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Manitoba simplifies seller disclosure form

The seller property disclosure statement remains a hot topic in the real estate community as Manitoba has now made them compulsory, while Britain has gone in the other direction to repeal the law requiring them in every transaction.

Effective Aug. 1, 2011, the Manitoba Securities Commission has mandated that its own version of the Property Disclosure Statement must be used by real estate agents when they prepare agreements of purchase and sale.

The major difference between the disclosure form created by the Manitoba Real Estate Association and the Ontario Real Estate Association version is their length and complexity. The Manitoba form has 19 questions, the basic Ontario form has 48.

I am a devout opponent of these forms, but given a choice, I would take the Manitoba form any day.

While Manitoba was busy making the forms compulsory, Britain abruptly suspended their use in May. Britain's Communities Secretary Eric Pickles and Housing Minister Grant Shapps took what they called "an important step at a point of fragile recovery in the housing market" by suspending the requirement for homeowners to provide a Home Information Pack (HIP) when selling their homes.

Calling the HIP "expensive and unnecessary," Pickles said that the government's action "sends a clear message of encouragement to people thinking of selling their home that they can put it on the market with less cost and hassle."

Here in Ontario, the Seller Property Information Statement (SPIS) issue seems to divide the real estate community right down the middle, with half strongly in favour of it and the other half just as strongly opposed.

Few real estate experts know more about the Ontario disclosure statement than Barry Lebow, who has testified as an expert witness in as many as 600 trials involving real estate issues.

In a video Lebow posted on YouTube, this question was posed to him: If a client asked you "should I or should I not sign a Seller Property Information Statement," what would your definitive answer be? Lebow's one-word response: No.

In the same video, Lebow says, "If I had my choice there would only be four questions on an SPIS form."

Lebow's suggested questions for sellers to answer are:

- Is there anything in your home that you are aware of that could negatively affect my buying decision?
- Is there anything on or below the surface of your land that could negatively impact my buying decision?
- Is there anything within the neighbourhood either in place or pending that could negatively affect my buying decision? Lebow explained the concerns referred to in this question would be issues like whether a pedophile lives in the neighbourhood, or whether there are any area plans for new developments like a new highway, airport runway or recycling plant.
- Is there anything about your house that would prevent me from getting a mortgage or insurance?

As for me, I let the facts speak for themselves. In less than 18 years, the SPIS has given rise to or been the central feature in more than 200 reported Canadian court cases — 50 in Ontario and another 150 in the rest of the country.

On the assumption that only one in 10 court cases ever gets to trial, that translates to as many as 500 Ontario cases and 1,500 more from coast to coast to coast.

I can't think of any other single real estate document that produces so much work — and money — for litigation lawyers.

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