



CANNABIS GROW OPERATIONS:

WHAT REALTORS® NEED TO KNOW





CANNABIS IN CANADA: A REAL ESTATE REALITY CHECK

Cannabis grow operations (CGOs) may seem like they belong on TV crime dramas, but reality places them much closer to home. Today in Canada, drugs are being cultivated and manufactured behind the facades of any type of building REALTORS® might encounter during the course of regular business. They pose both potential health and safety risks, not to mention significant legal and ethical responsibilities.

*This publication is produced in collaboration
with the Royal Canadian Mounted Police.*

LEGALIZED CANNABIS IN CANADA

Under the Cannabis Act, the use of cannabis for non-medical purposes became legal in Canada on October 17, 2018. The Cannabis Act also allows adults 18 years of age and older to legally grow up to four cannabis plants per household, however, additional restrictions may apply on cultivation, propagation and harvesting of cannabis. Review your provincial and territorial guidelines and check your municipality's website for local information.

Individuals who have received a Health Canada registration certificate may grow cannabis for their medical needs. The number of plants that may be grown will be written directly on the certificate.

Growing or possessing cannabis plants in a commercial property is prohibited unless a valid license has been obtained.

Now that cannabis is legalized in Canada for both medical and non-medical use, REALTORS® may be more likely to encounter cannabis plants on a property. Cannabis plants may be grown legally at residential properties, within the legal limits, and commercially by businesses, known as licensed producers, that have been granted a license by Health Canada to grow cannabis under a strict regulatory framework. However, despite these regulations, illegal cannabis grow operations continue to exist.



WHAT ARE CANNABIS GROW OPERATIONS?

A cannabis grow operation (CGO) is defined as any location that has been converted for the purpose of growing cannabis plants. There are both legal CGOs, licensed for medical or recreational production, and illegal CGOs. Illegal CGOs are often set up in residential or commercial rental properties.

CGOs operate in Canada's largest urban centres and in its smallest rural communities. It is not uncommon for police to find several CGOs in the same neighbourhood—even on the same street. The detection, investigation, dismantling, and remediation of CGOs is a complex undertaking as damage to a building is not always visible or obvious.

Illegal operators sometimes have families live in the properties as "crop sitters," or they might place interior lights on timers to make it look like someone is living in the building. While CGOs are often set up in rented units, they may also be found in owned, single-detached houses as they pose less of a risk of being discovered. CGOs can range in size from several plants in an apartment or condominium to more than 10,000 plants that occupy an entire barn or warehouse.

WHY REALTORS®, HOMEOWNERS, SELLERS AND BUYERS NEED TO CARE

On the outside, illegal CGOs can look like any other property; however, current and former CGOs may not be safe for human occupancy due to their compromised structural integrity, electrical deficiencies, and hazards from mould or chemical residue. The presence of explosive and/or toxic materials may also pose a threat to adjacent properties. Damages to a property as a result of CGOs may require costly remediation.

Houses where cannabis is grown for medical purposes must comply with provincial/territorial and municipal regulations. The individual responsible for growing cannabis for medical purposes must ensure that they comply with building and electrical standards to avoid the same health and safety risks associated with illegal CGOs.

Illegal CGOs can bring criminals, weapons and violence into neighbourhoods that normally wouldn't be exposed to this type of activity.

DANGERS ASSOCIATED WITH A CGO

The radical modifications made to buildings that house CGOs can create several potentially dangerous hazards.



Humidity issues

The high humidity and temperatures necessary for a grow operation can lead to the formation of damaging mould and fungus. It can also cause the warping of wood components, including staircases, handrails, floors, roof joists, and studs.



Structural integrity

Modifications to a residence serving as a CGO, such as alterations made to furnace vents and hot water heaters, are very common and may affect the structural integrity of the house.



Poisonous gas and chemicals

The chemicals used in the production of cannabis can circulate inside the residence. The presence of chemical fertilizers and pesticides can create biohazards such as toxic fumes and increased levels of harmful carbon dioxide. As well, the disposal of liquid, soil and sludge waste products may contaminate sewer or septic systems, surrounding soil, and local water supply.



Explosions

Chemicals used in cannabis extraction may be highly volatile and can result in explosions.



Electrical risks

Electrical bypasses and rewiring performed by unqualified individuals can result in dangerous electrical hazards. The use of enormous amounts of electricity, combined with illegal tampering of electrical systems and heat generated by high-intensity light bulbs can lead to fires.

HAZARDS OF CANNABIS EXTRACTION LABS

Tetrahydrocannabinol (THC) is the main psychoactive ingredient in cannabis that produces the high experienced by users. The high becomes increasingly intense with greater levels of THC, leading some consumers to prefer products containing higher concentrations of THC. One way to achieve this is by performing cannabis extraction.

THC may be extracted legally from a cannabis plant provided no organic solvents are used, such as butane and propane. Unlicensed, illegal extraction using organic solvents can damage the integrity of a building. Improper handling has resulted in numerous explosions causing damage to property, severe injury and death.



COSTS OF REMEDIATION

There is no national standard of remediation for either CGOs or cannabis extraction labs. Prior to making an offer, potential home buyers should be aware of the risks and costs associated with a property that has not been repaired or has been improperly repaired. A home inspection is critical to identify any deficiencies in prospective purchases.



To repair a building used as a CGO, it is often necessary to remove all materials down to the framing to gain access to the mould spores. Restoration can require new drywall, insulation, vapour barriers, and flooring throughout the house.



In all cases, remediation must comply with any provincial or municipal bylaws and cleanup should be completed by personnel trained to deal with these types of hazards. Check with your local municipality to see what remediation programs are available.



ARE YOU SHOWING OR VIEWING A CGO?

The presence of any single indicator may not cause concern; however, a cluster of the following indicators may be a cause for concern.

Vents

There's an unusual number of vents on the roof, or an unusual amount of steam in cold weather.

OUTSIDE

Roof

Excess heat may melt away snow.

Windows

They are blacked out, or with the curtains always drawn.

Wiring

There are unusual or modified wires on the exterior of the house.

Security Devices

There are visible security cameras or "Beware of Dog" signs.

Moisture

Condensation is visible on the windows due to elevated humidity levels or sweating down the side of the house from excess moisture.

Hydrometer

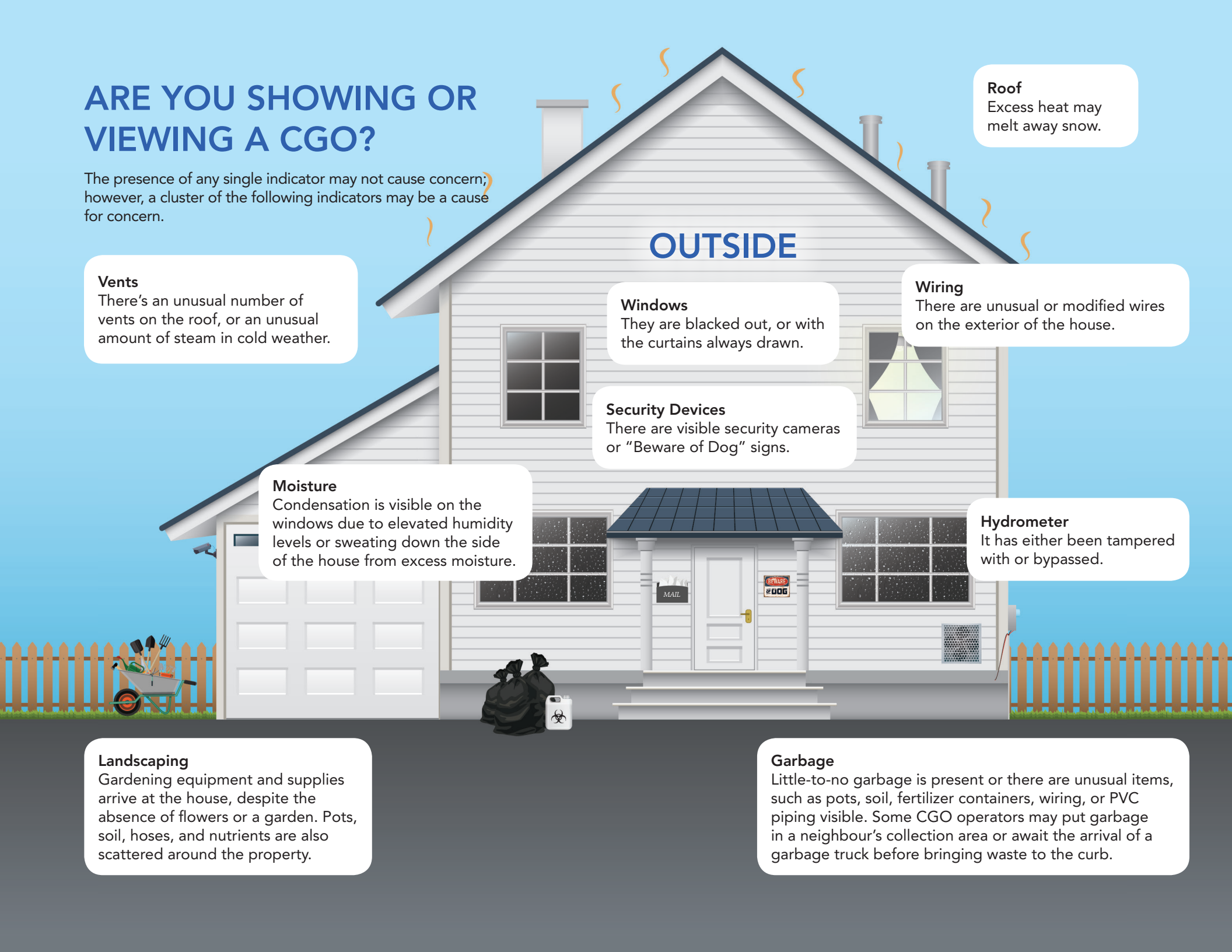
It has either been tampered with or bypassed.

Landscaping

Gardening equipment and supplies arrive at the house, despite the absence of flowers or a garden. Pots, soil, hoses, and nutrients are also scattered around the property.

Garbage

Little-to-no garbage is present or there are unusual items, such as pots, soil, fertilizer containers, wiring, or PVC piping visible. Some CGO operators may put garbage in a neighbour's collection area or await the arrival of a garbage truck before bringing waste to the curb.



INSIDE

Moisture

Warped or rotten wooden structures are found due to excessive moisture.

Mould

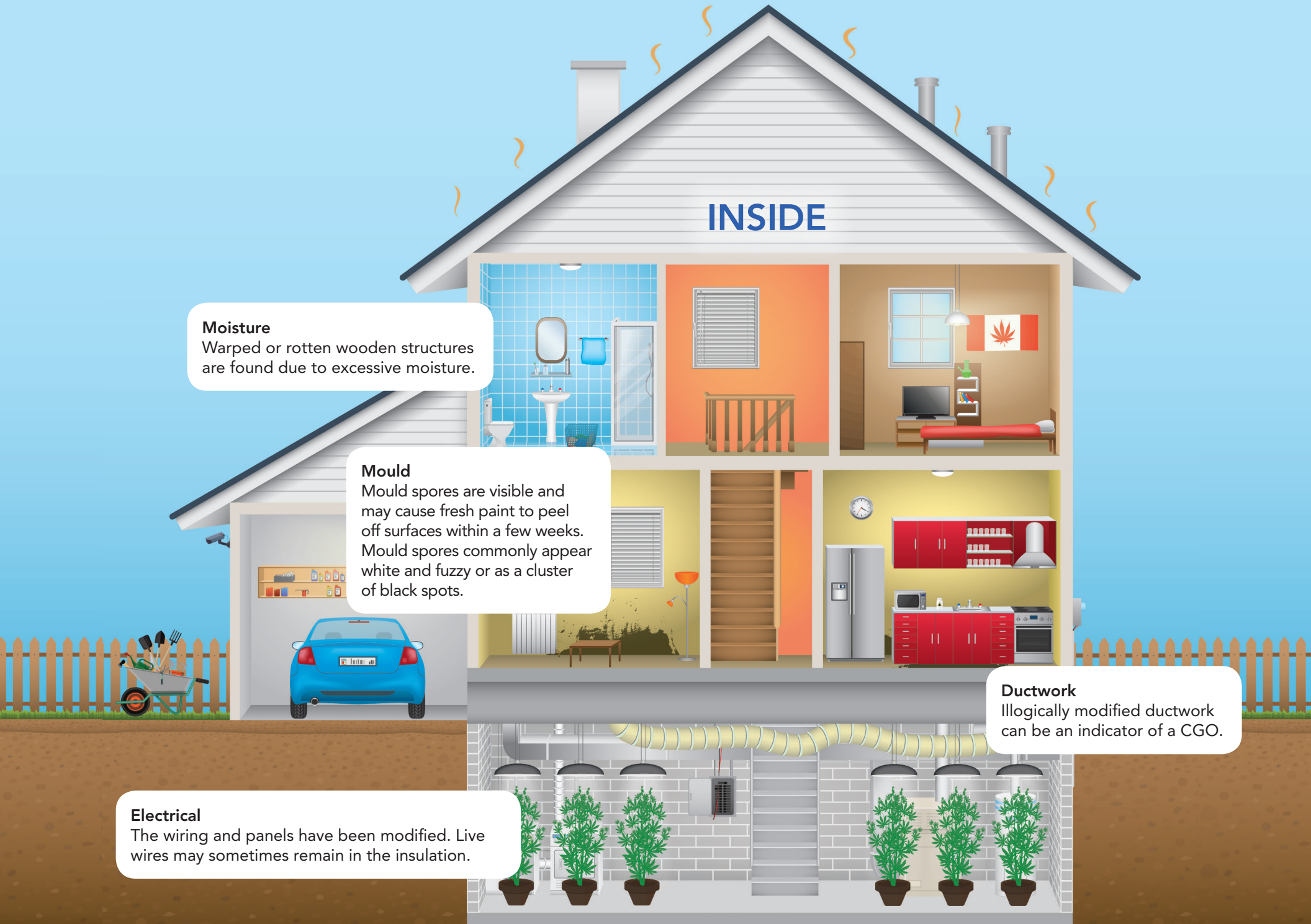
Mould spores are visible and may cause fresh paint to peel off surfaces within a few weeks. Mould spores commonly appear white and fuzzy or as a cluster of black spots.

Ductwork

Illogically modified ductwork can be an indicator of a CGO.

Electrical

The wiring and panels have been modified. Live wires may sometimes remain in the insulation.



BEHAVIOURAL INDICATORS

- **Residents:** They are either only home occasionally and for short periods of time or seem to always be home and never leave the house. They avoid contact with neighbours and only access the residence through the garage.
- **Visitors:** Either there are no visitors or people who frequently visit and display unusual behaviours. They may be parked away from the house with one person waiting in the car.

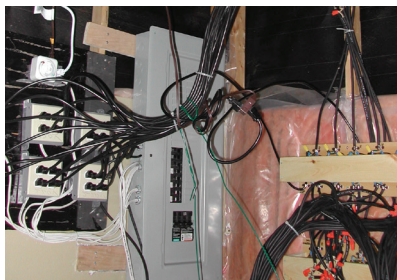
OTHER INDICATORS:

Outside

- **Odour:** A skunk-like odour resulting from cannabis cultivation can be detected.
- **Neglect:** Outdoor lights are left on all day and excess flyers are left in the mailbox or on the front steps.
- **Power surges:** Neighbouring residences may experience random power surges or decreases of power that dim lights and slow running appliances, with regular power flow returning about 12 hours later.
- **Sounds:** There's a constant humming from electrical equipment or fans directing air flow through the chimney, into the attic, or into the sewer system.
- **Brickwork:** Chunks of the exterior have been replaced.
- **Soffit:** There are brown stains created by external venting, or brand-new soffits.

Inside

- **Makeshift vents:** There are patched circular holes in floor joists or roof trusses that served as vents.
- **Stains:** Containers that sat unmoved for long periods of time can leave stains on the floor or in laundry tubs.
- **Plumbing:** New plumbing has been installed to link water supply and drains.
- **Structural changes:** Foundations and concrete walls have been cored or breached to get wiring around the hydro meter.
- **Fresh paint and renovations:** A new coat has been applied on only one or two walls or is in an unusual location like the basement. Alterations may have been performed around windows and hydro box.





DISCLOSURE

INFORMATION FOR LISTING AGENTS

Under the common law, the disclosure obligations of a listing agent are the same as those of the seller. If the seller is required to disclose, so too is the agent. Sellers and listing agents are obligated to disclose that a property was a CGO when:

- there is a material latent defect which the vendor knows or ought to know about;
- the buyer asks a specific question or expresses a specific concern;
- the agreement of purchase and sale contains references that the property was not used as a CGO; or
- there is a statutory or regulatory requirement that this disclosure be made.

If none of the above criteria apply, there is likely no obligation to disclose the fact the property was a CGO. Note, however, that provincial regulations and codes of ethics may impose a higher obligation of disclosure on a REALTOR®.

If you have any questions about the disclosure requirements in your jurisdiction, it is recommended to seek legal advice or contact your provincial regulator or real estate association.



INFORMATION FOR BUYER AGENTS

If you're a buyer agent and you know the property in question was used as a CGO, you have an obligation to disclose that fact. As part of your obligations as a buyer agent, you should take reasonable steps to ensure the property hasn't been used as a CGO.

A buyer agent should be aware there may be no obligation on the part of sellers to voluntarily disclose that the property has been used as a CGO. Recognizing this fact, the buyer agent should be proactive in protecting the buyer by:

- specifically asking the listing agent or seller if the property has been used as a CGO;
- specifically asking whether the sellers have knowledge of any defects—latent or patent;
- ensuring the agreement of purchase and sale contains a representation on the part of the sellers that the property has not been used as a CGO; and
- recommending their buyer get a building inspection.

INFORMATION FOR DUAL AGENTS

If you're representing both the buyer and the seller as a dual agent, you have an agency obligation to disclose all pertinent information to both parties. Before agreeing to represent both the buyer and the seller in a transaction where the property was used as a CGO, it is important to inform the seller of your obligation as a dual agent to disclose the details of the property to the buyer.

EXCISE ACT, 2001

Did you know?

The *Excise Act, 2001* allows an officer to seize anything that is reasonably believed to be related to a contravention of the Act. A contravention of the *Excise Act, 2001* can range from producing cannabis without a license to selling illegal cannabis. This means that your residential or commercial property could be forfeited if it is used for illegal cannabis-related activities.

TIPS FOR LANDLORDS AND PROPERTY MANAGERS

Interview tenants

You should interview all prospective tenants or renters. Be wary of anyone who wants to pay cash, has no obvious means of income, or wants to rent for a third party. Obtain a credit history, photo identification, references and follow up diligently.

Check your property regularly

Tenants may be reluctant to allow landlords to inspect the property. A crop may take two to three months to mature, so checking your property every four to five weeks is recommended.

Sign a rental agreement

Ensure you have a detailed rental agreement and that those renting are actually living in or are using the property.

Talk to the neighbours

Develop a relationship with the neighbours so they can let you know what is going on at the property.

ILLEGAL ACTIVITY

If you suspect any illegal activity, contact your local police or your local Crime Stoppers immediately. You should be prepared to provide a description of the house and the reasons you believe illegal activity is taking place.





OTHER FREQUENTLY ASKED QUESTIONS

How do I disclose the information?

There is no standard or requirement for disclosure. The disclosure can be made verbally; however, given the nature of the problem with CGOs, REALTORS® are encouraged to act in an extremely cautious manner by having disclosure documented. If a listing agent is going to indicate on the data input sheet that the property housed a CGO, they should first satisfy themselves that this disclosure is required by law or regulation and should obtain consent for that disclosure from the seller. Any disclosure required by law should be made before any agreement of purchase and sale is signed.

What are the legal consequences of selling a home without disclosing it was once used as a CGO?

There may be no obligation to disclose the property was a CGO. That is the first area of inquiry a REALTOR® must undertake. There is, however, always an obligation to disclose material latent defects that are known or should be known by the seller. Both the seller and the listing REALTOR® (if they knew or ought to have known) could be liable to the buyer for damages if any repairs are needed to make the property habitable. Remember, the standard of care imposed on agents requires them to confirm information when the circumstances dictate. In some situations, REALTORS® may not be able to simply take the seller's word regarding the status of defects and may need to investigate further.

As a REALTOR®, do I have to take any steps to determine if my client's property has been used as a CGO?

Yes. As a REALTOR® you have a legal duty to make reasonable efforts to discover the relevant facts about your client's property. REALTORS® are also bound by the REALTOR® Code—a code that symbolizes a commitment to competence, service, and professional conduct. According to the REALTOR® Code, a REALTOR® has an obligation to discover facts pertaining to a property that a prudent REALTOR® would discover in order to avoid error or misrepresentation (Article 4: Discovery of Facts). Provincial regulations and regulator codes of ethics may impose additional obligations on a REALTOR®.

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