Myths we just can't shake

By James L. Goldsmith, Esquire

There is a lot of fake news out there! And there is a lot of fake news about news that is claimed to be fake that isn't fake. You, my readers, are not alone in your quest for the truth.

Before we fact check, we are going to run a quiz. Below you will see a number of myths that just might be true, or not. Take the quiz. Keep this article and one-by-one we will pick out the fake news from the real stuff. At the end of the list I've answered the first two questionable facts, so read on.

The list:

- An agreement of sale must include a deposit or it is not enforceable.
- Under the PAR Standard Agreement, a buyer must pay to have water delivered for us in a hydraulic-load test.
- A buyer cannot give an inspection report to anyone other than his/her agent or the seller.
- A broker has five days to return a buyer's deposit after the parties have signed a release providing that the deposit is to be returned to buyer.
- An owner who has never lived in the property is not required to complete a seller's property disclosure statement.
- A buyer may assign his agreement of sale to a company he/she has formed without paying an additional transfer tax.
- Withdrawing a listing from the multi-list terminates the listing agreement.
- An executor/administrator of an estate is not required to sign a seller's disclosure statement.
- It is illegal to sell a property without a range/oven.
- Procuring cause is determined by who first introduced/showed the property to the buyer.
- You cannot be the procuring cause of a sale if you do not have a buyer agency contract.
- A builder's warranty of a newly constructed residence is limited to one year.
- A builder's warranty that has not yet expired will cover one who buys from the original purchaser for whom the home was built.
- The listing agent/broker must represent an otherwise unrepresented buyer who seeks to purchase the property (and thereby serve as a dual agent).
- A listing agreement/buyer agency contract is enforceable if it has a starting date, but lacks an ending date.
- You may not inform a buyer of the "quality" of the school district, but must refer the buyer to some other source.
- You may provide a buyer with demographic statistics that include the number of minority residents of a municipality in which the buyer is looking only if those statistics were published by another source.
- The cash bonus paid to the selling agent by the listing broker must be paid to the selling agent's broker.
- Real estate salespersons and brokers may testify in court as to the value of real property (e.g., a domestic relations case).

To get things started, let's examine the first statement: an agreement of sale must include a deposit or it is not enforceable. Myth or truth? Myth. A deposit is not an essential element of an agreement for the sale of real estate, residential or commercial. It is not required! For the seller, it is a great idea and to the seller, it may be essential. Buyers who risk losing a substantial deposit are buyers who will be reluctant to breach an agreement of sale. A deposit also assures that there is money available to pay for seller's losses, or some of them, in the event of buyer default. In the absence of having the deposit serve as a liquidated damage, seller would have to sue the buyer, obtain a judgment and then seek to enforce that judgment.

Since that was so easy and 90% of you got it right, let's take on the next one: under the PAR standard agreement, a buyer must pay to have water delivered that will be used for a hydraulic-load test. Myth or truth? Truth. So what is a hydraulic-load test for those of you who are not familiar? It is a type of inspection to an on-lot sewage system. It is particularly helpful when the property has not been used for some time and helps determine the maximum flow that the septic system is capable of handling. The test is performed to replicate the maximum flow conditions. As for the test itself, it involves adding a significant and measured volume of water, over a measured period, and observing whether it is accepted by the soil or surfacing elsewhere in the yard, causing downslope breakouts, etc.

Given the volume of water that may have to be introduced, many sellers are reluctant to all use of their well water. Arrangements can be made to have the water trucked on-site, though at some expense. The standard agreement provides that "at Seller's expense, will locate, provide access to, and empty the individual on-lot sewage disposal system." The general provisions in the agreement also provide that seller will give access to inspectors and have utilities on. It doesn't say or imply that seller must provide the water

For buyer's part, buyer agrees that tests will be non-invasive. It would otherwise seem from a reading of the entire inspection provision that buyer conducts, and therefore pays for, all testing. Whether taking a substantial volume of water from seller's property is an invasive test could be argued 'till the cows come home.' The better answer comes from the fact that buyer pays the costs associated with the test unless otherwise stated. Passing on the cost of the water to buyer, or having buyer pay to have water brought to the property, assuming there is any dispute, is the answer in this "court's" opinion.