



SELLER PROPERTY INFORMATION STATEMENT

TO SIGN OR NOT TO SIGN?

There are many reasons not to sign the “Seller Property Information Statement”, often referred to as the SPIS. There are a few things to keep in mind when dealing with the SPIS. First, it is not mandatory. It is not required for the purpose of creating a binding Agreement of Purchase and Sale. Secondly, the document is very lengthy, complex and full of ambiguities that make it very difficult to complete. Third, the SPIS is highly litigated. There have been a number of lawsuits that have been filed as a result of the SPIS having been provided to a buyer that contained inaccurate information.

THE SPIS IS NOT A ROUTINE AND REQUIRED DOCUMENT:

It is often the case that even before listing the property, an agent will ask the client to complete the SPIS. Do not be fooled by the casual manner in which this is done, as it is often put to you along with other listing agreement documents in a way that will have you believing it is a routine and mandatory document. Please keep in mind that **you have no obligation to complete the SPIS.** The only document that is mandatory is the Agreement of Purchase & Sale.

Following the listing, you might face a situation whereby the buyer or the buyer’s agent is requesting the SPIS. This can be requested either before making the offer, or may be put to you as a condition of the offer. Even though you now know it is not mandatory, you might still have concerns that you will lose the deal if you refuse, or that it can be inferred, from your refusal, that you are hiding something. We always tell agents and our clients to simply advise the buyer’s agent that the SPIS was not completed as we, as your lawyers, recommended against it.

This form can and often does lead to lawsuits brought after closing due to it being completed inaccurately. Keep this mind. It is not a matter of being reasonable and cooperative. It is a matter of protecting yourself.

TRICKY, TECHNICAL & VAGUE LANGUAGE:

The form is not a straight forward document. Some think that litigation can be avoided by being extra diligent in filling out the form, but the form itself is a very complex document. The questions are very vague in nature and can sometimes impede your ability to answer the question correctly. For instance, one question on the SPIS pertains to whether there are any defects present in any appliances or equipment that are included with the property. Keep in mind that there is no definitive definition for the word ‘defect’ provided. This leaves the meaning subject to the subjective interpretation of the word. Some believe ‘defect’ refers to something that is not working. Others believe it refers to something that could be working but presents with problems, such as the fridge not hitting a cool enough temperature or not being clean enough.

It is not farfetched to anticipate that problems can arise from parties to a transaction holding different definitions of a term. Thus, if the fridge is working, but the buyer believes that it is defective because of the temperature or because it is not clean, the buyer can bring forth an argument that the SPIS was completed inaccurately.

Vagueness is only one issue. Another issue is that the questions are often very complex and technical in nature. They are burdensome, requiring information that the owner does not have knowledge of. For instance, issues surrounding zoning, encroachments and restrictive covenants. These questions require a certain level of investigating, and that too, by a lawyer. Without that, there is no way that these questions can be answered accurately. Maybe a lucky guess. But that's a long shot. Most people, at these very early stages in a transaction, do not consult with a lawyer. Our clients typically come to us after signing the Agreement of Purchase & Sale. While we definitely do not encourage this, it happens.

LITIGATION

There are countless lawsuits that have been initiated as a result of the SPIS form. Simply put, where the buyer relied on information contained in the SPIS to purchase the property, and that information was later found to be incorrect, the buyer can sue the seller for the damages that have resulted from that misrepresentation. If successful, the court can order a very high award to the buyer.

CONCLUSION

There are some real estate markets that have more or less rejected the SPIS. The Toronto market is one of them. Sellers generally do not provide buyers with this form, and buyers generally do not ask for them. On the other hand, there are markets where the general consensus is to use these forms.

Keep in mind sellers, that while it is possibly in your best interest to have your property sold as quick as possible, the expensive litigation that can and often does result from inaccurately filling out the SPIS far outweighs any benefit you may receive from selling early. Tread lightly sellers.



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