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Observations On The Revised PRDS SSC

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The revised PRDS Supplemental Seller's Checklist (SSC) has been in use for several months.

In that time, I have reviewed a number of these disclosures in the context of various real estate disputes. The following are some of my observations regarding how sellers are completing the revised SSC.

Sellers do not appear to understand the scope of information and documentation contained within Question 2. This question replaces Question 23(B) in the prior version of the SSC. In doing so, Question 2 now distinguishes between alterations, additions, and repairs made by the sellers during their ownership and those that sellers are aware of but that took place prior to their ownership.

Sellers appear to be doing a good job of responding to Question 2(A) but not as good a job when it comes to responding to Question 2(B). Question 2(B) relates to alterations, additions, and repairs, and documents relating to these subjects, prior to the seller's ownership of the property. Sellers need to understand that this is information that they would have as a result of their purchase of the property or that they may have learned during their ownership, such as by contacting a governmental agency, talking to neighbors, or speaking with contractors who may have worked on the property. Depending upon a number of factors, including how long the seller has owned the property, responding to this question may require that the sellers determine if they have records regarding their purchase of the property and whether those records contain any of this information. The form requests that sellers provide copies of all permits and other documentation in their possession related to each disclosed item. My observation is that these documents are not being provided in conjunction with the delivery of the SSC.

Question 2(C) requires that the seller identify and provide all prior written reports, inspections, and disclosures (e.g., TDS, supplemental disclosures) received by the seller at the time of their purchase and during their ownership relating to the property. This question is either not being answered by sellers or, if there is an answer, prior written documentation is not being provided in conjunction with the SSC.

Sellers need to provide prior TDSs, SSCs, and other supplemental disclosures as well as written reports and inspections received during their ownership. Examples include reports or inspections generated by governmental agencies or contractors. Proposals from contractors sometimes contain observations or other information regarding the condition of the property that they are providing an estimate to repair.

Sellers need to understand that Question 2(C) requires that they identify and provide these documents. Even if the seller does not have a copy of a document, it should be identified in response to this question. If copies of the documents are not in the seller's possession, then the seller should consider making that statement as part of the response.

Finally, Question 2(C) asks sellers if they are aware of any oral or verbal inspections/reports on the property that would adversely affect its desirability or value. While the question requires a description only if answered in the affirmative, the current version of the SSC does not have a box for the seller to check for a negative response. As a result, if the seller's response is in the negative, my suggestion is that the seller make that statement in writing in response to this specific question.

My next observation is that there are several distinct issues with regard to the completeness and detail with which a seller has responded to the questionnaire. The first issue is that sellers need to make sure they have responded to all of the questions. Sellers often don't understand a specific question and thus skip over it, planning to come back to it. Many times, they fail to return to that question and answer it. The revised PRDS contract requires that the seller provide a fully completed SSC. An unanswered question results in an incomplete SSC. Depending on the circumstances, this can create a number of legal issues for the seller.

A second and distinct issue is whether the seller has provided the necessary explanation to a question that has been answered in the affirmative. The form now provides detailed instructions regarding what information the seller must provide. For example, the form requires that the seller identify the specific location of the issue, condition, or problem, give a separate and detailed explanation of each, describe any repair, patching, or replacement, identify who did the work, state when it was done, and state whether the issue, condition, or problem has recurred. Sellers are also required to provide all related documentation.

The range of sellers' responses runs from no response at all, incomplete responses that don't answer the specific questions and provide the requested details, and responses that provide no documentation, let alone all such documentation.

Another observation concerns Questions 4 and 5, which relate to soils and surface/subsurface water/moisture control. These questions relate not only to the seller's property but to adjacent properties.

The questions are not limited to issues, problems, or conditions that exist only on the seller's property or that affect only that property but also include any that may only impact an adjacent property. Examples include settlement, slippage, erosion, and water/draining issues and/or conditions on an adjacent property that have affected the seller's property but are known to exist.

While the foregoing observations relate to the revised SSC, the general principals also relate to the TDS and to other supplemental disclosure documents. Sellers should read the "Caution To Seller" language in the SSC before starting to fill out the form.

Finally, sellers who need help meeting their disclosure obligations, including identifying what to disclose and how to disclose it, should consult with their own real estate attorney.



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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