



## ***Form 17 Waiver Issues***

By the Demco Law Firm, P.S.

Sellers often want buyers to waive the right to receive Form 17. Builders often downright require it. The Form 17 Statute (RCW 64.06) does permit buyers to waive the right to receive a completed Form 17, subject to a very important exception. If the answer to any question in the Environmental Section would be “yes” then the buyer may not waive the right to receive that section of Form 17. Buyers have an absolute right to receive a completed Environmental Section of Form 17 if any answer is “yes.” That right cannot be waived.

So, if a buyer waives the right to receive a completed Form 17, but an answer to a question in the Environmental Section would be “yes,” then the seller must complete and deliver to the buyer the Environmental Section. The seller should use Form 17 for this limited disclosure, and simply “X-out” the remaining disclosure sections of the Form 17. This is critical to ensure that the buyer receives the portions titled “Notices to Buyer” found both before and after the disclosure portions of Form 17. If a buyer does not receive those portions (which are required by statute) then the disclosures given might be deemed ineffective under the Form 17 statute. Simply reproducing the Environmental Section questions elsewhere (like in a builder’s addendum) may not be sufficient. If the disclosures are deemed ineffective for failure to produce required portions of the Form 17, then a buyer’s right of rescission would remain until closing.

There are three signature lines for buyers on the last page of Form 17. The first is for the buyer’s acknowledgment of receipt of the Form 17; the second is for the buyer’s waiver of right to rescind the transaction on a Form 17 basis; and, the third is for the buyer’s waiver of the right to receive a completed Form 17.

In the event that a buyer is willing to waive receipt of a completed Form 17, but is not permitted to waive the Environmental Section due to there being one or more “yes” answers, then Buyer would likely proceed as follows:

- (1) sign the first signature line to acknowledge receipt of the Form 17;
- (2) sign the third signature line to waive the right to receive a completed Form 17; and
- (3) sign the second signature line only if buyer wishes to waive the right to rescind the transaction on a Form 17 basis.

Additionally, when a buyer is willing to waive receipt of a completed Form 17, the buyer should be given an incomplete Form 17, and sign the signature line for waiver on that form. This makes the buyer’s waiver “knowing and intelligent” – the buyer knows what is being waived.

Of course, Form 17 is one of the more significant documents in any real estate transaction. Buyers should be advised by their agent to seek legal counsel if they have questions about waiving Form 17 rights.

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