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## Honesty won't resolve disclosure form issues

### The Great SPIS Myth

It's time to reveal The Great SPIS Myth the prevailing fiction about the Seller Property Information Statement (SPIS), a disclosure form published by the Ontario Real Estate Association (OREA).

Although its use is endorsed and encouraged by many OREA member boards, real estate agents remain sharply divided on whether the form is too dangerous to use, and whether it protects the public or the agents who try to get sellers to sign it.

I have been very critical of the form because it results in a great deal of litigation among sellers, unhappy buyers and the agents who are caught in the middle.

The official position of OREA and industry commentators who support it is that the problem with the SPIS is not the form itself, but that some sellers do not tell the truth.

The key to the successful use of the SPIS, OREA says, is honesty. In every one of the court cases I have written about in this column, OREA's view (set out in a letter to me last month) is that "it was not the SPIS form itself that caused legal difficulty for the sellers: rather it was the failure of the sellers to be forthright in their disclosures about the property."

This, in my view, is the fatal flaw in the OREA logic. I call it The Great SPIS Myth the fiction that if sellers are honest they won't wind up in litigation over the SPIS form.

A careful analysis of the reported court decisions shows that this position is simply not accurate, and that is probably why OREA's president declined my request for an interview.

Consider some of the questions on the form:

- "Does the survey show the current location of all buildings, improvements, easements, encroachments and rights-of-way?" My response: only a licensed land surveyor can answer this question. Even the most honest seller doesn't have the skills to answer it properly.
- "What is the zoning on the subject property? Does the subject property comply with the zoning? If not, is it legal non-conforming?" Unless a seller is intimately familiar with the municipal zoning bylaw, it would be foolhardy to answer these questions.
- "Are there any restrictive covenants that run with the land? Are there any drainage restrictions?" Few sellers have a current title search at hand in order to properly understand or answer these two zingers.
- "Are there any local levies or unusual taxes?" To me, all taxes are unusual and most sellers have no idea if there are any levies.
- "Is the sale of the property subject to GST?" Only someone familiar with the GST legislation would be safe in answering this. "Has the use of the property ever been for the growth or manufacture of illegal substances?" Note the use of the word "ever." Unless the proverbial "honest seller" knows what happened in the house under previous owners, this question could be an invitation to litigation.
- "Is the property under the jurisdiction of any Conservation Authority?" Not something most homeowners would have the slightest clue about.

Other questions ask for the size of the electrical service, the type of wiring, whether there is any lead or galvanized metal plumbing, and what is under the carpeting. How the honest but typical homeowner is supposed to know the answers to these questions off the top of her head is beyond me.

Condominium owners are asked to itemize what is included in the common expenses, whether a reserve fund study has been completed, how much money is in the reserve fund, and whether there are any pending rule or by-law amendments. Again, these are not questions that even the most honest condominium owner could readily answer without extensive investigation.

The SPIS form is so impossibly technical, so complicated, so ambiguous and so badly worded that even a college of cardinals, a posse of priests, an institution of imams, a multitude of monks or a regiment of rabbis could not honestly fill it out.