

## Disclaimer In Fine Print May Not Avoid Liability

By Claire Bernstein (Reprinted with permission of the author.)

An appraiser hired by a bank learned the hard way that he was expected to do his job right.

Does a cut-rate price mean a cut-rate job? True, you get what you pay for, but when does negligence - doing a really lousy job - come into the picture?

The story of the Sengers of Terrace, B.C., could be the story of anyone buying a house.

Because they were not experts in construction, they had to rely on "experts." They didn't have much money. That's why they were looking at a run-down house, as well as to Canada Mortgage Housing Corp. for a 90 per cent mortgage.

The manager at the Bank of Nova Scotia told them they needed an appraisal on the house in order to qualify for a CMHC mortgage.

"But don't worry about finding an appraiser," he said. "We'll call someone for you."

The Sengers were relieved. They had done their own inspection and easily discovered two rotten floor joists in a cellar crawl space. They assumed this could be easily repaired, but Senger was not expert. He was delighted an appraiser would inspect the house.

The appraiser came up with a positive report, which he entered on the CMHC standard appraiser form. The structure of the house was good to fair, the insulation adequate, he said.

*"True, you get what you pay for, but when does negligence - doing a really lousy job - come into the picture?"*

True? Not true. In fact, the house was falling apart. The foundation was rotten and the insulation inadequate.

Why didn't the appraiser discover the mess? Simple. He spent five minutes or less in the cellar - without a flashlight or ladder. He didn't even look at the attic insulation before preparing his report.

### **Negligence:**

The Sengers took the appraiser to court and asked that he be held responsible for negligent misrepresentation. The appraiser, they said, had been negligent.

"We had relied on his report when we bought the house," they pleaded. To clinch the case, they said the appraiser knew they would rely on this report when they made the final decision to go ahead with the purchase.

"Why make such a fuss, the appraiser argued. "I'm being paid a lousy \$167 for one report. I've got to prepare 600 reports in order to make ends meet.

"What do they expect for that kind of money?" the appraiser asked aggressively.

And then he exploded his bomb.

"Besides, read the fine print. It says the appraisal was not a detailed building inspection."

### **Reliance:**

The judge didn't buy it.

"That's no argument, true." the appraiser countered, "but I don't owe anything to the Sengers. If some one should be suing me, it's CMHC. I prepared the report for them."

"Not at all," the judge replied. "You knew the Sengers would rely on your report. It doesn't matter that they weren't the owners who hired you. Your negligence caused them damages."

*"Will the appraiser or someone from the mortgage company tell you if you're NOT getting a detailed building inspection?"*

The damages totalled \$27,200, in the judge's view.

The Sengers didn't get all they had asked for. The judge held they were entitled only to the present value of the house, less salvage value, not the cost of rebuilding the place.

This case gives lots of reasons for sleepless nights when you're in the process of buying a home. If there's a standard mortgage appraisal form, how many read the fine print?

### **Buyer's Choice:**

Will the appraiser or someone from the mortgage company tell you if you're NOT getting a detailed building inspection? If you're not, should the buyer have that information so he can choose to pay more money for a complete appraisal?

There's no lazy way out for purchasers who must rely on expert advice. You'll have to learn enough about the pitfalls of buying a house in order to demand the expertise you need.

Sure, it's nice to win a lawsuit. It's much nicer to avoid one in the first place.



For Full Text from *The Lawyers Weekly*,  
call 416-598-5211 or 1-800-668-8155 or fax to 416-598-5659