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What lies beyond your walls?

When buyers of new homes or condominiums examine floor plans, model suites, and agreements of purchase and sale, they are typically concerned more with everything inside the house or condominium unit than with anything beyond the perimeter walls.

This can sometimes lead to unfortunate consequences when nearby parcels of land or condominium units are used for purposes that interfere with the enjoyment of a new home. A good example of this type of problem came before the Superior Court this year.

The Metropole is a luxury condominium building located near the corner of King and Yonge Sts. in Toronto, directly across the road from my office. It comprises 314 residential units, six street-level commercial units, and 254 parking units.

In the development stage, beginning in late 1994, the Metropole was marketed to prospective purchasers as a luxury condominium building with emphasis on privacy and security.

The developer's disclosure statement revealed that there was no restriction on the number of units to be marketed in blocks to investors or the number of units that could be purchased by any one individual or corporation. The developer actively marketed the condominium to foreign investors.

Purchasers who had read the disclosure statement would have known that many of the units would not be owner occupied. Owners of units are entitled to lease their units without board consent, but the tenant must comply with the Condominium Act as well as the declaration, bylaws and rules and regulations of the Metropole, formally known as Metropolitan Toronto Condominium Corporation (MTCC) 1170.

One of the buyers in the Metropole was Mahoud Abdeelsalam Zeidan. He bought five units and with the developer's help, leased his units to Glen Grove Residences Inc. These units, along with a number of others, were re-leased by Glen Grove to transient, short-term visitors.

Although this type of use was encouraged by the developer, it was not disclosed to other purchasers in the building who live in the building themselves.

In its brochures, in the Yellow Pages and on its Web site, Glen Grove advertised the rental units it was managing as a "unique alternative to staying in just an ordinary hotel." At the time, the Metropole was described as having weekly and monthly rates available.

Owners of regular units in the building consider large numbers of short-term occupants in the Metropole to be a nuisance that has changed the character and atmosphere of their homes and increased the flow of traffic through the building. In addition to the short-term residents, there are their guests, trades people and cleaners.

The unit owners see the increased traffic in the building as a security problem. The Glen Grove guests expect hotel-type service from the building's concierge, even though the building staff is unaffiliated with Glen Grove. In short, the short-term residents have caused real problems for the other residents in the building, and for the staff.

Eventually, the condominium corporation began a test case against Zeidan and Glen Grove Residences Inc., asking for an order prohibiting the use of suites in the Metropole as an apartment-hotel. The case was heard before Justice Anne Molloy in January, and her decision was released last month.

The Metropole board claimed that the transient use of the units by Glen Grove and Zeidan was a breach of the condominium declaration and city zoning bylaws; that the building's insurance costs went up as a result of the commercial use; and that the Glen Grove operation was a violation of the condominium's rules. Those rules restrict tenancies to terms of not less than three months and prohibit tenancies for transient or hotel purposes.

After an extensive analysis, Justice Molloy ruled that the apartment-hotel use of the condominium units did not violate the city of Toronto zoning bylaw. She did find, however, that it was a breach of the condominium declaration to use a unit in a way that would cause an increase in the building's insurance premium.

MTCC 1170 carries insurance with Royal & Sun Alliance. In Nov., 2000, the insurance premium jumped from \$17,750 to \$23,080 because of a similar use of 44 units in the building by a company called Apartments International.

Justice Molloy also considered the claim that the apartment-hotel use of the building contravened a 1999 rule passed by the Board that prohibited tenancies for a term of not less than three months.

The test for the rule's validity, she said, was whether it promoted the safety, security or welfare of the owners or whether it was designed to prevent unreasonable interference with the use of the common elements. On both counts, the judge decided that the rule was validly passed by the Board and binding on the owners.

The condominium's lawyer Jonathan Fine was successful in obtaining an order against Zeidan and Glen Grove prohibiting the use of their units as an apartment-hotel business.

For buyers of new homes and condos, there are a number of lessons to be learned from this case. Here are some good questions to ask at the sales office:

How close will my new home be to a commercial use? Will there be a convenience store or fast food restaurant on the main floor of the condominium building or on the corner lot down the street?

How many condominium units are being sold as investments to non-residents? Will the units be used for transient accommodation?

How close is the nearest group home, halfway house, or public housing?

What is the nearest source of noise, smells or vibration? How much will the street traffic, highway, expressway, subway, GO train, airport, sewage treatment plant, or nearby commercial or industrial uses interfere with my enjoyment of the property?

Will there be noise from traffic, a bus or streetcar line near my home?

Will I be forced to keep my windows closed to block out noise?

What is planned for the vacant land next door? How long will construction noise and dust interfere with my enjoyment of the home? Will the new construction obstruct my view?

When buying a new house or condominium, it's always a good idea to look beyond its four walls. The environment outside the home may be just as important as the amenities inside.

Please send your inquiries and questions to bob@aaron.ca or call 416-364-9366.

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