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November 6, 2004

## Resale home inspection a smart move

### Agent, township must pay damages

*Buyer unaware of sloping floor; Home inspection wasn't suggested*

An Ottawa-area real estate agent and her firm have been hit with a six-figure damage award for failing to ensure that her purchaser client obtained a home inspection, when the house had an obvious and serious construction defect.

Also, the Township of Hungerford has been ordered to share equal responsibility with the agent for paying the damages.

In May 1996, 28-year-old Christine Wood took possession of a house on Sherry Sideroad in Thomasburg, Ont. She was the third owner of the house, which had been built in 1978.

Shortly after moving in, Wood noticed a marked slope in the main-level kitchen and bedroom floors. Later, during basement renovations, it became apparent that the concrete block foundation walls were buckling as a result of being pushed inward by the outside soil.

During negotiations to buy the house, Wood was represented by real estate agent Sue Barlow, of Re/Max Trent Valley Realty. The vendors, Richard and Gayle Lautenbach, had their own agent.

At the time of her first and only pre-closing visit to the house, Wood did not notice the bad slope of the main floor. Her agent, Barlow, offered no advice on whether a condition requiring a home inspection should be put in the offer, nor did she make any negative comments on any aspect of the house.

After Wood decided to bid for the property, a meeting took place where the listing and selling agents presented two competing purchase offers to the vendors.

The slope of the floor was discussed at the meeting, and Barlow urged the vendors to accept the offer from Wood because it did not contain an inspection condition.

Typically, a sloping floor in a house indicates a problem with the foundation. At no time did Barlow discuss with Wood the possible significance of the sloping floor, or suggest a pre-purchase inspection.

After closing, Wood arranged an inspection by an engineering firm. Its report revealed that the foundation walls had shifted both horizontally and vertically, and that the floor sloped as much as 29 centimetres from one end of the house to the other.

It turned out that the foundations were crooked from the day the house was built, and literally went slowly downhill after that.

Normally, foundation walls of a house should be built on footings at least four feet below ground level well below the frost line. In the Wood house, two of the four foundation walls were on footings that did not extend below ground at all.

Eventually, the front wall failed due to ongoing frost damage, and the house was declared uninhabitable by the municipality. Wood moved out in November, 2001, and the house was sold under power of sale by the mortgage lender in 2002.

Wood was not in a financial position to fund a very expensive court case. Fortunately, she was able to find David Curtis, a lawyer in Brighton, who took on the case knowing he probably would not be paid unless he won. Six expert witnesses adopted the same approach.

Curtis told me last week that if he had known from the beginning what he was getting into, he probably would not have taken the case. He thought it presented a good opportunity for his first trial, but he never imagined he would have to spend 16 days in court.

Late last month, Justice Charles Hackland of Ottawa released his 35-page decision in favour of Wood. He awarded her \$81,425 for loss in value of the property, \$12,000 for mental distress and \$5,000 for out-of-pocket expenses. She is also entitled to eight years' interest.

The total so far, with a cost order now pending, is about \$135,000 on a house that was originally purchased for \$89,900 and sold under power of sale for \$47,000.

The court decision released the listing agent and broker from any liability, on the grounds that there was no misrepresentation, and the principle of caveat emptor (buyer beware) applies to cases involving disclosed or readily observable defects.

The vendors were also innocent of any misrepresentations, and the original builder had died, so the case did not proceed against him.

The Township of Hungerford was jointly liable for the damages for failing to ensure that the house complied with the Ontario Building Code and for failing to conduct proper inspections during construction.

The lessons for homebuyers are these:

Always have a home inspection before a resale offer becomes firm.

If there's an obvious defect, ask the real estate agent for more details.

If the home still has a serious defect, get a good litigation lawyer preferably one like Curtis who had a strong belief in his client's case.

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