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## Ontario buyers deserve same rights as British

Should builders of new homes or their agents be held responsible for errors or subsequent alterations in their descriptions of the houses being built and sold?

That was the question a court had to deal with when two homebuyers complained that the houses they purchased did not match the model homes or the drawings in the sales office.

Stephen Day and Steven Huntingdon separately purchased new houses to be built by Barratt Homes Ltd., well-known property developers and builders. Both the Maidstone model home and the drawings they saw in the sales office showed certain design features, including a gable roof over one window, a large second-floor window above the porch and a central concrete lintel in the ground floor window.

Beneath a large framed drawing of the Maidstone model in the sales office was an "important notice," which stated that the drawing could not be relied on as an accurate description of the house to be built. A sticker on the glass stated "property details have been amended." A notice on the office wall cautioned there might be a difference between the depiction and the houses to be built.

When the two houses, as finally built, differed from the model home and the sales literature, both Day and Huntingdon closed, fearing that they would otherwise lose their deposits.

Had these transactions occurred in Ontario, the builders could have relied on the disclaimers and warnings, and that would have been the end of the story. But the two houses were built and sold in Brackley, Northamptonshire, England, and the law there is far more consumer-oriented than in Ontario.

In 1993, the United Kingdom proclaimed the Property Misdescriptions Act, which creates a criminal offence of making a false or misleading statement about certain matters in the course of business by a real estate agency or home builder.

The statement or misstatement must relate to a relevant feature of the house, such as the view, physical or structural characteristics, the neighbourhood, services, fixtures, valuation, history or age, title restrictions, or zoning and planning issues.

Not every erroneous statement amounts to an offence. The test is whether the description would mislead a "reasonable person."

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### **A notice posted on the office wall cautioned that there might be a difference between the depiction and the houses**

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The defendant may attempt to show he took all reasonable steps and exercised due diligence to avoid committing the offence.

In the Day and Huntingdon cases, convictions were ordered on four of eight charges brought against Barratt Homes by the local county council.

Another builder, Berkeley Homes, pleaded guilty to two charges under the Property Misdescriptions Act in 2001 following complaints it did not live up to the promises made in a glossy brochure about a luxury London development. The artist's impression showed sliding patio doors with an uninterrupted view from the living area. Instead, the buyer got an "unattractive" hinged door opening outwards.

Not every case results in a conviction, but the publicity surrounding the charges certainly does not help the reputation of the builder or real estate firm involved. In 1996, Castles Estate Agents Ltd. was charged, by the London borough of Enfield, with making a misleading statement in a property advertisement. The property in question was a four-bedroom semi-detached house with a one-bedroom bungalow on the same grounds.

Since no planning approval had been given to use the bungalow as a dwelling, the allegation was that the advertising was likely to cause a reasonable person to believe that the property could be used legally for residential purposes. The real estate firm was acquitted on the grounds that it took all reasonable steps and exercised all due diligence to avoid committing the offence.

In Ontario, the typical builder agreement of purchase and sale for new homes allows the builder leeway to alter the floor plans, room sizes, exterior design and colour, lot sizes, and many other features. These rights are reserved in case the municipality requires changes at the building permit stage, if the builder makes a mistake during construction, or cannot deliver what was promised for other reasons.

In Great Britain, the Property Misdescriptions Act forces builders to deliver exactly what they promise.

The U.K. legislation also applies to the sale of resale houses and could be invoked in cases of advertising using such vague phrases as new roof, close to transportation, updated plumbing and in-law suite.

If the Ontario government was serious about consumer protection, it would take a long and hard look at the Property Misdescriptions Act in Britain. Ontario citizens should have the same rights in purchasing new or resale homes that their counterparts do in the British Isles.

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