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## Legal Hotline Q & A

Get the Facts 07/11/17

**QUESTION:** My sellers completed Form 17 and with respect to both water rights and remodeling, they checked "no". Then, they did not check any of the boxes for the sub-parts following those questions that begin, "If yes, ...". The buyer's broker is insisting that these sub-part boxes be marked N/A. This is not making sense to me when reviewing my seller's answer(s) to the question(s) directly above. I do not want to ask my seller to readdress questions if incorrect. The buyer broker is insisting and stated that he will not have the buyer sign off receipt until corrected.

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**ANSWER:** The answer is set forth in lines 5 through 7 of Form 17. The "Instructions to Seller" clearly specify that seller is to answer EVERY question including sub-parts of questions that clearly have no application to seller's property. For example, if seller marks the box indicating there has been no remodeling, seller should then check N/A on the sub-part questions asking about permits for remodeling. Perhaps this seems like a needless exercise to seller and listing broker but the importance of marking every box, including those that do not apply, is grounded in an effort to protect seller and listing broker ... not buyer. Moreover, it's the law. The Seller Disclosure Act creates this obligation on seller, not the statewide forms producer.

So how does this protect seller? Buyer's only remedy under the Seller Disclosure Act is to terminate the purchase agreement, prior to closing, if seller fails to comply with the Seller Disclosure Act. The Seller Disclosure Act establishes the questions that seller MUST answer. If seller picks and chooses the questions that are actually important for seller to answer, seller runs a serious risk of buyer terminating the transaction prior to closing. Seller may be feeling secure in a transaction where buyer has no contingencies and then buyer lawfully terminates the agreement, the day before closing, because seller failed to fully comply with the requirements of the Seller Disclosure Act. By requiring seller to answer every single question on the form, without any exceptions, the law makes it easy for seller and listing brokers to

confirm that seller complied. Seller and listing broker simply need to view the answers column and make sure there is a check box marked for every single question.

Additionally, the form (lines 35-36) requires sellers who answer "yes" to an asterisked question to explain the answer on a separate page and/or attach documents if available and not publicly recorded. If sellers fail to comply with this requirement, this is another potential basis for buyers to argue when attempting to terminate the PSA based on seller's failure to comply with the Seller Disclosure Act. Accordingly, listing brokers should, prior to delivery of the Form 17 to buyer, verify that seller marked a box next to every question and with respect to asterisked questions that seller marked "yes," listing brokers should verify that seller explained the answer and/or attached relevant, available documents.

In answering the specific question asked, it is necessary for seller and listing broker to apply some critical thinking. If seller and buyer are early in the transaction and buyer still has the right to terminate the agreement based on contingencies, then seller should absolutely correct the form, answer N/A to the questions that are not applicable, initial those revisions and re-deliver the form. However, if closing is days away and it seems that buyer broker's demand for answers to these inapplicable questions seems to be laying a foundation for buyer to then terminate the agreement within three days following seller's delivery of the revised Form 17, then broker should advise seller to seek legal counsel. Seller will need to consider whether the risk of seller's non-compliance with the Seller Disclosure Act is lesser or greater than the risk that buyer will terminate within three days following receipt of seller's revised disclosure statement.

Buyer broker's position is interesting. Since buyer's broker is refusing to have buyer "sign off receipt" it would appear that these parties are early in the transaction. Buyer broker's insistence on seller marking all boxes, even those that provide no further substantive information to buyer, serves only to eliminate for buyer any potential argument that buyer may have later, that seller failed to comply with the Seller Disclosure Act, should buyer want to terminate the PSA prior to closing. Moreover, it is never up to any broker to dictate how a party reacts to communications from the other party. This buyer may want to sign off on the Form 17 (particularly since buyer signing the first signature line on Form 17 would not impair buyer's statutory right to later challenge the sufficiency of seller's completion of the form) in order to preserve good will with the seller as buyer heads into a negotiation over repairs and any other issues that come up prior to closing. While buyer broker is correct, that all questions are supposed to be answered, buyer broker's insistence on seller marking N/A to questions that clearly have no application and where the seller's answer will provide no

additional substantive information to buyer is questionable. The risk of this demand is that buyer broker sows disharmony and a spirit of distrust between the parties for absolutely no benefit to buyer. In doing this, buyer broker potentially harms his client.

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