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Hazard land brings grief

Next month marks four years since Jeff and Krista Strachan purchased their dream home in Palgrave, and the nightmare is far from over.

Shortly after closing, the Strachans got the shock of their lives when they received their lawyer's reporting letter.

In it, they discovered for the first time that the house had been built on property zoned "hazard land." It turns out that the land is swampy, subject to flooding and a river runs underneath it.

None of this was visible when they first inspected the house because the ground was entirely snow-covered. There was no mention of hazard land in the MLS listing.

The house on the one-acre parcel was built some years before the hazard zoning came into effect in 1987, and in 1992 the Town of Caledon permitted the dwelling to remain in place as a legal non-conforming use. An agreement to that effect was to have been registered on title to warn future owners, but that was never done.

In the summer of 2002, the Strachans applied to Caledon for permission to build a separate apartment in the house for Krista's parents. That was when they found out they would never be able to add to the house because of the zoning.

The Strachans turned to First Canadian Title, their title insurance company, to reimburse them for the difference between the true value of the property and what they actually paid for it. The insurer did not deny the claim, but took the position that the Strachans had not suffered any damages.

The Strachan saga was featured in this column on Oct. 5, 2002 (online at <http://aaron.ca/columns/2002-10-05.htm>). Since then, the Strachans took the title insurer to arbitration before lawyer Sidney Troister, who awarded them \$45,000 plus costs.

This amount was not nearly enough, Jeff Strachan told me last week. The Strachans can't enlarge the house, and can't sell it because mortgage lenders won't touch hazard land.

Thoroughly frustrated, the Strachans launched a double-pronged initiative to recoup what they feel is their full damages. They commenced a lawsuit against their own lawyer and Janine Woodley, one of the real estate agents involved. The lawyer has now brought the title insurer back into the legal fray as a "third party" defendant.

At the same time, a complaint was filed with the Real Estate Council of Ontario against the agents involved. The council is the governing body of real estate agents in the province. The council decision was released in October, 2003, and appears on the organization's website at http://www.reco.on.ca/ccd_discipline_woodley%20-%20irwin.htm.

The parties involved were Roger Irwin, Barbara Rolph, Janine Woodley and Royal LePage RCR Realty. The three individuals were employees of the realty at the relevant times.

Rolph and Irwin were the listing agents on behalf of the seller. The owner of the property provided them with a "seller property information statement" that said the property was zoned rural and hazard land. That designation was also set out in a feature sheet for the property, but the MLS listing for the house only showed the property zoned as rural residential, not as hazard land.

Woodley acted as a dual agent for the Strachans when she prepared the offer on their behalf. She relied on the MLS information only, and did not show the property information statement to the Strachans before they signed the offer. She also did not verify the zoning, did not get a written acknowledgment of her role as dual agent, and did not advise the buyers that hazard lands are common in Caledon.

The real estate council found that the three agents involved had breached a number of the rules in the council's code of ethics. Each of the agents was assessed a stiff "administrative penalty" of \$5,500, and Royal LePage RCR Realty, as their employer, was ordered to pay \$2,000. In addition, costs of \$1,500 were levied against all four parties jointly.

The Strachans, who actually suffered the damages, get none of the \$20,000 in fines.

Some of the lessons to be learned from the Strachans' predicament are:

- If you're buying rural land, be careful about things such as zoning, surveys, well water, septic systems and building permits.
- If there is any doubt about the zoning of the property being purchased, confirm it in writing.
- Check the experience and reputation of your real estate agent.
- Have the offer reviewed by a lawyer before signing it.
- Check the zoning coverage in your title insurance policy before closing.
- Investigate the claims payment record of your title insurance company.
- Ask if there is a property information statement. If there is, read it. If not, make your own investigations before the offer becomes firm. Get your answers in writing.
- If things go wrong before or after closing, get a good litigation lawyer.
- And if you're expecting compensation, be patient. Very patient.

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