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Basement apartments are a minefield for the uninformed

My column on basement apartments earlier this month (<http://aaron.ca/columns/2012-03-17.htm>) seems to have touched a nerve among homeowners and real estate agents, many of whom sent me emails. The message in the column was that simply using the term “retrofit” to signify whether an apartment was legal or not was misleading and dangerous.

Bill Johnston, past president of the Toronto Real Estate Board (TREB), wrote: “Thank you for your excellent article on basement units in the *Saturday Star*. They can be a minefield for the uninformed.”

Current TREB president Richard Silver agreed, saying: “It certainly is a minefield for consumers and agents unless we get some clarification.”

Brian Edwards, of Westbrook Building Inspection Services, pointed out: “I have lectured to agents over 80 times on this topic and it never ceases to amaze me how devious efforts are to hide the fact that the unit is illegal.”

Bill Owen, of Re/Max Realty Services, told me there are “thousands of illegal (units) out there, especially in Mississauga and Brampton. I see them every day.”

In fact, the minefield is even more complicated in light of provincial legislation, which came into effect at the beginning of this year.

In 2010, the Province of Ontario introduced Bill 140: the Strong Communities through Affordable Housing Act, 2011 (http://www.ontla.on.ca/bills/bills-files/39_Parliament/Session2/b140ra.pdf). The legislation requires municipalities to implement official plan policies and zoning bylaw provisions that will allow basement apartments or accessory units in detached and semi-detached homes and townhouses.

Although the changes to the Planning Act came into effect on Jan. 1, 2012, the province has not set a deadline by which municipalities are required to bring their bylaws in line with Bill 140.

Until the official plans and zoning bylaws are amended in each municipality, the effect of old zoning bylaws which appear to prohibit basement apartments is uncertain.

Provincial law in 1995 grandfathered existing basement apartments, but only with respect to zoning requirements. The question now is: can a municipality enforce its old zoning bylaws prohibiting a post-1995 basement apartment in the face of Bill 140 when that municipality has not yet implemented the required changes to its official plan and zoning bylaws to permit basement apartments? At the moment the answer is unclear.

Bill 140 may not apply to condominiums, since the declarations in most residential buildings contain a restriction limiting use to single-family purposes only. Hamilton lawyer Ronald Danks tells me that a number of court cases and arbitration decisions have upheld these restrictions.

The City of Toronto has prepared an excellent guidebook entitled “Second Suites: An Information Guide to Homeowners.” It is available at http://secondsuites.info/Homeowners_Guide.pdf. It notes that provisions permitting second suites throughout the City of Toronto came into effect in the summer of 2000. Homeowners are allowed to have a second dwelling unit in any single or semi-detached home, and in some rowhouses.

For a second suite to qualify as an authorized unit, it must meet residential zoning requirements, property standards bylaws, occupancy standards, health and safety requirements, and fire and electrical codes.

The Toronto guide contains a step-by-step procedure on how to create a new second suite and how to legalize (the city calls it “upgrade”) an existing suite.

A home with a basement apartment represents a huge investment and a valuable source of rental income. My recommendation for anyone owning one, or considering buying a home with an “accessory unit,” is to consult a qualified professional planner, engineer, architect or other building professional for guidance.

And if a real estate sale listing describes a home with a basement apartment using the toxic word “retrofit” — which applies only to Fire Code — the best thing to do is to find out why the unit doesn’t comply and what would be necessary to legalize it.

Morten Andersen, the broker at Royal LePage Meadowtowne Realty, recommends that purchase offers contain a clause specifically acknowledging full and complete disclosure of what aspects of the secondary unit comply, or do not comply, with legal standards.

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