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How to create a legal second suite

One of the biggest mysteries of the local real estate market is the legality of basement apartments – also known as granny flats, in-law suites, accessory apartments or non-retrofit units.

Toronto bylaws permit basement apartments in all single detached and semi-detached homes, subject to certain requirements. Determining just what those requirements are, and whether any of the tens of thousands of basement apartments in Toronto are legal, is a tall order.

The City of Toronto has prepared a kit that provides information on how to create a legal second suite. It's available at the Access Toronto desk at municipal offices (or 416-338-0338). It's somewhat shy on the actual physical requirements, including unit size, fire protection, zoning, parking, window area, ceiling height, exit requirements, etc. Recently I came across a superb explanation of the basement apartment issue. It's on the website of Carson Dunlop, a well-known firm of home inspectors and consulting engineers (UPDATED 2013: http://www.carsondunlop.com/wp-content/uploads/BasementApartments_UntanglingTheWeb.pdf or <http://www.carsondunlop.com/2013/04/basement-apartments-untangling-the-web/> - and below).

The report starts off with the big Catch-22: "Homeowners with a basement apartment would like to find out what it would take to 'legalize' the apartment," it says, "but they want to find this out without tipping off the authorities."

The answer, according to Carson Dunlop, involves five issues:

- Do the local bylaws permit you to have a basement apartment?
- Does the apartment comply with the Fire Code?
- Does it comply with basic building code requirements?
- Does it comply with basic electrical safety requirements?
- Has the apartment been registered?

Under Ontario law, a permit is required to add a new basement apartment to a single family house. In 1994, the NDP government overrode local bylaws prohibiting basement units, if certain conditions were met. New Fire Code rules were introduced, and they apply to all basement apartments.

Carson Dunlop suggests checking the zoning bylaw at city hall and applying for a building permit. The new unit will have to comply with current building codes.

For existing units, the first step is to check with Municipal Property Standards or the fire department for a certificate of compliance. If there is one, the apartment is legal.

If not, the next step is to have the fire department inspect the home to verify compliance with the Fire Code. The four key areas of this inspection involve fire containment and fire-rated drywall separations from the remainder of the house; fire exits (including qualifying windows); fire detection and alarms; and electrical safety.

Following the fire inspection, an Electrical Safety Authority inspection is required.

Several rules apply to all basement units:

- All bathrooms need either a window or an exhaust fan
- If there is a parking spot for the upper unit, there must also be a parking spot for the basement
- The minimum ceiling height must be 6-feet 5-inches
- The entrance door size must be at least 32 inches by 78 inches

If the unit passes all the required inspections, it can be used, advertised and sold as a legal basement apartment. In my experience, if a house is advertised or listed as having a basement apartment, and there is no mention that the unit is legal, it probably isn't.

For anyone buying, selling, building, or arranging insurance for a basement apartment, the best advice is to complete the required inspections and always make full disclosure.

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Basement Apartments: Untangling the Web

Basement apartment, granny flat, accessory unit; no matter what it is called, there are many different reasons for having a second suite. Whether it's for extra income, providing a place for a family member, increasing the value of the house or having a tenant for company, a second suite can be beneficial.

But is it a 'legal' apartment? If not, how can it be made 'legal'? In the process of getting the apartment approved, will I be inviting 'trouble'? What if the City prescribes improvements that are prohibitively expensive? What if the City decides that I can't have a second suite?

This report will look at some of the key concepts of second suites including:

- The legislation history
- The evaluation process and required inspections
- Where to get more information

WHERE THERE ARE RULES, THERE IS GOVERNMENT

There are two levels of government with interests in the regulation of second units.

Provincial Legislation

Prior to 1993, there was little to worry about.

In 1994, the NDP government in Ontario created *Bill 120*, which allowed for second suites anywhere in the province, regardless of local bylaws. Standards were set out for building, fire and parking requirements. At this point, a permit was required to change a home from single family to multifamily.

This legislation was nullified by the Conservatives in 1996, although any units created prior to November 1995 were to be recognized and permitted to stay in use.

The Liberals have since introduced *Strong Communities through Affordable Housing Act, 2011* (effective January 1, 2012). This Act requires municipalities to allow second units within primary residences as well as in other structures (e.g. garages). Generally only one extra unit would be permitted. Planning for the possible inclusion of these units is actually encouraged in any new developments.

At the same time, the Act allows each municipality to dictate areas that may not be suitable (e.g. inadequate services available) as well as standards for size, requirements for parking, etc. The Minister of Municipal Affairs and Housing warns that the standards should encourage the creation of these second units. These units must also adhere to the Building Code, the Fire Code and any applicable property standards bylaws.

What about old units?

There is no provision for 'grandfathering'. Current standards will apply to all units.

In effect, the provincial government has told the municipalities, 'If you don't have a policy that governs second units, get one; and if you do have one, make sure it agrees with ours.' (Once all the legislation is declared in force). To confuse matters, there is no specific date that municipalities have to be in conformance.

Municipal Legislation

Many larger municipalities have established policies on second units with different biases for and against them. With the recent Provincial legislation, this is now a bit of a gray area, specifically in municipalities that do not allow for 'accessory dwelling units' (e.g. Mississauga). As mentioned previously, while the Province has said that municipalities must 'get in line', no exact date has been set.

For the City of Toronto, legislation was passed in the summer of 2000 which permitted a second dwelling unit in almost the entire amalgamated city. This Second Suites Bylaw used the repealed *Bill 120* as a template to specify the requirements for planning standards, building and fire codes.

THE EVALUATION PROCESS (Toronto)

The first thing to establish is whether the suite is **existing** or **new**.

Existing Units

If there is an existing suite and the City has records that identify the house has been adjusted for a two unit residence, the Fire Department has issued a Certificate of Compliance and the Electrical Safety Authority has given approval, all is good.

If there are no records, you may have to prove the pre-existence with supporting records for rents collected, improvement expenses, taxes, etc. Inspections would then be required to determine if any upgrading is required.

In Toronto, a Municipal Licensing and Standards inspector will use Chapter 629 to confirm the requirements for occupancy and property standards are being met. If there are problems, they can be addressed by:

- fixing them, or
- applying to the Committee of Adjustment for a variance

After these conditions are approved, you must get a Fire Services Inspection and then an Electrical Safety Inspection.

New Units

If a new suite is being planned, there are a number of questions that have to be answered before your apartment can be considered 'legal'.

- *Do the local bylaws permit you to have a basement apartment?*

In most cases they will be permitted. Assuming that a second suite *is* allowed, you must ask,

- *Does the apartment comply with the building code requirements?*

When creating a second suite, plans must be submitted, permits taken out and work approved. The Ontario Building Code and Ontario Fire Code are used for reference. There is lots of room for the inspectors to be more or less 'strict'. In municipalities that encourage basement apartments, the inspection may be less strict. In municipalities that discourage basement apartments, the inspection may be more strict.

- *Have the requirements of the Ontario Fire Code been met?*

After the building requirements are passed, the local municipal fire department will have to be contacted so they can ensure current fire safety codes are being met. A 'Letter of Inspection' will be issued when all is good.

- *Have the requirements of the Electrical Safety Authority been met?*

A *General Inspection for Compliance of Two-Unit Residential Dwelling* must be arranged with the ESA and once any electrical defects are corrected a 'Certificate of Inspection' is issued.

What are the consequences of having an 'illegal' apartment?

A disgruntled tenant or neighbour may call the City and complain. If you are found to be not in compliance there are a number of possibilities:

- You could be asked to dismantle the apartment and remove the tenant
- You could fix the problem
- You could be fined or go to jail

HOW ABOUT SOME SPECIFIC REQUIREMENTS?

In Toronto, Municipal Licensing and Standards (ML&S) has developed guidelines for developing second suites. To start:

- The building must be at least five years old
- The building must be detached or semi-detached (and in some cases it may be a row house)
- The front of the house must stay essentially the same
- The second suite cannot be larger than the primary residence
- Parking must be provided (with exceptions in some parts of the former City of Toronto)

Ontario Building Code and Municipal Bylaws

While the Provincial standards are ordinarily followed, ML&S bylaws may provide exceptions or refinements. In Toronto, Chapter 629 provides the rules for Property Standards. These include specifics for everything from the sizes of rooms, required heating and lighting to the necessities for storage of garbage and debris.

Some examples:

- *Size of Living Space* – 629.25C requires a minimum habitable space of 9 square meters (97 ft²) per person.
- *Ceiling Height* – 629.25D requires a height of 1.95 meters (6 ft. 5 in.) for at least ½ of the floor area in a room.
- *Bedrooms* – 629.25E/F requires 6 square meters (65 ft²) for one person or 4 square meters (43 ft²) per person when more than one person is sleeping in the room.
- *Bathroom Ventilation* – 629.39B requires any bathroom to have an exhaust fan or an operable window.

Ontario Fire Code Retrofit Section 9.8

Any rental unit, old or new, must comply with the standards set out in the Ontario Fire Code. There are four key areas regarding fire code compliance, all having to do with the safety of the occupants:

- Fire containment
- Mean of egress
- Fire detection and alarms
- Fire suppression

1. Fire Containment

The goal is to contain the fire in the unit that the fire started, long enough to get all of the occupants out of the house. This means that any walls, floors, ceilings and doors between units should control the fire for a minimum prescribed time. These components are given '*Fire Resistance Rating*' of how long they will survive a direct fire before burning through. A 30-minute rating means that the component will withstand the fire for at least 30 minutes. The typical requirement is a 30-minute separation between the units.

- Drywall and plaster are acceptable but suspended (T-bar type) ceilings are not.
- The ceiling must be continuous. For example, this means that you can't have exposed joists in the furnace room – this area has to be covered with drywall or plaster as well. (See note below in Suppression.)
- Doors should be solid wood or metal – at least 45 millimeters (1¾ inch) thick.

Flame Spread Ratings which determine how quickly the fire on a burning material will spread are also considered, meaning materials like wood paneling are not ordinarily acceptable.

2. Means of Egress | Escaping the home

The goal is to allow the occupants to get out of the house if there is a fire. There are two common situations; either each unit has its own exit, or there is a common exit. If each unit has its own exit, you are all set. If the units share an exit, it is more complicated.

A common exit is allowed if it is fire separated from both of the units with a 30 minute rating. If the common exit is not appropriately fire separated, you can still use this common exit as long as there is a second exit from each dwelling unit and the fire alarms are interconnected (if one alarm sounds, the others will sound as well). The second exit is typically a window.

What is an acceptable window?

- The windowsill must be within 1 meter (3 feet) of grade. We don't want people jumping and breaking a leg.
- The smallest dimension is 0.5 meters (~18 inches).
- The opening is at least 0.38 square meters (~4 ft²).
- If a basement window has a window well, it must extend 1 meter (3 feet) out from the house wall, to allow room to crawl out.

3. Fire detection

All units must have smoke alarms on every floor and audible from the bedrooms (when doors are closed). The *owner of the property is responsible* for the installation and maintenance. The smoke alarms do not have to be interconnected unless the fire separation to the common exit area does not have a 30-minute rating (Note: It must have at least a 15-minute rating). Interconnection may also be required if a unit is located on a third floor. Carbon monoxide detectors are also required.

4. Suppression

While sprinkler systems are not mandatory, their installation may lower the requirements for fire containment and/or egress. As an example, an open ceiling in a furnace area may be acceptable. Portable fire extinguishers should be provided.

Electrical Inspection

The Fire Code includes a provision that any suite must have a general inspection by the *Electrical Safety Authority* and any hazards must be fixed. If requested, a letter of compliance must be made available to the Chief Fire Official.

Closing Thoughts

Although there are many more 'illegal' apartments than 'legal' ones, the benefits of 'flying under the radar' should be weighed carefully. The consequences of being reported by a perturbed tenant or neighbour are one thing; being sued for negligence or being denied an insurance claim can be more onerous. If you are going to represent the property as Multi Unit, verify that it is registered with Municipal Property Standards.

WHERE TO GET MORE INFORMATION

Province of Ontario – Ministry of Municipal Affairs and Housing

- Information on the *Strong Communities through Affordable Housing Act, 2011*: <http://www.mah.gov.on.ca/Page9575.aspx>

General inquiries: Phone 311

- Landlord's Self Help Centre: www.landlordselfhelp.com and http://www.secondsuites.info/hub_page.htm
- Excellent sources of information on creating a rental unit

City of Toronto Buildings Division: www.toronto.ca/building

- For building information, permits and inspections

Municipal Licensing and Standards: www.toronto.ca/licensing

- For information, inspection and investigation of zoning and bylaw infractions

Toronto Fire Services: www.toronto.ca/fire/prevention

Electrical Safety Authority: www.esainspection.net

Our Website

The Carson Dunlop website (www.carsondunlop.com) has this report and other reports of interest to Real Estate Professionals available for download.

This article was submitted by Carson Dunlop, a Toronto based consulting engineering firm that has specialized in Home Inspection since 1978. For more information, call 416-964-9415 or 1 800 268 7070, or visit www.carsondunlop.com.

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