What happens if the seller/realtor fails to disclose information? These ethical issues are central to the discussion will be analyzed in this paper.

Many property cases involve physical damages to the property, such as termites or leaked gasoline (Young, 2001). A nearby sinkhole or toxic waste dump is easy to explain, and easy for the student to understand. Students easily see the need to inform a potential buyer and the obvious decrease in property value because of the damages. A subjective case would be better for a student interactive discussion.

This paper will explain the benefits of a stigmatized property discussion for your real estate classes. This paper will start by discussing the unusual case of *Stambovsky v. Ackley*, involving the sale of a house which the seller claimed was haunted. Next, the paper will explore the types of stigma, the notice requirements for stigmatized property, and the potential for a loss of value. Then, this paper will also explore cultural differences of stigma. The paper will conclude with the expected benefits from this type of discussion in your classroom.

Stigma

First, what is a stigmatized property? Does this only apply to haunted houses? A stigmatized property has been defined as "property psychologically impacted by an event which occurred or was suspected to have occurred on the property, such even being one that has no physical impact of any kind" (Morgan, 1994). Roddewig (1996) defined stigma as "an adverse public perception about a property that is intangible or not directly quantifiable" (p. 376). Ghosts or haunted houses certainly fit this definition. What else could be considered a stigma?

Many types of occurrences can create a stigmatized property without physical indications. Places of violent crimes have the same issues of disclosure and loss of value (Brown & Thurlow, 1996). Many disputes have resulted from the fears of living in a home once occupied by someone with HIV/AIDS (Hartog, 1994). Also the fear of sex offenders living nearby can have an obvious effect on the desire of the home, with nothing being physically wrong with the building (Komuves, 1997).

This discussion will involve the stigma of death and ghosts. Americans have become more detached from death, at least from death in the home. Historically, death occurred at the home. Victorian era homes had "coffin corners," stairwell niches which allowed a coffin to be maneuvered down the stairs (Rosenbloom, 2006). Now, death is expected to occur at a hospital, and a funeral conducted away from the home, protecting the home from the taint of death.

Stambovsky Case

Our fear of death is the primary motivation for the buyer's behaviors in the case of *Stambovsky v. Ackley*. The case is also an excellent class reading assignment. The case is short

(six pages), and relatively free of legal jargon and procedural issues. The case is fairly recent (1991) and freely available on the internet from multiple sources. In addition, Judge Rubin worked tirelessly to craft the opinion to be filled with numerous puns of ghosts and the supernatural. It makes for an interesting and entertaining read.

The facts of the case are straightforward. Helen Ackley owned a home in Nyack, New York (about 30 miles north of Battery Park in Manhattan). The home had been mentioned several times in the media as being a haunted house. The 18-room Victorian home was believed to be inhabited by five ghosts (Cavanaugh, 2002), one of them being a cheerful ghost dressed in Revolutionary-era clothing (Pacelle, 1991). Ackley made multiple public reports of ghost sightings in the home in the nine years before the sale took place, including participating in stories for *Reader's Digest* and several local newspapers. The home was also featured on local walking tours of haunted houses.

Despite the local notoriety of the home, Ackley could not obtain a buyer when she tried to sell the home in 1989. She hired Ellis Realty (co-defendant) to assist her. Along came Jeffrey Stambovsky, a New York City bond trader, who was not familiar with the area. Stambovsky liked the home, but was completely unaware of the home's reputation as being haunted. He made an offer on the home for \$650,000 and made a \$32,500 earnest money.

Shortly after making the earnest money, Stambovsky learned of the reputation of the home. He wanted a personal residence, not a haunted house. He wanted to rescind (cancel) the contract and get his earnest money returned. Ackley insisted Stambovsky complete the purchase of the house or lose his earnest money. The conflict was pushed into court.

The New York Supreme Court dismissed Stambovsky's complaint. The Court explained that New York followed the common law doctrine of *caveat emptor*, and imposed no duty on the seller to disclose any information to the buyer. Ackley was not required to tell him about the ghosts. As a result, Stambovsky would have to purchase the house or lose his earnest money. Stambovsky appealed to the New York Court of Appeals.

The court noted that Stambovsky was not seeking damages (legal relief). He was seeking rescission (equitable relief). In equitable cases, the court must determine a fair result. In this instance, Ackley furthered or created the impression in the public that the house was haunted because of her participation in the media stories and the haunted tours. Allowing a seller to further an interest (haunted house claims) then conceal that fact to a potential buyer would encourage predatory selling practices.

The Court found that *caveat emptor* was not fairly applied in this instance. Even a close inspection by the buyer conducting his due diligence would not have discovered the ghosts or the haunted reputation in the community. Such things lack physical characteristics which lent themselves to inspection, which was what the *caveat emptor* rationale encouraged. A diligent buyer would never have known about the ghosts unless the buyer had lived in that neighborhood. The buyer cannot be faulted for failing to discover this type of harm to the property.

The court was cautious to make the decision very specific. Every complaint about a failure to disclose will not cancel a real estate transaction. Equity required this contract to be rescinded because the seller had created the impression of the haunted house. Ackley cannot tell the story to *Reader's Digest* and newspapers, but claim the buyer was not entitled to know. Fairness required the buyer to be informed of the ghosts or have the opportunity to avoid the contract (and get his earnest money back) if he wished after knowing the facts about the property.

The final result, Stambovsky got his earnest money back and the contract was cancelled. While this was the result from the case, the potential to disagree is obvious, leading to an excellent opportunity for an interactive classroom discussion. Was the decision correct? Was it fair? Students will not easily reach a consensus, and that is good for the classroom discussion.

Of course, the world kept revolving after the Stambovsky decision. Shortly after the case, New York and several other states passed stigmatized property laws which protected sellers who do not disclose non-physical defects and stigmas to the property (Cavanaugh, 2002). The statutes should eliminate future disputes by settling the issues of disclosure for future transactions. Buyers again should beware.

Of course, the house did not disappear. The Ackley house appreciated in value after the lawsuit, despite the owners knowing about the stigma (Cavanaugh, 2002). However, appreciation in value was only part of the story. While the house may have appreciated in value, it probably had to change from a family residence into a retail tourism site. There is a large and growing industry of “dark tourism” for those interested in haunted houses, cemeteries, even sites of genocides (Copeland, 2011). Stambovsky did not purchase the property as a commercial investment in dark tourism, but as a personal residence.

Who You Gonna Call?

First, the students will likely start the discussion with the paranormal issue from this case. Usually, the question will be “Should being a haunted house really matter since ghosts are not real?” “Should we really make the laws to protect some silly superstitions of a few?” Is a ghost a material issue that must be disclosed to a buyer?

Belief in the paranormal, like beauty, is in the eye of the beholder. Believing in ghosts is not reserved to campfire tales told to naïve children. A large portion (37%) of Americans believe in ghosts (Musella, 2005), and more than one in ten Americans believes to have seen a ghost (Wiseman, et al., 2003). This is not a small or disenfranchised group. Believers are one out of every three people in America (ironically, very close to the same amount of people who consistently vote in elections).

Some surveys are even more heavily weighted for the paranormal beliefs. A random survey of adults from a phone directory found 50% believed in ghosts (Sparks & Miller, 2001). In one extreme sample, 70% of Purdue University students indicated a belief in ghosts (Sparks, Hansen, & Shah, 1994). Those who believe in ghosts are not isolated, they are average. Nor are believers uneducated, as the Purdue study found.

Americans are more than supportive of the idea of ghosts. They believe a house can be haunted. Thirty percent (30%) of American believe in haunted houses (Gallup & Newport, 1991). How can people believe in ghosts? They are bombarded by ghostly content in the media. Movies have consistently emphasized ghosts. The Blair Witch Project, The Sixth Sense, Paranormal Activity (1-2-3-4), Poltergeist (1-2-3), the Grudge, the Ring, the Shining, Shutter Island, and many more to come emphasize (dramatically) that ghosts are real.

Titles like Ghost Dad, Ghost Rider, Ghost Ship, Ghost Story, Ghost Town show America’s never quenched appetite for more and more ghost stories. But ghost stories are not simply reserved for horror movies. Comedies also feature ghosts, including Ghostbusters (I and II), Casper the Friendly Ghost, and Beetlejuice. Even the holiday class, A Christmas Carol features four ghosts to visit Scrooge on a dark and stormy Christmas Eve.

Television has fed the daily diet of ghost seekers with many documentary type shows, including Ghost Hunters, Ghost Hunters International, Ghost Hunters Academy, Ghost Adventures, Haunted Encounters, Unsolved Mysteries, Paranormal Witness, The Dead Files, and

others. These shows compete with airtime with shows such as X-Files, Charmed, and Touched by an Angel, exploring the fictional side of paranormal events.

Even if society has been constantly shown images of haunted houses, should the law treat them as fact? Perhaps not. Warner (1993) explained: "Social welfare is decidedly not promoted by laws that indulge belief in ghosts and in real estate tainted by bad karma" (p. 214).

The stigma of ghosts might affect the property even if the buyers are not believers. In the future, if the buyer wishes to resell the property, the stigma might affect their ability to sell the property even if they do not personally believe in it.

Disclosure Duties

For the real estate professor, the belief of lack of belief in ghosts is a quicksand issue, as the class can easily devolve into a discussion of whether or not ghosts are real. There are some other issues to guide the discussion to non-paranormal topics.

What is a seller's (and their agent's) obligation to inform the buyer? Ethically, the best choice is to always inform the buyer. Bill Hanley of the New Jersey Association of Realtors explained "if you know something you should disclose it" (Rosenbloom, 2006). This view has a strong ethical foundation, tell the truth, always. The seller is only obligated to disclose material issues, so this ties with the previous discussion. Are ghosts material?

Confounding the ethical obligation is the legal obligation. Usually, the legal and the ethical obligation align, but not always, and perhaps not in this instance. The Stambovsky court mentioned that New York followed the doctrine of *caveat emptor* in dealing with real property. *Caveat emptor* is defined as "a doctrine holding that purchasers buy at their own risk" (*Black's Law*, 2004). This is actually a shortened version of a longer doctrine: *Caveat emptor, qui ignorare non debuit quod jus alienum emit*. It translates as follows. Let a purchaser, who ought not be ignorant of the amount and nature of the interest which is about to buy, exercise proper caution (McKee, 1988).

Caveat emptor originated in primitive Roman law, and was the dominant view in American law until 1960s (Weinberger, 1996). The views changed, as the result seemed harsh to unsuspecting first time home buyers. Over the last fifty years, the doctrine has virtually collapsed, replaced by tort law and statutes which require disclosure (Peterson, 2002). Often due to publicized cases, legislatures have created exception after exception to the *caveat emptor* doctrine.

Some states require stigma disclosure, but none specifically mentions ghosts. South Dakota, for example, mandates disclosure of any homicide or felony on the property within the last twelve months (Ben-Ezra & Perlin, 2005). In contrast, Connecticut only requires disclosure of stigma to the property if the buyer makes a written request for information (Rosenbloom, 2006).

Perhaps, the need for more protection of the buyer is not needed. The availability of legal services has dramatically expanded as the number of lawyers in America has mushroomed. Doesn't that remove the need to be so protective of the buyers? If a buyer has a question, he/she can seek out an attorney for help. Does that fix the problem? No. Few buyers get legal help. One study found that 59% of home buyers did not seek legal help during their home purchase (Braunstein & Genn, 1991). Of those who had lawyers, most met them at or shortly before the property closing (Braunstein & Genn, 1991). This is too short of a time for any effective assistance. As a result of the lack of help from the legal community, perhaps the consumer protective statutes are needed.

The irony is that most of the stigmatized property statutes do not protect the consumer. Twenty-nine (29) states have laws which protect the sellers and their agents who do not disclose psychological taints on real property (Brown & Thurlow, 1996). In other words, 29 states allow Ackley to do the same behavior without liability.

Interestingly, five states (Colorado, Illinois, Michigan, Montana, and Texas) only protect real estate agents, but do not protect the seller of the property (Brown & Thurlow, 1996). It is difficult to find a rationale that would protect the realtor but not the seller, other than protection for the real estate industry. The buyers could still sue the property owners, so the harmed party does have a recourse, but these statutes exempt the realtors even if they were participants in the deception.

Valuation of Stigma

The next big issue in the class discussion should be the effect of stigma on the property. Interestingly, *Stambovsky* court assumed there would be a decrease in the value, at least for the purpose of the hearing. Was that a safe assumption? How would a rumor of a haunted house or ghosts affect a property's value? How much would be lost?

Most people would agree that properties associated with death can linger on the market and have a reduced price (Rosenbloom, 2006). But how much is the loss? For example, the apartment where the Menendez brothers killed their parents in 1989 lost more than \$1 million in market value when sold (Rosenbloom, 2006). This is not an easy problem to quantify. Some appraisers have specialized in valuing stigmatized property (Roddewig, 1996). An interesting experiment would be to ask real estate students how much a home should be devalued based on stigmatizing events.

Even if an appraiser can accurately define how much property has been devalued because of a ghostly reputation (itself no small task), for how long should the stigma affect the value (and thereby require disclosure)? Two months? Two years? Two decades? Forever? In *Reed v King*, a California case, the sellers were being sued for not disclosing murders that occurred in the home ten years earlier. The buyers claimed the stigma from the past murders decreased the property value from \$76,000 to \$65,000, a 17% decrease in value.

In practical matters, even if the seller would ultimately win, the seller could avoid the expense and hassle of an avoidable problem by disclosing the stigma initially.

If we continue with the facts from *Stambovsky*, how much less should the house be worth as a result of the haunted reputation? Students will not easily agree, if ever agree. Some will be dedicated to claiming the reputation should not have any effect, because ghosts are not real. Some will take the opposite position, that the house is uninhabitable because of the ghostly presence. Most would seek a middle ground on lost value of the home, but finding an exact number is problematic. No number would satisfy everyone, which is an excellent result for a classroom discussion. Even if the students would reach agreement, it is doubtful they would agree on the length of time the stigma would affect the value of the property.

Of course, in some areas the stigma of death has no effect. In New York, it is still common for apartment seekers to check out obituaries to locate potentially available dwellings (Rosenbloom, 2006). The stigma of a recent death in the apartment does not lower the interest in the property; it actually informs potential buyers of the property.

Ethnicity and Stigma

The discussion could explore additional issues. Should the ethnicity of the buyer matter? Why? There is a cultural aspect to this particular type of stigma. Some cultures are more affected by issues of death than others. Asians are more affected by ghosts than Westerners

because of their long held cultural beliefs of death and dying (Rittichainuwat, 2011). For example, Chinese customs prevent buying an apartment where someone had recently died (Rosenbloom, 2006). The Chinese even disfavor having a view of a cemetery (Tse & Love, 2000).

In Asian communities, apartments where someone committed suicide are considered haunted and have a lower appraised value, on average 7.5% lower, but it can be as much as 50% lower (Man & Wong, 2012). As a result, the impact of being associated with death is not uniformly felt. Even within one specific cultural group, there are wide differences in the reactions to a stigmatized property. How could a multicultural society such as ours achieve a consistent result which pleases everyone (or anyone)? Do the cultural beliefs affect the duties of the seller? In other words, does the seller have more of an obligation to inform of death associated with the property if the buyer is Asian? That should lead to an interesting discussion.

The Asian community is not alone in the views of ghosts and death. Estonians also have a strong cultural belief in ghosts, which was suppressed during the Soviet times (Valk, 2006). Demonic servants (*kratt*), ghosts (*kummitus*), and treasure seeking demons (*kratid*) are common in Estonian literature (Valk, 2006). There are many other cultures which have a strong reaction to property with ties to death. These cultural factors must be considered by the real estate professional.

CONCLUSION

The *Stambovsky v Ackley* decision and the subject of stigmatized property should result in an interesting and enlightening class discussion. Many times **we** as educators strive to make the classes interactive and engage the students. A discussion which involves the students and peaks their interest is a valuable asset, and should be used.

This discussion can lead to a good understanding of stigmatized property, disclosure issues, and devaluation issues. The discussion can also explore some cultural issues and how those affect business behaviors. Since this exercise would involve many issues into a single set of facts, it would be an excellent example to integrate into class.

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