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Signing SPIS form remains a huge risk

Whenever I write about Seller Property Information Statements (SPIS), which real estate agents often ask their seller clients to sign, I can always be sure of getting a significant number of email responses.

In last month's issue of *REM* (Real Estate Magazine), a trade paper for real estate professionals, columnist Stan Albert forcefully takes issue with an SPIS column I wrote in this space on May 12.

Albert is a veteran real estate agent and writer. Many of his colleagues view him as a self-appointed ombudsman. In this capacity he wrote in *REM* last month that I was "fear mongering," and that I should "refrain from brush stroking all parties to a transaction as being tarnished or dishonest."

The point I was making in my May 12 column about the SPIS, and again in another Title Page column at the end of June, was that a seller who signs the SPIS form even the most honest of sellers is taking a huge risk and inviting litigation.

Indeed, from my regular scans of new real estate-related court cases from across the country, it appears to me that litigation based on the SPIS form is a growth industry.

Several of the questions on the Ontario SPIS form designed by the Ontario Real Estate Association call for greater expertise than the average layperson can be expected to have. An objective analysis of the SPIS form should begin with the question: who is the form trying to protect the agent, the seller or the buyer?

In his *REM* column, Albert asks the telltale question about the forms, "What protects us as (agent or broker) registrants?"

At the same time, he calls on real estate boards across the country "to seek the assistance of the provinces to step up and make it mandatory to require the forms, to help our registrants become better and more proficient."

Of course, there is nothing wrong with professionals protecting themselves from their own clients, provided the client is fully informed. On the issue of making the SPIS mandatory, the overriding concern should be public interest.

The Real Estate Council of Ontario (RECO) is the governing body for real estate agents and brokerages. It makes clear on its website that its Code of Ethics does not oblige a seller to complete the form, but there is no obligation to tell this to the seller.

The Code does make clear that the primary duty of a real estate agent is to protect and promote the interests of his or her client.

Even the Toronto Real Estate Board unlike other boards in Ontario has decided not to make the form mandatory.

Albert writes, "I have yet to see or hear of one lawsuit that was a result of SPIS errors or flaws, as a result of a form being signed."

Perhaps Albert is not a regular reader of this column, but I would be happy to send him a whole pile of cases where the complexities of the form or the way it was used led directly to litigation involving all the parties to the transaction.

The form is deeply flawed because it requires sellers to disclose far more information than the law requires and demands that sellers answer complex legal questions.

Perhaps it is time for the Ontario Real Estate Association to design an SPIS form that is shorter, more user-friendly and less complex, and that does not require a law degree to answer properly. And one that clearly states in bold letters, "Completing this form is optional."

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