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RECO decision heralds new rules about basement apartments

A discipline decision by the [Real Estate Council of Ontario](#) (RECO) earlier this year has established what may be a new disclosure standard for real estate agents dealing with basement apartments and land surveys.

Back in 2006, Richmond Hill real estate agent Sean Marandi listed a property for sale. In the published listing, it was described as a magnificent house . . . elegant design with two apartments in the basement (\$1,150 income) . . . three fridges, three stoves . . . Seller and agent do not warrant the retrofit status of basement apartment.

Two days after the listing was published, Marandi drafted an offer on behalf of a buyer. He had advised the buyer that the property would be an excellent purchase for investment purposes because the previous owner had built a separate entrance to the basement.

The buyer signed a dual representation acknowledgement confirming that Marandi and his brokerage represented both buyer and seller.

In preparing the offer, Marandi did not insert a clause to ensure that the buyer was fully informed of the legality and suitability of the basement units for his intended use.

The offer did, however, contain a clause requiring the seller to provide an existing land survey of the property. That was never done.

Shortly after closing, the municipality informed the new owner that the basement entrance and basement apartment did not comply with the building code, and it issued a violation order against the property.

The cost of remedying the faulty construction of the basement door came to about \$50,000. On top of that, the tenants took the buyer to what was then known as the Ontario Rental Housing Tribunal due to problems with the door.

Eventually the owner was forced into bankruptcy when the tenants stopped paying rent.

RECO filed discipline charges against Marandi for breach of its code of ethics. At a hearing in March, Marandi admitted to unprofessional conduct when he failed to verify the status of the basement apartment and failed to follow through with delivering a land survey to the purchaser.

The RECO discipline panel ruled that Marandi acted unprofessionally by not inserting a condition in the offer to ensure that the buyer received information or assurances about the legality of the basement apartment before the offer became binding. Marandi was ordered to pay a penalty of \$7,500 and take a course in ethics and business practices.

Based on my reading of the case, it seems that in similar circumstances, potential purchasers have a right to expect very high disclosure standards from their real estate agents:

Agents are now required to verify the legality and/or intended use of basement apartments with the municipality before offers are submitted.

Agents can no longer insert clauses into offers stating that they and the seller do not warrant the retrofit status of basement apartments (a common practice at present).

Agents are now required to follow through and ensure that buyers will promptly receive a land survey if the offer provides for it.

In a 2004 Ontario court decision in a civil case for damages, the judge ruled that agents have a positive duty to tell purchasers whether a basement living unit might not comply with the municipal bylaw. He wrote in his judgment that an agent must fully and fairly disclose to his clients all material information regarding the property.

The Marandi discipline decision echoes that high standard of full disclosure in offers to purchase. In future, disclosures should avoid words indicating that there is no verification of retrofit status, in favour of a blunt statement, such as The purchaser acknowledges that the basement apartment is illegal.

My colleague Merv Burgard, a London, Ont. lawyer who lectures extensively to real estate agents, tells me of a careful Brampton real estate agent whose advertisements often read illegal in-law suite. Hopefully, this degree of honesty and disclosure may soon become common practice in Toronto.

When in doubt, Burgard tells his students, tell the whole truth, and warn (buyers) of the risks.

RECO DECISION http://www.reco.on.ca/publicdocs/20100315_30735.pdf

and

[http://www.aaron.ca/columns/marandi decision.pdf](http://www.aaron.ca/columns/marandi%20decision.pdf)