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March 17 2012

Basement apartments must comply with code

When real estate agents prepare offers for a house with a basement apartment, they typically insert a clause stating that “seller does not warrant retrofit status.”

This results in the purchaser taking the risk of getting caught by city inspectors and having to vacate the unit and forfeit rental income.

Agents and sellers seem to think they are sheltered from liability if they do not “warrant” the basement’s so-called retrofit status.

This practice could end in the light of a recent letter to local real estate agents by Toronto Real Estate Board president Richard Silver.

Silver’s letter attempts to end the confusion over what is and what is not a “legal” basement apartment, and what’s missing if there is only partial compliance.

Silver quotes noted home inspector Carson Dunlop, who reports (at <http://www.carsondunlop.com/2011/12/basement-apartment-retrofit-untangling-the-web/>) that achieving a “legal” basement apartment involves five separate issues:

- Do the local bylaws permit basement apartments?
- Does the apartment comply with fire code?
- Does it comply with building code requirements?
- Does it comply with electrical safety requirements?
- Has the apartment been “registered?”

Real estate agents frequently use the term “retrofit” to signify whether the basement unit is or is not fully “legal.” But in this context, its use is incorrect, and only refers to fire code — one of the five requirements.

The provincial fire code is a subset of the Ontario building code. The building code applies only to the day the unit was constructed. Only the fire code is retroactive — and this gives rise to the term “retrofit.”

As a result, a unit which does not have a fire retrofit may otherwise comply with the building code, electrical safety requirements and zoning bylaws. It’s all very complicated.

In 1994, the provincial government set new fire code rules with which all basement apartments, new and existing, must comply. A unit upgraded to comply with the fire code is called a “basement retrofit.”

Compliance with the fire code involves four requirements: fire containment, means of escape, fire detection and alarms, and electrical safety.

Drywall separations between the basement and the rest of the house must have a minimum 30-minute fire rating. A separate exit (or fire-separated shared exit) is required. A basement window is acceptable if it meets certain size and location requirements.

Fire safety rules also require installation of smoke alarms in all units in a house. They do not have to be interconnected unless the fire separation to a common exit area does not have a 30-minute rating. Many municipalities also require carbon monoxide detectors.

Once a unit has been inspected and any deficiencies corrected, the fire department will issue a retrofit certificate to verify compliance.

But a unit that has been fully retrofitted may still not comply with zoning, building code and other requirements.

Identifying whether a municipality’s bylaws permit basement apartments is also important when buying a house with a basement unit. Since 1995, municipalities have had the authority to enforce their bylaws with respect to basement apartments; however, units that existed prior to November 1995 are exempt from meeting local bylaw requirements.

Silver notes that the building code, which prescribes minimum requirements for the construction of buildings, for the most part applies only to the day the house was built, and not retroactively.

As a rule, a basement apartment’s minimum ceiling height must be 6 feet 5 inches; its entrance door must be at least 32 inches by 78 inches; bathrooms require either a window or an exhaust fan; and if there is a parking spot for one of the units, there must also be a parking spot for the other unit.

Electrical safety refers to the required inspection by the Electrical Safety Authority.

Buyers of houses with basement units, and agents marketing them, should always insist on evidence that the unit was in existence in 1995. And they should find out whether the unit does or does not comply with the fire code, building code, electrical safety requirements and municipal zoning bylaws.

Full disclosure is of the utmost importance.

UPDATE:

In 2010, the Province of Ontario introduced *Bill 140: Strong Communities through Affordable Housing Act, 2011*. Bill 140 amended various sections of the Planning Act so that they now require municipalities to implement official plan policies and zoning by-law provisions to allow basement apartments (second units) in detached, semi-detached and townhouses, or as accessory units. The changes to the Planning Act came into effect on January 1st, 2012, however the Province has not specified a deadline by which municipalities are required to bring their respective planning documents into conformity with Bill 140.

Ontario municipalities are now required to initiate a policy review to implement policies in their Official Plans and performance standards in their Zoning By-laws.

Until the Official Plans and zoning bylaws are amended, the effect of zoning bylaws which appear to prohibit basement apartments in the face of the new legislation is uncertain.

LETTER TO TREB MEMBERS FROM PRESIDENT RICHARD SILVER

March 2, 2012 -- As Greater Toronto REALTORS we recognize that in comparison to other world cities, ours is a clean, safe and affordable place to live, and its allure means that we'll continue to see greater intensification in the years ahead.

Toronto's popularity is reflected for example, in the condominium market, which currently has more buildings under construction than in any other city in North America. Basement apartments also play an important role in meeting demand for housing throughout the Greater Toronto Area and if you have ever listed a property with one, you're probably familiar with the "Seller does not warrant retrofit" clause. Second suites can cause confusion for homebuyers and REALTORS alike, but this doesn't have to be the case.

According to noted home inspectors Carson Dunlop, achieving a "legal" basement apartment involves five areas of consideration: bylaw permissibility; compliance with the building, fire, and electrical safety codes; and registration. In short, if a listing indicates that a property has a retrofit basement apartment, it must meet municipal bylaw requirements, have a Certificate of Compliance to verify that it has passed fire and electrical inspections, and be registered with Municipal Property Standards. Additionally, if it is newly constructed, it must meet Building Code requirements.

Identifying whether a municipality's bylaws permit basement apartments and if any special conditions apply is the first step in the process. Since 1995, municipalities have had the authority to enforce their bylaws with respect to basement apartments; however, units that existed prior to November 1995 are exempt from meeting local bylaw requirements.

The Building and Fire Codes are related in that the Fire Code is a subset of the Building Code. There is, however, an important distinction between them. The Building Code, which prescribes minimum requirements for the construction of buildings, for the most part applies only to the day the house was built, not retroactively. The Fire Code, which prescribes construction and safety issues related to how a building is required to perform should it catch fire, does apply retroactively. In 1994, the provincial government set new Fire Code rules with which all basement apartments, new and existing, must comply. A unit upgraded to comply with the Fire Code is called a "basement retrofit". The fire department must inspect all basement apartments, and when any deficiencies have been corrected, as is required, it will issue a certificate to verify compliance.

The Fire Code involves four key areas of compliance: fire containment, means of egress, fire detection and alarms, and electrical safety.

Fire containment refers to a building's ability to contain a fire in the unit where it started. Walls, floors, ceilings and doors are rated based on how long they will survive a direct fire before burning through. The typical requirement is a rating that affords a 30-minute separation between the units. Drywall and plaster ceilings for example, are acceptable but they must be continuous so that joists are not exposed in any room. By contrast, suspended ceilings are not acceptable.

Means of egress refers to the occupants' ability to exit the house. Ideally, units should have their own exits. Units that share a common exit are allowed if the common exit is 'fire separated' from both of the units with a 30-minute rating. If it not rated as such, it can still be used provided that there is a second exit from each unit and the fire alarms are interconnected. To be considered an acceptable second exit, a window must have an opening of at least 600 square inches, with the smallest dimension being 18 inches; the windowsill must be within three feet of grade; and basement window wells must extend three feet out from the house wall, to allow room to crawl out.

The fire detection area of compliance requires that all units have smoke alarms. Smoke alarms do not have to be interconnected unless the fire separation to the common exit area does not have a 30-minute rating. Some municipalities may also require carbon monoxide detectors.

Electrical safety refers to the required inspection by the Electrical Safety Authority. As with the fire department's inspection, deficiencies that the Electrical Safety Authority identifies must be addressed. In general, an apartment's minimum ceiling height must be 6 feet 5 inches; its entrance door must be at least 32 inches by 78 inches; bathrooms require either a window or an exhaust fan; and if there is a parking spot for one of the units, there must also be a parking spot for the other unit.

Once bylaw and code requirements have been met and certified, homeowners can register the basement apartment with Municipal Property Standards.

Bear in mind that if your clients are planning to construct a basement apartment they must also apply for a building permit and comply with today's Building Code.

Representing a house as a two family property requires that you verify it is registered with Municipal Property Standards. Failure to comply can result in a \$25,000 fine and one-year jail term.

For more information on basement apartments contact your client's municipality.

Yours truly,

Richard Silver, President

Toronto Real Estate Board

<http://www.carsondunlop.com/pdf/Basement%20retrofit.pdf>

CARSON DUNLOP: BASEMENT APARTMENT RETROFIT - UNTANGLING THE WEB

-as of January, 2008

In a city like Toronto, where the apartment vacancy rate is low and real estate values are high, many people rely on the rental income from a basement apartment to give them the edge they need to own a home. But is it a 'legal' apartment? If not, how can it be made 'legal'? In the process of legalizing the apartment, 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 an apartment?

Catch 22

Homeowners with a basement apartment would like to find out what it would take to 'legalize' the apartment, but they want to find this out without tipping off the authorities. The only way to know for sure what will be required is to have inspections done by the appropriate authorities.

This report sheds some light on this complicated subject. We will look at basement apartments including...

- Key concepts
- The history
- The evaluation process
- Four key issues
- The rules
- Inspections and their costs
- Where to get more information

Definitions

Is it 'legal'?

'Legal' involves five separate issues including –

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

We will look at these issues more closely.

Building code vs. fire code

The Building Code prescribes minimum requirements for the construction of buildings. For the most part, the Building Code is a code that applies only the day the house was built. The code changes over the years, but we don't have to keep changing our houses to comply with the code. The code does not apply 'retroactively'.

The Fire Code is a subset of the Building Code. It prescribes construction and safety issues as they relate to how the building is required to perform should it catch fire. A significant distinction with the fire code is that it can apply retroactively.

Basement retrofit

Now that we know that the Fire Code applies retroactively, we can see where the phrase "basement retrofit" comes from. A new Fire Code was developed that applies to basement apartments. The code applies retroactively, so all basement apartments whether existing or new must comply with the new Fire Code. All owners of homes with basement apartments were given a period of time to upgrade their homes to comply with the new Fire Code. This 'grace period' has long since passed.

Certificate of compliance

All basement apartments have to be inspected to verify that they are in compliance. Once this has been verified and any improvements completed, the apartment is given a 'certificate of compliance'.

Bylaw

We mention this term here to make sure that we don't confuse bylaws with building codes. Bylaw in the context of basement apartments refers to whether you are permitted to have a basement apartment in your area and any special conditions involved. Bylaws are set by municipalities to keep people from being a nuisance to their neighbours. Codes are health and safety rules to protect occupants.

Basement Apartments – The History

Prior to 1993, there was little to worry about. After 1993, a permit was required to change a home from single family to multi-family.

In 1994, the NDP government in Ontario said that we could ignore local bylaws that prohibited second dwelling units in houses if certain conditions were met.

In 1994, the province set new Fire Code rules for basement apartments. A deadline was established for all existing basement apartments to upgrade to the new fire code. Upgrading to comply with the new fire code is called a "retrofit". The owners were allowed to apply for an extension for up to two years past the deadline if they had financial or logistical obstacles. Even with the extension, the deadlines have long since passed.

In 1995, the provincial Conservative government told municipalities that they could enforce their bylaws regarding basement apartments. A grand-fathering clause says that apartments existing before November 1995 do not have to meet local bylaws

The Evaluation Process

NEW UNITS

If you are thinking of adding a basement apartment here is the procedure –

- Check the Zoning Bylaw at City Hall Buildings Division to find out if basement apartments are allowed.
- You would then apply for a building permit. Keep in mind that you will have to comply with today's building codes.

EXISTING UNITS

This report will focus on existing homes with a single basement apartment.

- The first step is to check with Municipal Property Standards or the Fire Department for a Certificate of Compliance. If there is one, you are done!
- If the unit is not registered, you need to do some more work
- Verify that zoning bylaws permit a basement apartment. In most cases they do.
- The next step is to have the fire department inspect the home. They will verify compliance with the fire code. This is the most daunting part of the process because any deficiencies will have to be corrected by order of the fire marshal.
- The next step is to have the Electrical Safety Authority (which used to be called Ontario Hydro Inspection Department) inspect the electrical system. Once again, you will be required to make any improvements that are prescribed.

If the apartment unit passes the inspections, the unit can be registered with Municipal (Property) Standards (If not, improvements may cost \$15,000 or more).

Four Key Elements

There are four key areas regarding fire code compliance. They all have to do with the safety of the occupants –

- Fire containment.
- Mean of egress.
- Fire detection and alarms.
- Electrical safety.

Let's look at each of these.

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 at least a few minutes. These components are given 'ratings' of how long they will survive a direct fire before burning through. A 30 minute rating means that the component will control 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 drywalled or plastered as well.

? Doors should be solid wood or metal – at least 1¾ inch thick.

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 alarms, the others will alarm as well). Here is an example: There is a common exit area but the common area does not have a 30 minute fire separation between both of the units. If there is an 'acceptable' window for an escape route and the smoke alarms are interconnected, we are all set.

What is an acceptable window?

The windowsill must be within 3 feet of grade. We don't want people jumping and breaking a leg.

The smallest dimension is 18 inches.

The opening is at least 600 square inches (30 inches by 20 inches for example)

If there is a window well on a basement window, it must extend 3 feet out from the house wall, to allow room to crawl out.

3. Fire detection

All units must have smoke alarms. The owner of the property is responsible for ensuring that there are smoke alarms and that they are maintained. 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).

A carbon monoxide detector (CO detector) may be required by the city.

4. Electrical Safety

An electrical inspection by the Electrical Safety Authority is required. The Electrical Safety Authority used to be called Ontario Hydro Inspection Department. All deficiencies must be addressed.

General Rules

Here are a few rules that your apartment must meet.

- All bathrooms need either a window or an exhaust fan
- If there is a parking spot for one of the units, there must also be a parking spot for the other unit (yes, you read it correctly!)
- The minimum ceiling height is 6 feet 5 inches
- The entrance door size must be at least 32 inches by 78 inches

Inspections and their costs

As we already pointed out, two inspections are required, fire code inspection and electrical safety inspection.

Once the inspections are done, you will be required to make the prescribed improvements. Improvements may be minor, but can cost \$15,000 or more.

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.

Inspections for fire code compliance cost between \$120 and \$300.

Inspections for electrical safety cost \$72.

The consequences

If you are going to represent the property as two family, verify that it is registered with Municipal Property Standards. Failure to comply can result in a \$25,000 fine and one-year jail term.

More information

The Second Suites kit from City of Toronto is a useful reference. Contact Shelter, Housing and Support at (dial) 311.

The City of Toronto defines a second suite as a self-contained rental unit in a single-detached or semi-detached house. Most second suites are basement apartments. They have also been called granny flats, in-law suites and accessory apartments. The new bylaw permits second suites in all single-detached and semi-detached homes throughout the City of Toronto with certain conditions. Toronto has prepared an information kit that provides easy-to-read information on how to create a legal second suite. It's available in a downloadable format at http://www.secondsuitesinfo/Homeowners_Guide.pdf

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