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Bizarre form warns against signing Seller Property Information Statement

In the wake of a flood of court cases involving the Seller Property Information Statement (SPIS) and its counterparts across Canada, the Ontario Real Estate Association (OREA) has introduced a strange new form designed to warn sellers about signing the SPIS.

Property disclosure forms consist of a complex series of questions that agents sometimes ask sellers to complete. Some agents believe — incorrectly — that the form shields them from liability for undisclosed defects in the house.

Since the form first appeared in 1997, it has been the subject of about 230 court cases across Canada — and new ones are appearing at the rate of about one a month. Indeed, it is difficult to think of any other single form — except perhaps the marriage certificate — which has spawned so much litigation and has produced so much money for litigation lawyers.

Rather than place the warnings about signing the SPIS form right on the form itself, the new form 225, entitled “Important Information for Sellers,” contains a caution for anyone about to sign the disclosure form.

In a huge understatement, the warning form states “care must be taken when the form is completed.”

“If there is some question as to whether a particular item should be mentioned on the form,” the warning notes, “it is better to err on the side of caution and provide the information along with an explanation, e.g. a defect that has been repaired.”

In my view, erring on the side of caution would require that the form be shredded.

The text continues: “With the high volume of property transactions that take place, there will inevitably be disputes between seller and buyers, whether or not an SPIS has been completed. The SPIS, when completed, may become an issue in such a dispute.

“There have been cases where a court has determined the sellers completed the SPIS accurately, honestly and to the best of their ability and the evidence provided by the SPIS is favourable to the sellers. There have been other cases where a court has determined that a seller has not been forthcoming with important information on the SPIS or has provided misleading information to the buyers.”

The warning form makes no mention of the frequent criticisms that have been levelled at the SPIS by the courts, here in this column, and elsewhere. Filling it out completely requires technical, legal, construction, environmental, tax and accounting expertise far beyond the capacity of most individuals, and indeed, most agents. Many of its questions are ambiguous or unclear at best.

Some of the questions ask about events which occurred prior to the ownership of the seller, and would be completely beyond his or her knowledge.

Sellers signing the form are asked impossible technical questions about encroachments, easements, restrictive covenants, drainage restrictions, local levies and heritage designations.

But the biggest zinger on the new warning form is that it fails to clearly state the law on a seller’s disclosure requirements.

It says, “Whether or not the seller completes an SPIS, the law requires a seller to disclose hidden material defects to a property.”

Correctly stated, the law requires a seller to disclose any hidden defect which renders the property uninhabitable or dangerous. Telling a lay person to disclose “material” defects without defining the term is both unhelpful and misleading.

I can’t think of any other document in any area of law that exists solely to warn consumers about the dangers of signing a different form altogether. To me, the concept of a separate warning form is simply bizarre.

It makes me wonder whether the real purpose of the form is an attempt to shield the agent from getting sued for asking the seller to sign the SPIS.

In a recent blog about the SPIS, lawyer Simon Parham writes, “Buyers love them. Lawyers hate them. Sellers should be wary of them.”

In its attempt to dig itself out of a hole created by a very bad disclosure form, OREA’s new warning form has only succeeded in making the hole that much deeper.

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