SUPERIOR COURT DECISION AFFECTS SELLER DISCLOSURE LAW: DOES "AS-IS" REALLY MEAN "AS-IS?"

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A recent Superior Court decision concerning the Real Estate Seller Disclosure Law ("RESDL") has sparked a series of calls from agents concerned that when a property is sold "as-is," it may no longer really mean "as-is." In Phelps v. Caperoon, a buyer and seller, unrepresented by real estate professionals, entered into an agreement of sale to purchase a property consisting of various outbuildings, including a greenhouse, garage, and barn, but also including a single-family residence. The buyer leased the property from the seller for a period of six (6) months before the purchase. Prior to entering into the lease, the buyer asked the seller whether there was anything about the property that the buyer should know, to which the seller responded there was not. The agreement of sale was not the Pennsylvania Association of Realtors® form and contained an "as-is" clause. On advice of counsel, the seller did not complete a seller's disclosure as required by RESDL.

After leasing for six (6) months, and then closing on the property, the buyer discovered issues with the septic, the electrical system, the roof, and structural issues. Buyer sued Seller and Seller raised the following defenses:
1) the property was sold "as-is" so there was no disclosure requirement under RESDL;
2) even if the "as-is" did not preclude relief, the property was commercial in nature and as a result, RESDL does not require a seller's disclosure; and
3) even if the seller's disclosure was required, a good-faith exception should apply in this instance because the Seller relied on advice of counsel in not providing the seller's disclosure.

The Superior Court disagreed, finding that RESDL requires (with limited exceptions, none of which applied) "[a]ny seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller." RESDL §7303.

Accordingly, the seller was required to provide the seller's disclosure to the buyer even though the sale was "as-is." Additionally, because the property had one to four residential units located thereon, RESDL applied and required the seller to provide the seller's disclosure. Lastly, the Court found no good-faith exception applied even though the seller claimed to rely on advice of his attorney when not providing the seller's disclosure. The seller was found liable for the actual damages, measured by the costs of repairing the material defects, capped by the market value of the property.

Does this mean the end of "as-is?" Not exactly. If nothing else, this case helps to emphasize the importance of completing a seller's disclosure. Sellers can still sell property in an "as-is" condition, provided they accurately and completely fill out a seller's disclosure form. Had the seller in the foregoing case provided a seller's disclosure to the buyer disclosing the items of concern, the seller may not have been found liable for the actual damages as aforesaid. The key takeaway: a seller selling a property containing one to four residential units, whether or not that

seller is represented by an attorney or a real estate professional, **MUST** provide the seller's disclosure unless one of the excepted categories applies. Failing to do so could mean the seller is liable for repair damages up to the full amount of the sales price, a mistake many cannot afford to make.