



Bob Aaron bob@aaron.ca

June 12, 2004

## Marijuana grow-ops slash value of real estate

### Former grow houses nearly impossible to sell

#### *Standard clause needed to protect unwary buyers*

A decision by the British Columbia Court of Appeal released last month is a reminder of the effect a marijuana grow operation (grow-op) can have on real estate and real estate values.

Back in 1996, Heinz and Elfrieda Lindner were approached by their long-time friend Robert Williams, who was a licensed mortgage broker. Williams told the Lindners of an opportunity to invest \$65,000 in a second mortgage on a rented property said to be valued at somewhere between \$425,000 and \$450,000. The title was subject to an existing first mortgage of \$291,000 at the time.

Based on these figures, it was Williams' opinion that there was sufficient equity in the property to make the loan secure.

Within a year, the owner had defaulted on the mortgage. The interior of the building had been trashed due to a marijuana grow-op, but it was not clear whether that had occurred before or after the second mortgage had been advanced.

Following foreclosure proceedings in 1998, the second mortgage lenders lost money.

They sued (and settled with) their own lawyer and the owner of the property, but the negligence case against the mortgage broker and his company went to trial and then to appeal.

Both courts agreed that the broker had been negligent in saying that the second mortgage was a good one and the investment secure, but there was no evidence that the loss had been caused by Williams' negligence.

Since no one testified when the grow-op had started, it might have begun after the mortgage was given. In that case, the loss would not have been caused by the broker's misrepresentation. The case against the broker was dismissed at trial and on appeal.

Just how common are grow-ops in Canada, what effect can they have on the subsequent value of the house, and what kind of damage can result from this type of agricultural operation in a residence?

Judging from press reports, grow-ops seem to be increasingly common in the real estate marketplace. Last week, a prominent Brampton realtor was charged with participating in a scheme to orchestrate house sales, fraudulently register titles, lease the houses as residences, and turn them over for marijuana cultivation.

Across the country, estimates are that there may be as many as 50,000 grow-ops currently running.

In order to gauge the impact of grow-ops on real estate values, I spoke last week to Toronto real estate educator and appraiser Barry Lebow. He told me that a grow-op current or past can have a drastic effect on the value of a home.

Once a residence has been used as a grow house, he said, it is virtually impossible to sell as-is. The house becomes stigmatized.

Mould contamination is inevitable in the drywall and other components of the building. It requires a thorough environmental analysis and cleanup.

He says the house is okay to buy, but only after it has been given a thorough bill of health by an environmental engineering firm.

In addition, since the electric meter is usually bypassed in a grow-op and the house is often rewired illegally to support high-intensity lights, major electrical work will usually be necessary to restore the house to electrical code standards.

Unless it is totally rehabilitated, a grow house may be impossible to finance and insure. Mortgage lenders and insurance companies may stay miles away from this kind of risk. Insurance companies may also be reluctant to pay claims arising from this sort of activity.

Two years ago, Gurkirat Takhar sued the British Columbia Insurance Company for damages to his property caused when a tenant established a grow-op inside. The B.C. small claims court awarded Takhar \$10,000 on the basis that the tenant's activities constituted vandalism without the owner's knowledge. However, that may not be the case with every policy.

The 50,000 grow-ops in Canada today can be compared with the estimated 100,000 Canadian houses that once had, or still have, urea formaldehyde foam insulation (UFFI).

Standard form Ontario house agreements still contain a no-UFFI warranty. But even though grow-ops can be far more hazardous to homes than UFFI, it has not become a standard practice for real estate agents to insert clauses in agreements of purchase and sale warranting that the house was never used for growth or manufacture of illegal substances.

The Ontario Real Estate Association's forms manual contains a clause of this type, but I've never seen it used.

But given the growing seriousness and frequency of the problem, I wouldn't be surprised if a clause like this soon becomes commonplace. In fact, it may be risky for buyers not to use a marijuana-free warranty.

Bob Aaron is a Toronto real estate lawyer. He can be reached by e-mail at [bob@aaron.ca](mailto:bob@aaron.ca), phone 416-364-9366 or fax 416-364-3818. Visit <http://www.aaron.ca>.

*Additional articles by Bob Aaron*

---

*Bob Aaron is a Toronto real estate lawyer. [www.aaron.ca](http://www.aaron.ca) ©Aaron & Aaron. All Rights Reserved.*