



LEGAL HOTLINE Q&A

FROM GET THE FACTS, March 26, 2024

Question:

Listing agent for subdivision has disclosure for improved property loaded into associated docs. I requested the unimproved property version, but they insist this one has been fine with everyone so far and to use it. My buyer is very familiar with the area, and was fine using the unimproved property disclosure and waiving their right to receive it as the listing agent was not going to go to seller to get unimproved. I present offer, and they are not wanting to go pending until my buyer signs the improved property disclosure from the seller. I have stated how that doesn't seem right and that we have different forms for a reason... Thoughts?

Answer:

The question that the brokers need to address originates with the real property that buyer will purchase from seller. Is buyer purchasing improved property even though the property is currently unimproved? Said differently, is buyer signing a purchase agreement now, to close a transaction months from now, after seller has completed construction of a residence on the currently vacant land? If so, seller should deliver a Form 17. Or, is buyer purchasing property that is unimproved currently and will still be unimproved at closing? If so, seller must provide the Form 17C. If the latter is the case, then seller's delivery of a Form 17 makes no sense. Seller will be answering questions that likely have no application to the unimproved property.

Broker is correct in broker's assertion that statutory law requires seller's delivery of different forms for different types of property because the forms, and questions asked, are specific to the type of property being conveyed. The fact that seller may have delivered the wrong form to prior buyers and those buyers did not object does not make seller compliant with the law in future transactions when seller uses the wrong disclosure statement. Simply put, the answer to this question originates with an understanding of the nature of the property that is being conveyed at closing. If the property is improved, seller complies with the Seller Disclosure Act by delivering a Form 17. If the property is unimproved, seller complies with the Seller Disclosure Act only by delivering a Form 17 C.



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Answer Continued...

Finally, it is important for buyer broker to understand what it is that seller and listing broker are requiring. If buyer signs the first buyer signature line of the Form 17, and does not sign the second or third buyer signature line, and does not otherwise agree to waive buyer's rights under the Seller Disclosure Act, then buyer is not waiving any rights under the Seller Disclosure Act. When buyer signs the first buyer signature line, buyer simply acknowledges receipt of the seller's disclosure statement. If seller has delivered the correct form and the form is fully completed and signed by seller, then three days later buyer will no longer have the right to rescind the transaction. However, if buyer signs the first buyer signature line, acknowledging receipt of the form but seller has delivered the incorrect disclosure statement, then seller has not complied with seller's obligation under the law and buyer's acknowledgment of receipt of the incorrect form has no impact on buyer's ongoing rights under the Seller Disclosure Act. If the parties cannot resolve their differences, broker should advise broker's client to seek legal counsel.

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