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Ontario a step closer to mandatory energy audits

With the proclamation of the Green Energy Act, 2009, Ontario has moved one step closer to requiring mandatory energy audits on the sale of residential properties.

Section 3 of the new legislation is the only part of the law that has not yet received royal assent, but when it does it will give anyone who is making an offer to purchase a residential property the right to receive an energy audit from the seller. Regulations, which have yet to be released, will describe the type of information and reports the purchaser is entitled to receive.

The new law allows the government to establish rules setting out how energy audits will disclose the energy consumption and efficiency ratings for the house.

The Green Energy Act also states that, before accepting the offer, the seller must provide the prescribed information, reports or ratings to the buyer.

Real estate agents, or any others acting on behalf of the seller, are required to inform the owner promptly of any request for the information, reports or ratings from a person submitting an offer to purchase. This requirement, however, does not apply to agents or others who are performing their services as a favour and not getting paid in connection with the offer to sell.

The energy audits do not have to be personally delivered to the interested buyers as long as they are made "reasonably available" whatever that means.

When the provincial government originally announced its intention to impose mandatory energy audits on the sale of residential real estate, industry stakeholders made their objections known quite forcibly to Queen's Park. That requirement was dropped from Bill 150 in favour of disclosure of the right to receive the audit and the option to waive it.

Another provision that was dropped was the rather draconian right of the government to appoint inspectors who would have the right to enter any business office (including a law office) to demand to see energy audits stored there.

Since this would have shredded the privacy protections to which clients are entitled in their lawyers' offices, I was very critical of this provision when it was announced. As passed, however, the legislation makes more sense without establishing Ontario energy police.

My guess is that Section 3 will not be proclaimed until details of the requirements for an energy audit have been worked out, and Ontario has enough federally-licensed and trained energy auditors to handle the province-wide demand, without bringing the real estate market to a standstill.

It remains to be seen whether the real estate industry will jump on board the green energy bandwagon and encourage those listing their properties for sale to undertake energy audits.

The alternative would be for real estate agents to insert into purchase offers a standard clause waiving the right to an energy audit. This type of clause might even find its way into the standard printed form offers.

My take is that until vendors and purchasers see the value in having homes undergo energy audits, stakeholders in the real estate field will view the audits as an interference in the orderly processing of real estate transactions and routinely use waiver clauses.

Other parts of the Green Energy Act encourage construction of facilities producing energy from alternative sources, including solar, wind and biogas projects.

The bad news is that Ontario power consumers will be shouldering the cost of the alternative sources.

Currently, electricity is wholesaling at four to five cents a kilowatt hour (kWh), but the Ontario Power Authority (OPA) will be paying huge premiums to producers of green electricity. The OPA will be paying between 45 and 80 cents a kWh for hydro from new solar facilities, 19 cents for offshore wind farms, 13.5 cents for onshore wind farms and up to 19.5 cents for biogas projects.

The only source of this huge expense, of course, will be from everyone in Ontario who uses electricity.