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Observations on a Seller's Obligation to Provide a Completed TDS and SSC

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Paragraph 10 of the PRDS contract requires a seller (unless exempt by statute) to provide the buyer with a fully completed Transfer Disclosure Statement (TDS) and Supplemental Seller's Checklist (SSC). Collectively, these documents are referred to as "the disclosure documents."

In order to provide a fully completed TDS, the seller must answer all of the questions in that document and sign Section 2, and the listing agent and selling agent (if any) must provide a response to their respective sections concerning their visual inspection of the property and sign the appropriate section of the TDS indicating that they have done so. A fully completed SSC requires the seller to answer all questions and sign the document.

Whether the disclosure documents have been fully completed by the seller turns on several factors, including the following;

1. Has the seller provided an answer to all of the questions?
2. Has an explanation been provided for every question to which the seller has answered in the affirmative?
3. Are the explanations sufficiently detailed?
4. Have all documents related to any response been produced?

If the seller has no documents or cannot provide a detailed explanation, the seller should consider providing a statement that they do not have any documents or explaining why they cannot provide more

details.

The consequences to a seller for failing to provide fully completed disclosure documents varies depending on the facts, circumstances, and legal issues. Some consequences I have encountered in handling disputes that arose because disclosure documents were incomplete include (1) a claim by the buyer that the seller is in breach of contract, (2) a demand by the buyer to the seller to provide fully completed disclosure documents (thereby triggering new rights of rescission), (3) a claim by the buyer that material facts have been withheld (justifying rescission of the purchase contract by the buyer), and (4) demands by the buyer for price reductions, credits, extensions on the close of escrow date, or a close of escrow with the reservation of claims for damages as a result of information being withheld by the seller.

While a seller may have defenses or other arguments to refute any of these claims or demands by a buyer, these types of disputes are time-consuming, expensive, and subject to factual and legal disagreements, and a positive outcome is never guaranteed. The result is usually frustration and failed expectations on the seller's part. Sellers often look to their agents to rectify these problems when they occur.

While these issues can arise in any market, they seem to be more prevalent in our current market, with low inventory, non-contingent or short contingency period offers, and the time pressures resulting from these and other market conditions. These issues and their consequences may be avoided if a seller understands the disclosure obligations, including the need to provide a fully completed TDS and SSC. Sellers should carefully read and review the disclosure documents and devote sufficient time to completing them. The SSC contains a helpful overview of some of the issues that are important for the seller to understand in order to meet the disclosure obligations. If sellers have any questions about their disclosure obligations, they should consult with a competent real estate attorney.

Word Count: 549



Laurie and I had two very challenging real estate rights issues that we were advised were going to be difficult to prevail on. The RHRC team engaged with us and helped us understand our rights and prevailing position. RHRC were thoughtful advocates for us from the beginning to conclusion of our cases. We feel fortunate to know we will always be able to call on the firm in the future and that they are our legal counsel.

Albert "Rocky" and Laurie Pimental, President of Global Markets and Customers, Seagate Technology

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