



Bob Aaron bob@aaron.ca

September 26, 2009

## Real estate agents are divided over disclosure form

One of the most controversial issues facing the real estate community is the use of the Seller Property Information Statement (SPIS), which is often provided by sellers to buyers to disclose various issues about a house being offered for sale.

In numerous columns, I have been critical of the form because it is complex, ambiguous, misleading and technical. I have written about some of the many court cases that have resulted from the use and misuse of the document.

Real estate agents tend to be sharply divided on the SPIS. Many have written and spoken to me to support my position, and others have strongly disagreed with my "crusade."

Recently I contacted Bob McLean, communications director at the Ontario Real Estate Association, which publishes the SPIS form. I asked him to arrange an interview for me with the association's president or legal counsel.

I was told that the association's point person was its president Pauline Aunger, and that she would provide me with a written statement on the subject. Aunger was very busy "chairing meetings," and was only willing to enter into an email dialogue. I declined the offer.

OREA's carefully crafted response states, "We take great pride in this form because it has demonstrated its ability to inform buyers and protect sellers over its many years of use in Ontario. The SPIS form protects sellers from a claim by the buyer that the seller did not reveal the condition of their home. Numerous court cases have cited the SPIS as evidence that a seller did, indeed, disclose a condition such as a wet basement so they were found not to be responsible for a claim by a purchaser.

"We also know anecdotally," the letter continued, "that many potential claims by purchasers against sellers never even make it to court because those purchasers are reminded of the SPIS as evidence that they had, indeed, been informed of the condition of the house they bought.

"The Seller Property Information Statement also has proven to be an excellent tool to inform buyers of the condition of a property they are considering. Through the use of a SPIS, a buyer has pertinent information about a property that will assist them (sic) in their decision making process.

"The key to the successful use of the SPIS is the key to any successful transaction: honesty. If a seller knowingly hides pertinent information about their property, that is simply dishonest."

Ross Konyer, an agent with Coldwell Banker in Lindsay, expressed the opposing view to me in an email.

Konyer points the finger of blame at OREA and at the Real Estate Council of Ontario (RECO), the industry regulator, for promoting the SPIS form.

"RECO's mandate is to protect the public's interests in the trading of real estate in Ontario," he wrote.

"How can a document such as the SPIS serve in the public's best interest? Sellers are being asked questions that are beyond the scope of their expertise and knowledge. Innocent mistakes can be construed as misrepresentation and are an invitation to litigation.

"As a realtor, my ethical and legal duties are to protect my seller's best interests. How could I possibly recommend that my client should enter this minefield by completing an SPIS?"

SPIS forms, Konyer wrote, are usually completed by homeowners who are "totally unqualified to give opinions on the state of electrical, plumbing, structural integrity, drainage, environmental etc."

Buyers, Konyer added, should have qualified professionals conduct their inspections.

He also noted, "The more (court) cases that pile up, clearly showing how risky filling one out is, the more RECO insists it is a great tool for realtors and sellers alike."

"Unfortunately, many realtors are still casually laying it on the table and handing the sellers a pen to fill out an SPIS without any discussion about the implications. Remember that realtors all have errors and omissions insurance for lawsuits, the average homeowner does not!"

I agree with Konyers. Sellers who sign SPIS forms and agents who encourage them to do so are asking for trouble.