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Disclosure form is a danger to buyers and sellers

Over the years, I have repeatedly criticized the Seller Property Information Statement (SPIS), a form published by the Ontario Real Estate Association.

Use of the form is a controversial issue in the real estate community. Some listing agents encourage sellers to complete the form and provide it to buyers to disclose various issues about a house being offered for sale. Others avoid it like the plague.

In numerous columns, I have been critical of the form because it is complex, ambiguous, misleading and technical. Many court cases have resulted from the use and misuse of the document.

Not only does the SPIS present a risk of litigation to buyers and sellers, but it now appears that its use has repeatedly resulted in real estate agents getting disciplined by their regulatory body, the Real Estate Council of Ontario (RECO).

Recently, RECO added a search function to its website (www.reco.on.ca), allowing the public to search 10 years of discipline decisions by the subject matter of the rules which an agent may have breached.

In no time at all, I was able to confirm that there are a dozen reported discipline decisions in which the agent involved was censured over the use of the SPIS, among other issues.

The most recent was in September, 2010. The agent involved published a listing for a property indicating that an SPIS form was available, when in fact it wasn't until after it was too late. The penalty imposed for this and other transgressions was \$7,000.

In September of 2007, an agent was brought before a discipline panel regarding the sale of a property which contained urea formaldehyde foam insulation (UFFI). She failed to get the buyers to acknowledge receipt of the SPIS form which disclosed the existence of UFFI. Penalty: \$7,500.

Another agent faced a discipline hearing in June, 2007. The SPIS indicated that the water supply was a well with a backup cistern. A question about year-round water supply was left blank. In fact the well was dry and the cistern had to be refilled by truck every two weeks. The agent was fined \$10,000 for failing to review and correct the incomplete SPIS form.

Earlier, the brokerage had been fined \$5,000 for failing to adequately supervise the activities of its salespersons to prevent harm to consumers.

Three agents and their employer came before a discipline hearing in late 2003. They were involved with the sale of a property in Caledon which was zoned rural and hazard land. The listing only showed the property as rural, but the SPIS disclosed it was hazard land which could not be used for any further construction. The selling agent failed to show the SPIS to the buyers before they signed the offer.

For their lack of disclosure, the three agents were fined \$5,500 each and their employer got hit with a penalty of \$2,000.

Earlier in 2003, an agent was fined \$3,000 for failing to disclose on the MLS listing or the SPIS that the private driveway to the house was actually on land owned by the province of Ontario.

Two agents back in 2001 listed a home on one acre of land in Caledon which was about to be designated as being within a High Potential Mineral Aggregate Resource Area. The listing noted that an SPIS was available but this turned out to be false. For their lack of disclosure, one agent was fined \$1,000 and the other \$3,000.

In another 2001 case, the SPIS stated that there was wood under the carpeting in a listed home. The agent assisted in preparing the form and failed to verify the statement, which was only partially true. Fine: \$750.

Based on these reported discipline cases, the SPIS forms present a significant danger to the real estate agents who use them. They also have a tendency to get buyers and sellers involved in nasty litigation.

Since the use of SPIS forms is so clearly risky to all parties in a transaction, it continues to puzzle me why some agents still promote them.