

## **EVERY BUYER IS ENTITLED TO A SPDS**

**By K. Michelle Lind**

Every buyer should receive a Seller's Property Disclosure Statement ("SPDS"). The revised AAR Residential Resale Real Estate Purchase Contract form (the "Contract") recognizes the importance of the SPDS and provides:

**Seller Property Disclosure Statement ("SPDS"):** Seller shall deliver the SPDS to the Buyer within five (5) days after acceptance of the Contract.

Thus, pursuant to the Contract, the seller is required to provide a SPDS in every transaction.

Some sellers are reluctant to provide a SPDS. However, where a seller of real property knows of facts materially affecting the value of the property that are not readily observable and are not known to the buyer, the seller is under a duty to disclose those facts to the buyer. *Hill v. Jones*, 151 Ariz. 81, 725 P.2d 1115 (App. 1986). Additionally, pursuant to the Contract, the seller is obligated to disclose all known material latent defects that materially and adversely affect the consideration to be paid by the buyer. The SPDS will evidence the fact that the seller has made these required disclosures.

Sometimes a seller will initially refuse to complete a SPDS on the basis that the seller has never occupied the property, or perhaps has never even seen the property. However, if the seller owns the property, the seller should be able to answer most of the questions in the "Ownership and Property" section of the AAR SPDS. For example, even an institutional seller who has never seen the property can:

- disclose the address of the property
- disclose whether the property is located in an unincorporated area
- identify the legal owner of the property
- disclose whether the legal owner is a foreign person or non-resident alien pursuant to the Foreign Investment in Real Property Tax Act
- indicate whether the property is in a community providing housing for older persons pursuant to the fair housing laws
- indicate whether the property is owner occupied, lease, estate foreclosure, or vacant
- indicate whether the property is vacant, and for how long
- if the property is rented, and the expiration of the rental agreement, and disclose whether refundable deposits or prepaid rents are being held
- disclose whether the owner has entered into any agreement to transfer an interest in the property in any way

Additionally, most sellers know whether the property is in a homeowner's association ("HOA") and whether there are HOA fees (lines 12-15). Arizona law mandates seller disclosure of these and other HOA issues in HOAs with less than 50 units. The seller may also be aware of assessments, litigation, or liens affecting the property.

Most of the questions on the SPDS ask only for information of which the seller is aware. However, if there are questions on the SPDS for which the seller does not know the answers, the seller can simply use the explanation

lines to explain. The fact that certain information is unknown by the seller, and why, can be important to the buyer.

Despite the forgoing, some sellers still refuse to provide a SPDS. If a listing states that a SPDS is not available, or will not be provided, a buyer's broker should nonetheless advise the buyer to request the SPDS in the offer. The seller can respond to the offer requesting a SPDS with a counter offer that a SPDS will not be provided. However, before the buyer accepts a counter offer indicating that a SPDS will not be provided, a buyer's broker should provide the buyer with a blank copy of the SPDS form, which will enable the buyer to make an informed decision regarding whether to waive the SPDS. In these circumstances, a buyer's broker would be wise to obtain the buyer's written acknowledgment of receipt of the blank form.

A buyer should never waive a SPDS without seeing the SPDS form. Even a blank SPDS is valuable to the buyer. The buyer can and should utilize a blank SPDS as a checklist in conducting the desired inspections and investigations. The SPDS can prompt questions that will assist the buyer in evaluating the property.

Clearly, the SPDS is a valuable tool for both buyers and sellers in a real property transaction. Therefore, every buyer should receive a SPDS.

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