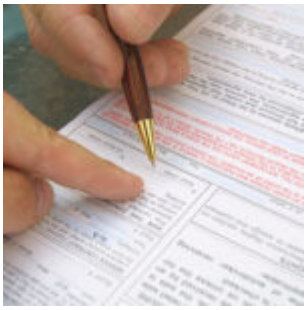
DOS & DON’TS: [û] Clearly Disclose Environmental Issues When Selling Property



When selling property, a seller has a duty to disclose any environmental issues or problems’as well as possible problems’such as existing contamination and prior hazardous uses of the land. In addition, buyers will often specifically ask about the property’s environmental condition. If you don’t answer such questions honestly and clearly, you could be accused of misrepresenting the property’s condition and thus give the buyers grounds to cancel the sale.

That’s what happened to a land sale in Ontario. The seller owned property that consisted of two large lots, one of which included a discontinued landfill. An environmental assessment report on the property concluded that the northern half of the property could be developed for residential use if certain precautions were taken, including the installation of a clay barrier to prevent the migration of contaminants from the southern half of the property. The property was subdivided into two lots. The seller installed the recommended clay barrier and then built a house on the northern lot.

Buyers contracted for the purchase of the house. The seller didn’t disclose the pre-existing landfill in the sales contract, but he did complete a seller property information statement (SPIS) in which he answered environmental questions about the property. Before the sale was scheduled to close,

the buyers' lawyer found out about the discontinued landfill at the property and so the buyers backed out of the purchase based the seller's failure to disclose the pre-existing dump. The seller was able to sell the house to someone else but for a lower price. He sued the buyers for $100,000 in damages for the aborted sale.

The court said the seller knew or should've known that his answers to two questions in the environmental section were incorrect or misleading. For example, the seller responded 'unknown' to the question, 'Are you aware of possible environmental problems or soil contamination of any kind on the property or in the immediate area" This answer was incorrect given the property's history and the seller's knowledge of it. In addition, his answer of 'yes' without further explanation to 'Are there any existing or proposed waste dumps, disposal sites or landfills in the immediate area" was insufficient in the circumstances and misleading to the point of misrepresentation'especially given that, at the time, there was a battle in the town and surrounding area concerning the prospect of a chemical disposal site being constructed. And the seller had other chances to disclose the old landfill, such as during the buyers' inspection of the property, noted the court. Thus, it ruled that the buyers *were* entitled to walk away from the sale [*M□nard v. Parsons*, [2015] ONSC 4123, Oct. 19, 2015].