



## YOU'LL GET IT WHEN I GIVE IT TO YOU!

### Timing Issues with Seller Disclosure

A listing has just become active in the MLS. Your buyer, scorned from losing out on the last four (4) homes they absolutely loved, texts you at 9:00 p.m. with what initially starts as a request to schedule a showing, but ends up with begging you to just write an offer. You review everything in the MLS, but under associated documents there is one major thing missing: the Seller Property Disclosure. Knowing that your buyer will not take “no” for an answer, you call the listing agent to find out whether the owner will be completing a disclosure, and if so, when you can anticipate getting a copy of it. The response, all too familiar for most of you, is “I’ll upload it as soon as the seller completes it.”

The Pennsylvania Real Estate Seller Disclosure Law requires a seller, except in very limited circumstances, to provide a completed disclosure to a prospective buyer **prior** to executing any agreement of sale. You know this and advise your client accordingly; however, the client wants to make the offer, sight unseen, regardless of the fact there is no disclosure. Maybe you get creative and make the offer contingent upon the seller providing a completed disclosure. But what if it is never completed and the buyer never gets it? Worse yet, what if the property goes under contract with another buyer with no disclosure.

While there may not be much a buyer agent can do in this circumstance, it’s important to underscore the potential liability a listing agent and brokerage could face by failing to comply with the Seller Disclosure Law. In addition to a seller being responsible for two (2) years after closing for any known, material defects that the seller failed to disclose to a prospective buyer, the listing agent and brokerage could also be liable by failing to do two (2) things: 1) provide a blank



disclosure form to a seller, or 2) informing the seller of his/her/their obligation to complete the disclosure completely and provide it to a prospective buyer prior to signing the agreement of sale.

Lastly, in addition to the Seller Disclosure Law, the Pennsylvania Real Estate Commission Rules and Regulations and the Pennsylvania Real Estate Licensing and Registration Act both impose an additional obligation on licensees. Specifically, a listing agent is responsible for informing the seller of the obligation to complete the disclosure, providing a blank copy for completion, and delivering the completed form to the buyer or buyer's agent before the seller signs the agreement of sale.

To clarify, Bright MLS does not presently require the submission of a Seller Property Disclosure Statement with a listing. In the ever-shrinking expectations of turn-around times and instantaneous responses, take a moment to keep yourself and your seller out of legal trouble. Two (2) years is a long time to wait holding your breath - complete the disclosure and get it to the buyer before the seller signs any offer.

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