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Make sure dimensions of lot are specified Property size rarely mentioned in builder offers

Sales office staff should have copies of registered plans

In all the excitement of buying a new home, it's normal for purchasers to concentrate on the details of the house and ignore the one thing that is just as important as the building, if not more so. I'm referring, of course, to the land the house is sitting on.

For both builders and buyers, the single most expensive component of a house price is the serviced land where the house will be built; and yet in the vast majority of builder offers I've seen, the lot size is rarely, if ever, mentioned.

Sales offices may display large maps of the proposed subdivisions showing lot sizes, but if miniature versions are attached to the purchase agreements, the lot sizes are either missing or too tiny to be legible.

Representations of lot size in sales office posters or colour brochures handed to purchasers are always excluded from being a part of the agreement of purchase and sale. As a result, real estate lawyers who review offers for buyers in advance or during a conditional period are forced to tell would-be buyers that there is no guarantee that their home will be built on the lot size they are expecting or for which they may have paid a premium.

In both new and resale housing, the rule of law is that unless the purchaser specifically states in the offer what lot size he or she is expecting to get and that the purchase price is calculated on the stated lot size the purchaser may well be stuck with whatever lot size the seller delivers on closing.

Ontario courts have seen considerable litigation over lot sizes for at least the last century in Canada, and the century before that in Britain.

Typical of these cases was the suit between Wilson Lumber and Simpson. Back in 1910, an agreement of purchase and sale was entered into for a corner property at 250 Richmond St. W. in Toronto. The agreement provided that the Richmond St. frontage was "36 feet more or less," and the depth along Duncan St. was "110 feet more or less."

It turned out that the land was only 98 feet 6 inches deep, and not 110 feet. Since the \$12,000 purchase price was a bulk sum, and not a price for each foot of frontage, the buyer was given the option to take the property at the agreed price, or back out of the deal. The Ontario court said that the words "more or less," which are still used in Ontario resale agreements, did not entitle the buyer to a reduction in the purchase price.

The same result occurred in an Ontario court decision released in November 2005. In the case of 985813 Ontario Ltd. v. Victor Tavares, a real estate agent represented that the land was 81 feet by 143 feet, or 11,583 square feet. Later, he gave the buyer a site plan showing an irregular 7-sided parcel of land with only 9,320 square feet.

Both at trial and on appeal, the court ruling was the same as in the Wilson Lumber case a century earlier more or less means more or less, and the purchaser was stuck with buying only what the vendor owned. In addition, the buyer could not rely on the representation of the sales agent, since a clause in the offer specifically excluded any outside statements.

Buyers interested in a new home should always insert into an agreement of purchase and sale a warranty of the minimum dimensions of the lot being purchased.

If the first page of the offer, or the Tarion schedule, shows that the plan of subdivision has been registered, insist on receiving a copy and attach it to the offer as a schedule. Ontario subdivision plans with an M or an R in the registration number are public documents available from local Land Registry Offices at nominal cost.

The staff in a conscientious sales office should have copies of the registered plans on hand. If not, the builder should be able to make the plan available by the next business day.

If the plan has not been registered at the time a new home deal is signed, get a written promise that a copy of the plan will be delivered within, say, 30 or 60 days of registration.

Life is simpler with resale properties, but they are not always without problems. I recall a transaction for a resale home several years ago where the real estate agent had prepared an agreement of purchase and sale showing a lot size of 40 by 100 feet.

When I showed the purchaser the survey, which arrived the day before closing, it was apparent that the pie-shaped lot had a frontage of only 20 feet but a rear yard width of 60 feet. When I asked the agent why she showed the lot as 40 feet wide, she said she had measured it at the midpoint. Since my client was expecting a lot with a 40-foot frontage, that little stunt cost the agent her commission.

In buying resale property, the frontage, depth or square footage of the land may be important for many reasons including redevelopment, parking, ability to enlarge the house or resale value. If it is important, the offer should provide a formula for a price reduction (or increase) in the event the land size is more or less than anticipated.

And whether the land size is important or not, an up-to-date land survey (known as a surveyor's real property report) should always be attached to the offer. If the survey is not readily available during the preparation of the offer, the agent is not doing his or her job.