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Readers weigh in on disclosure statements

Hot topic in the Toronto real estate market

There are strong views both ways on SPIS forms

Judging from the response I received to my column on property condition statements two weeks ago (<http://www.aaron.ca/columns/2004-10-16.htm>), the issue is a hot and sensitive topic in the Toronto-area real estate market.

I told the story about the sale of an upscale Winnipeg home in which the sellers had filled out a property condition form known in the Toronto area as a seller property information statement or SPIS.

The sellers failed to note on the disclosure form that some of the windows had been leaking even though there were black stains on the windowsills.

The buyers sued and were awarded damages in small claims court. Their victory was later upheld by the Manitoba Court of Appeal.

The basis of the appeal court's decision was that when the sellers failed to answer the question about water leakage fully and honestly, they were guilty of active concealment and "fraud by silence," even though the stains on the window sills were quite apparent for any potential purchaser to see.

Justice Guy Kroft of the Manitoba Court of Appeal warned the real estate industry against the use of property condition forms.

He noted that use of the form would be likely to increase the amount of litigation in similar circumstances.

He added, "This judgment should, in my view, be taken as a warning about the routine use of the PCS."

And Chief Justice Richard Scott wrote that the form creates "a ripe ground for litigation."

I received many emails on both sides of the issue.

Richard Faye, of Coldwell Banker Case Realty in Pickering, wrote to say that the forms are commonly used, and "if they are filled out honestly and correctly they will lead to fewer lawsuits."

The form, he says, is under active consideration by the Toronto Real Estate Board, and may become mandatory.

Faye told me about a transaction he is involved in where there is a dispute about whether the SPIS was filled in accurately. "I just hope it can be worked out without going to court," he added.

Brampton realtor Elizabeth Doell believes that the questions on the SPIS often place sellers at risk for innocent misrepresentations as the questions asked require the seller to comment on areas in which they have no expertise.

She wrote, "We have had discussions within our office regarding the use of the SPIS. I have not been the only representative to have misgivings about the 'for information purposes only' statement on the SPIS."

Robert Findlay wanted to know why I was "so down" on the form. He suggested that it could be tweaked so that little litigation would result from its use.

Realtor Sam Soukas wrote that it is the policy of Re/Max Hallmark Realty in Toronto that all sellers complete an SPIS when listing a property.

"In my experience," he wrote, "I have had very few people ask to see it when I have had listings."

The last word goes to Dennis Irwin, of Re/Max All-Stars Realty in Stouffville.

Irwin wrote that the issue of the SPIS form is becoming a critical one for the protection of sellers.

"I am glad to hear that I am not the only lone wolf out here in the woods who thinks the ... SPIS is one deadly piece of paper for a seller to sign," he wrote.

His opinion is that if the forms become mandatory, it will only be to protect the realtor and not the client.

"So I continue to scratch my head, and any other part I can find, wondering where the real estate industry is coming from when advising us to get them signed.

"Because of this (fraud by silence) case, we in the industry can no longer hide behind the curtain of 'well it has never been a problem before,'" Irwin wrote.

"Now we must advise the client that there is liability attached to the form," he added. "My opinion is to scrap the dam thing."

I couldn't have said it better myself. If you're selling a house, get legal advice before you sign a seller disclosure form.

Unless, of course, you enjoy litigation.

See also <http://www.aaron.ca/columns/bremner%20paper.htm>

and <http://www.aaron.ca/columns/2004-02-07.htm>

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