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Floor-by-floor sales venture would work better as a condo property

Too many legal sinkholes in real estate proposal

My nomination for the the most oddball real estate scheme of the year is last week's proposal by Larry Chilton and his real estate broker to sell separate floors of his Victorian rooming house facing Trinity Bellwoods Park.

As reported by Kamila Hinkson last week in the Star, the first and second floors are available for about \$480,000 each, plus the cost of renovating the house to create separate units. Half the house is also for sale, and the whole house is tagged at \$1.7 million.

In my experience practising real estate law in Ontario, I've never seen anything like this proposed joint venture with total strangers. It simply won't work here because it's unfeasible and impractical. To be honest, it's a pipe dream.

During an interview with CBC host Matt Galloway, listing agent Daniel Freeman admitted, "In our jurisdiction, there aren't any guidelines or laws that allow us to do this very easily.

"You're buying an interest share in the property," he said, "not unlike two people who know each other coming together and buying a property together . . . We're bringing people together and forming an alliance and a partnership."

That's much easier said than done.

Freeman added, "We're going to have a contract where we flesh out all the little details of sharing."

In fact, the details aren't so little. There are numerous big problems, including:

- The difficulty of two partners obtaining joint financing together and the impossibility of financing parts of the house separately.
- Dealing with one owner's default in mortgage payments, for which both owners would be equally responsible — the owner in good standing could be evicted by the bank for his partner's arrears.
- Similar challenges where one owner's utilities are in arrears and water, cable, phone, gas, Internet or hydro is shut off even though the other partner's contributions are up to date.
- Unwinding the venture and selling a share to a third party, especially where one party wants to sell and the other does not.
- The absence of a legislative structure such as the Condominium Act or a skillfully crafted co-operative or co-ownership agreement such as those used in larger multi-residential buildings in Toronto.
- How to deal with repairs, especially where they are necessary in one unit only, or where one party is unable or unwilling to contribute his share.
- The huge cost of creating new Ontario legal contracts, similar to those in common use in Quebec, California and elsewhere.
- The challenge and cost of physically separating the units and staircases according to current Building Code and fire regulations, so that each owner has a private, self-contained apartment.

As I see it, it would be far more cost-effective to convert the house to a condominium. Even if the conversion, surveying, legal and renovation costs were as much as \$250 per square foot, or \$100,000 for the whole building, the return on that investment could easily be recovered by the increase in the total value of the building.

In a condominium, one owner's arrears of mortgage payments, common expenses, taxes or utilities cannot be charged against the other owners in the building.

It seems to me that the listing of this Queen Street West neighbourhood house for sale by the floor — in the absence of a serious proposal for the operation of any sort of partnership — was just a clever and somewhat entertaining publicity stunt, but one which is totally impractical and doomed to failure.

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