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Busting the myths about the Seller Property Information Statement

As a result of its promotion by the Ontario Real Estate Association (OREA), the Seller Property Information Statement (SPIS) continues to be a source of never-ending business for litigation lawyers and endless grief for unlucky buyers and sellers who are being swept into the bottomless pit of lawsuits because they used it.

It's time to debunk some of the myths surrounding the form, many of them promoted by OREA and its industry apologists. Here they are:

- **Myth: Commonplace advice for sellers signing the form is Liars Beware.** Nothing could be further from the truth. The real reason sellers often get sued is not because they lie but because the SPIS is complicated, highly technical, misleading and highly ambiguous. It is impossible to complete the form fully and accurately without expert advice from industry professionals. And judging from more than 200 Canadian lawsuits, even the professionals get it wrong sometimes.
- **Myth: When buyers are faced with a home for sale for which the SPIS is not provided, they offer less money than they otherwise would have.** This fallacy has never been supported by a shred of statistical or anecdotal evidence.
- **Myth: Buyers become suspicious when an SPIS is not provided, and in many communities "this tactic usually creates a stigma on the property."** Again, this myth is unsupported by any reliable evidence.
- **Myth: Signing an SPIS may prevent possible legal action because known defects or problems are disclosed.** My research provides no support for this proposition.
- **Myth: Using the SPIS reduces the chances of serious problems that can lead to litigation and may prevent possible legal action.** In my view, industry experience proves otherwise.
- **Myth: When sellers make a disclosure that is complete and accurate, their chances of being sued virtually disappear.** An examination of court cases involving hidden defects puts the lie to this statement. When a house contains concealed defects which may or may not be known at the time of sale, sellers may get sued even when they do not sign the SPIS.

While refusing to sign an SPIS is never an absolute shield from litigation, signing the form exponentially raises the chances of being sued.

OREA's website contains an online education course entitled [SPIS: Don't Leave the Office Without It](#). Given that the real estate trade association is heavily promoting the form, I question why so few agents are following its advice.

Raymond Diep is a licensed real estate broker and articling law student. He tells me that in his experience fewer than 5 per cent of Toronto listings offer an SPIS, and he has actually never seen one in a live deal.

My conclusion is either that virtually all agents are ignoring their association's advice, or their clients are ignoring the advice of their agents, or almost everybody is ignoring OREA. But it is clear to me, observing the marketplace, that the industry associations across Canada that promote forms like the SPIS are flogging a dead horse and are clearly at odds with their members.

Despite the almost universal boycott of the SPIS, some sellers and their agents still use it: they are the ones who seem to be the source of the never-ending stream of new SPIS court decisions.

In April 2009, John Shen bought a house in Richmond Hill from Francesca Maiolo for \$1.869 million. Shen's home inspector produced a thorough report of the building's components.

Maiolo signed an SPIS form in which she responded in the negative to the question, "Are you aware of any moisture and/or water problems?"

The inspection report pointed to an "excessive moisture level" in the basement. Typically, this would relieve the seller from any responsibility for a misstatement on the form.

But deputy judge Stanley Baker ruled that the seller had to share responsibility for damages, due to her misleading statement. "To ignore it would be to condone reckless dissemination of untruths, a notion repugnant to the ethos of honourable dealings in contract and quite unacceptable in law," he wrote.

He ordered the seller to pay 30 per cent of the buyer's damages of \$5,330.

For more columns and court cases on the SPIS, including a review of Ontario court cases from 1997 to 2010, click on <http://aaron.ca/search-star.cfm>, and enter SPIS or Seller Property Information Statement.

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