

> PROPERTY LAW



Bob Aaron

Sellers' form confusing for buyers, agents

The Seller Property Information Statement, a disclosure form created by the real estate industry, continues to cause grief for sellers, buyers — and real estate agents.

Back in August, 2008, Daniel Fors bought a house in Thunder Bay from Vance and Dorothy Overacker for \$392,000. Jack Mallon was the real estate agent for the sellers on the transaction. Following closing, the buyer experienced significant water problems in the basement and roof. During the three years the Overackers owned the home before selling it, they also experienced significant water problems in the basement due to a high water table on the land. Their sump pump system had to work almost continuously to avoid basement flooding.

After one basement flood in 2005, their home insurance company paid a \$35,000 claim to repair the resulting damage.

In 2008, the Overackers listed the house for sale with Jack Mallon. He gave them a Seller Property Information Statement (SPIS) to complete and advised them — incorrectly — on some of the answers. He told them that if a problem had been fixed, it was not an issue for the disclosure form.

After receiving Mallon's advice, the sellers answered "no" to questions asking if the property was subject to flooding, if they were aware of moisture and/or water problems, if they were aware of any damage due to water and whether they were aware of roof leakage.

Following his closing, Fors experienced problems with a leaking skylight, the sump pumps, the septic tank and a saturated septic field.

The SPIS has sparked 75 lawsuits in Ontario since 1997

Fors sued the Overackers for misrepresentation, and the Overackers in turn sued their agent Mallon for providing them with bad advice on completing the form.

Fors claimed that the Overackers negligently completed the SPIS form knowing the answers were false. He said he would not have bought the house if the SPIS had been completed truthfully.

The Overackers acknowledged that they did not disclose the problems with the sump pump and skylight because Mallon told them that if the problem was fixed, they need not disclose it.

In May, following a trial lasting seven days, Justice Douglas Shaw released a 30-page decision concluding that the statements by the Overackers in the SPIS were untrue, inaccurate, incomplete or misleading. He also found that Jack Mallon was negligent in his advice to the Overackers on how to answer certain questions in the SPIS.

"The representations," wrote the judge, "were made negligently," and Fors suffered damages because of that negligence. "He is entitled to be restored to the position he would have been in if Mr. and Mrs. Overacker had not breached their duty of care" to him.

Shaw awarded judgment to Fors against the Overackers in the amount of \$117,830.50, or roughly 30 per cent of the total purchase price of the house. The Overackers in turn were awarded damages against Mallon and his employer to the tune of almost \$42,500.

Court costs against the Overackers and Mallon would have added significantly to the awards. In addition, the combined legal bills of both parties could easily have reached six figures for the seven-day trial.

Since the SPIS form was introduced by the Ontario Real Estate Association in 1997, it has given rise to more than 75 lawsuits. Across Canada over the same period, similar forms have produced over 240 court cases. The industry position is that the forms were created to provide disclosure of problems to buyers. Too many agents have been sued for providing poor SPIS advice to sellers, and some have been brought before their licensing bodies for related breaches of professional standards.

Clearly, the SPIS form presents significant dangers to sellers and their agents. Why these forms are still in use continues to amaze me. Bob Aaron is a Toronto real estate lawyer. He can be reached at bob@aaroon.ca. Visit his website at aaron.ca.

Parklane homes a perfect fit

TOWNHOMES from H1

Residents of the Code's nine-storey boutique building of 106 suites and 10 townhomes flanking one of Toronto's largest parks — Sir Winston Churchill — will have easy access to subway, streetcar, historic Forest Hill Village with its shops and eateries, and a newly renovated Loblaws.

Across town in Leaside, the Upper House condos at Laird Dr. and Millwood Rd. will also get a leg-up from local attractions that include a Longo's grocery store, parks, restaurants, schools and a rejuvenated community centre right across the street.

"It's an established neighbourhood with amenities that have increased exponentially over the last two years," notes Alan Perlis, chief operating officer with Knightstone Capital Management Inc.

He credits the changing streetscape in their decision to build the midrise of 74 units including seven two-storey townhomes.

The location, nearby amenities and building itself — a dog spa will be included — combine to offer residents an "all-encompassing lifestyle," he says.

It's a similar scenario to the south where Toronto's burgeoning east waterfront will see the erection of Great Gulf Homes' 40-storey Monde tower of 500-plus condos with ground-level stores, parks, walking

and bike paths, and transit on its doorstep.

And in west-end Roncesvalles Village, the Howard Park condo and townhouse project calls itself a "community within a community" for the range of amenities both inside and outside its walls.

Which brings us back to vibrant Port Credit where the all-inclusive neighbourhood means Parklane's builder can focus on the homes themselves. Buyers can choose from suites ranging from 2,169 to 3,100 square feet with nine- and 10-foot ceilings, engineered wood floors, privacy screens on rooftop terraces, high-end appliances and European-designed cabinetry. Kitchen and breakfast areas have heated floors and either quartz or granite countertops.

The "spectacular" and flexible design plans mean homebuyers can decide such things as the placement and size of the bedrooms, says MacKay, 52 Pick-up's vice-president of client services.

She sees the target market as urban professionals, perhaps families, and downsizers who still want comfort and space but less maintenance.

David Culham hopes there might be a green thumb or two among them.

As chair of Brueckner Rhododendron Gardens' stewardship committee, he oversees the small army of

volunteers who assist two staffers with the weeding, pruning and cultivating.

And he can't say enough about the place that Tong Hahn calls "one of the crown jewels" of Mississauga that even has a rose named after long-serving Mayor Hazel McCallion.

"There's nothing like it in Toronto," boasts Culham.

"It's a very beautiful place year-round that people very much enjoy and come back to. It has an atmosphere of contemplation and visual stimulation."

Parklane sounds like a perfect fit, he says. "I wouldn't mind living there myself."

> PARKLANE RESIDENCES



Location: 375 Lakeshore Rd. W., Port Credit, Mississauga

Developer: KohenHavn

Architect: Turner Fleischer Architects Inc.

Designer: Bryon Patton and Associates

Size: 18, 4-storey townhomes, 2,169 sq. ft. to 3,100 sq. ft.

Price: Starting from \$900,000

Info: parklaneresidences.ca, 905-278-3500, info@parklanetowns.com.

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REQUEST FOR EXPRESSIONS OF INTEREST (R.F.E.O.I.) FROM DEVELOPERS



Soft Copies (via email to jgalloway@midland.ca), will be received by the Town Engineer until:

12:00 noon local time, Friday, August 15, 2014

for Expressions of Interest from Developers interested in participating in the development of the former Unimin Waterfront Lands. The RFEI document is available on the Town of Midland website at <http://www.midland.ca/Pages/Midland-Bay-Landing.aspx>



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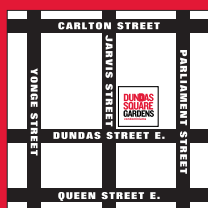
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