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Toronto's building department operations are neither open nor transparent

Before closing the purchase of their home, Pierre Marcoux and Caroline Bougie discovered the City of Toronto building department had an open file on the house. They wanted the seller, Darlene Remlinger, to rectify the situation by having the city's file closed.

Typically, sellers are required by the purchase agreement to provide clear title free of any liens, mortgages, and other matters including breaches of the building code or zoning bylaws.

The purchase agreement signed by Marcoux, Bougie and Remlinger was on the typical standard form published by the Ontario Real Estate Association (OREA). It contained a very badly worded 149-word sentence which deals with title problems and outstanding municipal orders.

Translated into understandable English, the tortured provision says that if the buyers object to any outstanding municipal work order or deficiency notice, and the seller is unable or unwilling to rectify the issue or obtain insurance (but not fire insurance) protecting the buyer and any mortgage lender, then the agreement is ended and the deposit returned.

Unfortunately, the sentence was a major contributing factor to the litigation which arose in this case.

In response to the demand by the buyers, the seller and her lawyer offered to provide the buyers with a title insurance policy purporting to protect them against whatever the city was concerned about in its open file.

The buyers declined the title insurance and the seller took the dispute to court prior to closing by way of an application under the Vendors and Purchasers Act, asking a judge to rule on the interpretation of the contract.

At the hearing, the buyers argued that even with the title insurance policy, they would be exposed to litigation and uncertainty over the effect of the city file. They objected to being forced to enter into a contract with a third party (the title insurer) against their will.

In an oral ruling last August, Justice Andra Pollak ruled that the purchasers had agreed to accept title insurance in the small print of the standard form contract. They could have refused if they wanted to do so at the time the agreement was being negotiated. The judge declared that the buyers' objection to the city's open file was satisfactorily answered by the commitment to provide title insurance.

Not only were the buyers forced to accept title insurance in the face of the city's open file, but they were also ordered to pay the seller \$9,800 in court costs.

In my view, the OREA form does a disservice to home buyers. Title insurance should not be forced on unwilling purchasers to paper over a title defect.

The Remlinger and Marcoux case highlights one of the biggest problems with buying houses in the city of Toronto: the municipal government will not tell purchasers whether the house they are buying is legal, whether it complies with zoning and building bylaws, whether it was built with a permit, and whether it is situated the appropriate distance away from the front and sides of the lot.

For the outrageous sum of \$122.89, Toronto Buildings department will send out a form letter stating only that their computer records show no active permits or permit applications, no active Committee of Adjustment applications, no active notices or orders of violation, and no active matters of investigation. The city does not confirm whether or not these matters exist, but rather whether or not they are shown in the city's computer files which may not be up-to-date.

If there are any outstanding matters, they are disclosed but not explained in the letter.

Other Ontario municipalities are much more open and transparent in their responses to building and zoning inquiries. They examine land surveys for bylaw compliance, provide copies of zoning bylaws, advise when the building permit was issued and whether the house complies with zoning bylaws.

The city of Toronto does none of these things. Its building department operations are neither open nor transparent, and contribute to unnecessary expense and litigation for home buyers.

Aren't Torontonians entitled to know whether the houses they are buying are legal?

