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New home owners dig into their legal rights and obligations about backyard burial

Couple unaware former owner's ashes part of their purchase



Just when I thought I had heard every possible real estate problem, a client showed up with a question that is so novel that the answer doesn't appear in any court cases or real estate text books.

"Winston" and his wife recently bought a midtown house with plans to demolish and rebuild it. They were in the process of obtaining permits from the City of Toronto when a neighbour came over to talk to them and warned that the house had a "bad history."

After considerable investigation, it turned out that the widow of a previous owner had buried her husband's ashes in the back yard and it seems that the gentleman's ashes had been stored in a vault at Mount Pleasant cemetery for three years and after some prodding the widow picked them up and brought them back to the house.

For want of a better place to put them, she decided to bury them in the back yard and planted a tree beside the spot. After figuring out where they were, Winston decided to dig them up.

It was no easy task, but finally a plastic bag with the ashes was located a metre below the surface.

Not knowing what to do with the ashes, Winston tracked down the family members of the former owners to see if anyone was willing to take the

plastic bag off his hands. The widow who buried the ashes has dementia and was unable to provide instructions.

The sons of the deceased were either not aware of the fate of their father's ashes or were in no hurry to pick them up. Eventually, a kind neighbour offered to store them and removed them from the property.

But the story does not end there. Winston and his wife came to ask me whether, as a result of the back yard being used temporarily as a burial ground for human ashes, the property was forever stigmatized.

In real estate, stigma may attach to a property for reasons unrelated to its physical condition. Factors such as murder, suicide, the existence of a marijuana grow-op or meth lab, sex scandal or even hauntings can have a psychological impact on buyers. This can result in serious difficulties marketing the property and a detrimental effect on the market value.

In Ontario, sellers have no legal obligation to disclose information about suicides, murders or any other matters which might stigmatize the house. Real estate agents, however, are required by their regulator, the Real Estate Council of Ontario (RECO), to "discover and verify the pertinent facts relating to the property and the transaction."

As a result, agents must disclose material facts regarding stigmatized properties so all parties to a transaction are treated "fairly, honestly and with integrity."

But if the agent is not aware of the property's stigma, there is no obligation to disclose something beyond his or her knowledge.

I knew what I was going to advise my clients about the previous owner's ashes but just to be sure, I called Barry Lebow, a real estate agent who is Ontario's "go-to" expert on stigmatized properties.

Without any hesitation, Lebow told me and my clients that the temporary use of the back yard for burial of the ashes was definitely not a factor in stigmatizing the property, and it did not have to be disclosed to subsequent purchasers.

I had come to the same conclusion, and likened the incident to the temporary storage of an urn containing human ashes on a mantelpiece inside the house. Once the urn had been removed, either from its spot above the fireplace or from its resting spot in the back yard, any possible stigmatization of the property disappeared.

Lebow told my clients to go home and "sleep soundly" at night.

My clients were very relieved, but I'm not sure everyone would feel the same way.

Would you buy a house where human ashes had been buried, temporarily or permanently, in the back yard?

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