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Couple wins fight over new house

Bottom falls out of plans for their dream home after sales mixup

Paul and Joanne learned the hard way about the problems that might arise when buying a new home from a builder who is not "buyer-friendly."

After their painful experience, they e-mailed me to share their story and some advice with the readers of this column. Their story underlines why it is so important for new home buyers to stand up for themselves, keep a paper trail, and have a good lawyer on their team.

The couple are empty-nesters who sold their family home in Toronto last spring. It didn't take long after they started to look for a newly constructed home to realize they had made mistake number one: never buy a house under pressure. In this case, the pressure was double they had to find a location and a builder, and the house had to be complete at the same time their existing house sale closed.

Eventually, they discovered a nice little enclave of bungalows going up in Whitby. While the site was still a field, they entered the sales office and met a very pleasant woman who turned out to be licensed and very knowledgeable.

She spoke with them at length about buying a new home, and even gave them a copy of a book she had written about the perils of buying and building a new home.

After much thought and number crunching, Paul and Joanne took the plunge and handed over a cheque for the \$20,000 deposit, coming in with a firm offer.

"This," says Paul, "is where it gets a little murky." After signing the purchase agreement, they were advised that the house was to be built and finished by Aug. 24, 2001. This was good news for them, and they prepared for the move.

Shortly afterward, the bottom fell out of their plans for a dream home. The sales agent contacted them to say that the house not be ready until possibly Nov. 15, 2001. Even worse than the delay, however, was the news that they could not have the house that they had purchased.

Apparently, the local municipality would not give the builder a building permit to construct the particular model they wanted on the lot they had selected.

Paul would not allow himself to be pushed around. In his own words, "I stamped my feet, screamed and yelled, spit and swore, all to no avail."

"This builder," says Paul, "did not care and the engineer working for him cared even less. This man was heartless and did not care one iota about our considerations or requests. I refused to live in the house and told the man to sue me."

Paul gambled that he could present a good case through his lawyer, based on the many "outright lies" that, he says, the builder told him.

I was not able to contact the builder because Paul did not want either his name or the builder's used in print, but I suspect that the local municipality exercises very tight control over home designs in new subdivisions.

It decreed that the elevation would be reversed (requiring construction of a mirror-image house), and that the garage would be downsized to the point it would not accommodate a Ford SUV on one side of a two-car unit. Interior walls had to be moved, and the entire roofline changed from a pointed dorm structure to a hip roof.

For these buyers, the roof change was "a big deal." Joanne was informed about the change during a phone call to the builder's office, when the agent said, "By the way, the township has changed your roofline." Later that day, Joanne received a fax showing the proposed new roof.

Paul and Joanne stamped their feet and refused to agree to the changes. When the time came to sell their old house, they moved into the family cottage for a while, and then found an accommodating friend. It looked like they were going to have to move in with the kids.

Finally, in July, they had a meeting with the builder. When Paul asked why the meeting was necessary, he got the surprise of a lifetime. The builder looked at them and said, "We screwed up. We sold you the wrong house for the elevation you selected."

At this point, Paul and his wife learned that the town had long before approved the builder's plan of how the entire project would look when finished. Their lot was next door to the lot that was supposed to get the house they purchased, complete with the correct roof line, left hand elevation, room sizes, garage and everything else. The builder had, in fact, sold them the wrong house.

As a result of putting their cards on the table, backed up by a significant paper trail from their lawyer to the builder, exposing many outright misrepresentations and "fibs," Paul and Joanne were able to win back their original roof and exterior and interior wall changes. How the builder convinced the municipality to agree is anyone's guess.

When Paul asked the builder why "coming clean" on the mixed up deal took so long, he responded with a "very sorry" and a "what can we do?" comment.

That's all Paul needed to hear. He told the builder he would feel much better and the pain of the experience would be soothed if he got free central air conditioning. The builder agreed.

At the same time, the builder asked the couple to select a brick colour for the house, saying that since they would be the first to select brick, their choice would be guaranteed. Only later did they learn that when they selected the brick, it came with a colour package for the exterior trim that was pre-approved by the municipality. After all the headaches, the buyers were not able to move into a house that met their personal colour choices.

Paul has some good advice for buyers of new homes:

- First, learn the status of the lot you are buying. Call the municipality and ask if the subdivision plan is registered. If so, he says, you should be able to take possession nearer to the target date than if the subdivision is not registered.
- Always check out the builder. "In my case," says Paul, "he has seven stars with the association and a good name. So beware, stars don't mean diddly."
- Finally, don't be shoved around. If you punch back hard enough through a lawyer and have a good paper trail, you will have real ammo to stand up for your rights.

Being an informed, cautious and assertive buyer will even the odds in the sales office.

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