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January 22, 2011

SPIS forms are ticking time bombs

Real estate boards and agents across the country continue to promote the use of the Seller Property Information Statement (SPIS), despite the fact that the disclosure form has resulted in an avalanche of litigation resulting from its widespread use and misuse.

Proof of the litigation explosion comes in the form of a detailed analysis of every Canadian case on the SPIS, which I have just completed for a presentation to real estate lawyers at a gathering of the Ontario Bar Association next month.

Since the forms were first introduced around 1993, there have been 49 reported court decisions resulting from the use of the SPIS in Ontario, and a further 153 from the other provinces and territories, for a total of 202 cases. I cannot think of any other single document which has accounted for so much litigation in the same time period.

Typical of the cases taking up considerable court time lately is the 2010 decision of Small Claims Court Deputy Judge Jay State in the case of Smith v. Campanella.

David and Brenda Smith sued Salvatore and Maria Campanella for damages in the amount of \$9,256.25 arising from their purchase of the Campanella house on Queenslea Dr. in Hamilton.

The Campanellas signed an SPIS form which was given to the purchasers before the agreement of purchase and sale was finalized.

Beside the question for the type of wiring in the house, the seller had the option to check off one of four options: copper, aluminum, knob-and-tube or other. There is a space beside the word "other" where the sellers could have filled in "unknown," but instead they checked off "copper" and left a blank in the space beside "other."

They completed the form in this way on the advice of their real estate agent.

After the purchase transaction had closed, the Smiths discovered that the house had both aluminum and copper wiring. They sued for damages representing the cost to remove the aluminum wiring and replace it with copper.

The judge accepted that the Campanellas actually believed that the wiring was all copper and that they did not deliberately or fraudulently mislead the buyers.

Nonetheless, he determined that their answer was based upon "a thin premise, an assumption, a guess, really, based upon the age of the building . . . made without doing any checking to ascertain if the answer was accurate, and this assertion amounted to a negligent misrepresentation."

In this case, the SPIS was not just "attached" to the Agreement of Purchase and Sale, but it was specifically incorporated into the Agreement of Purchase and Sale by a clause to that effect. As a result, it became a contractual commitment of the sellers.

Not only was the statement about copper wiring made a part of the agreement, but the sellers confirmed it orally on two occasions.

The written decision of State is unusually lengthy for a Small Claims court case. In 264 paragraphs and more than 28,500 words, the judge conducts a detailed analysis of the many court decisions in this area of law.

In the end, the judge was not happy with the actions of either the buyers or the sellers. Even though he found the sellers responsible for misrepresentation, he said the buyers were partly the cause of their own misfortune since they should have conducted a more thorough investigation of the wiring issue which concerned them so much.

This seems to be the first case in which a judge found the sellers and buyers equally at fault. As a result he reduced the damages by 50 per cent, awarding them only \$3,556.88 and costs.

Based on the more than 200 SPIS cases taking up the time of lawyers, judges and homeowners in recent years, it's clear to me that anyone who uses an SPIS in a real estate transaction is playing with a ticking time bomb.

Why real estate associations across the country continue to foist these dangerous disclosure forms on their clients continues to amaze me.