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## Homes' in-law suites can be a risky bet

*Ads touting basement units play word game*

*If apartment isn't tagged 'legal,' it probably isn't*

According to my dictionary, a euphemism is a substitution of a mild or vague expression for a harsher or more offensive one.

I thought of that word the other day as I was scanning advertisements for homes for sale in The Star's classified ads and on the Net.

In reading the ads, I was struck by all of the inventive expressions real estate professionals use to describe illegal basement apartments. Words like in-law apartment, in-law suite, nanny suite, basement apartment, income potential and second unit are all commonly employed to describe what the law calls "accessory units." Another ad detailed the features of the home and then added, "plus a one-bedroom basement apartment."

Unfortunately, due to the complicated rules regarding legality of such units, few vendors and even fewer agents are willing to put in writing whether the units are legal, and nobody but nobody ever advertises them as illegal.

After all, an advertisement offering a resale home for sale and adding the notation, "illegal basement apartment" does not inspire buyer confidence despite the truth of the statement. It's far easier for everyone to ignore the illegality and simply use a euphemism to state the fact that the unit exists.

I have to give credit to two agents who wrote ads last week using the phrases "legal duplex" and "very rare detached legal duplex," but they are the exception rather than the rule.

As a result, it's reasonable to conclude that when a house is advertised with a basement apartment and there's no mention that the unit is legal, it probably isn't.

It's no surprise almost no one wants to describe a basement apartment as legal, since the rules are very complex and municipalities like Toronto won't put the legality in writing unless the unit was freshly constructed with a building permit.

I'll deal with this in a future column, but some of the issues involved include zoning bylaws, fire code, ceiling heights, access and exit routes, window and floor sizes, fire-rated drywall separations, parking and, in some cases, how long the unit has been in use.

The rule of thumb I use in advising purchasers about basement apartments is that if the vendor or agent won't certify it as legal, the unit is almost certainly illegal.

A number of recent Ontario court cases have dealt with this issue. My favourite dates to 1989, when Mario and Maria Burreddu signed an agreement to buy a renovated semi-detached property on Indian Grove in Toronto from Palace Property Services Ltd.

The owner of Palace had obtained a building permit to divide what was a single-family house into two units with a recreation area in the basement.

But the renovations were completed so there were three apartments in the building, with three separate entrances and three kitchens. The building was then advertised for sale as a legal duplex with basement apartment.

The parties entered into an agreement of purchase and sale, which described the property as "a legal duplex with a basement apartment."

The Burreddus found out before closing that the basement apartment was illegal. Without the income from the basement, they could not carry their proposed mortgage. They demanded return of their \$10,000 deposit and, when the vendor refused, wound up in court.

After a six-day trial, the court decided the vendor and agent had represented the property to the purchasers in such a way that they could only conclude that there were three legal apartments in the building.

Justice John Jennings concluded that the words in the agreement were a misrepresentation as to the legality of the basement apartment. It was, he said, "made knowingly and, hence, was fraudulent."

Although the Burreddus got their deposit back, the message of the case seems to have been lost over the eight years since the decision was written.

Vendors and agents who use fuzzy terms to describe basement apartments run a serious risk of a court pointing at them and using the "f-word" fraud. It's a risk any reputable agent should go to great lengths to avoid.

If a building contains an illegal use, it should be flagged or waived in the offer, or at the very least, it should not be misrepresented.