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When a detached home is not a detached home

When you're selling a house known as a link-semi, is it wrong to advertise it as a detached home?

The link house style was popular in Toronto in the 1970s and 1980s. The only physical attachment that joins two adjacent houses typically consists of one or two short rows of underground concrete block footings, at right angles to the foundation walls. They are entirely unnecessary for structural reasons.

Looking at the houses from the street, they are clearly detached, with a few feet separating them. It is impossible to tell that the houses are linked because the only physical attachment is the concrete blocks that are invisible above ground level. In fact, the only purpose of the attaching footings was to allow builders to construct what looked like detached houses on lots which were designated for semi-detached models.

One Toronto real estate agent found out the hard way that the Real Estate Council of Ontario (RECO), the industry regulator, takes a dim view of agents who advertise link houses as detached.

Back in May 2007, this selling agent listed a house for a client, describing it on the Multiple Listing Service (MLS) as "detached," which from a street view, it was.

The property was listed at \$320,000, sold for \$329,000 through a buyer broker, and closed Aug. 31, 2007.

Prior to closing, neither the listing agent nor the buyer's agent disclosed that the property was a link house, although it could easily have been verified by calling the city's zoning department or reviewing the R-plan. Had the buyers seen the plan, they would have noticed the dotted lines indicating that the foundations were connected.

More than 18 months later, the buyers complained to RECO about the listing agent, saying that the house was misrepresented as being detached, and that had they known it was technically a link house, their purchase decision might have been affected. (Hindsight is always 20-20.)

The agent was charged with violating various sections of the RECO Code of Ethics, including failing to treat buyers with fairness, honesty and integrity, failing to demonstrate reasonable knowledge, skill and competence, failing to determine and disclose material facts, and making an inaccurate representation.

He was also charged with failing to use his best efforts to prevent error, misrepresentation, fraud or any unethical practice.

To me, it looks like RECO threw the book at the unfortunate agent. Ultimately he agreed to the buyers' representation of the facts, and that he had breached the RECO code of ethics. He was assessed a rather stiff fine of \$8,000, and required to take an ethics course.

Having had the experience of sitting on Law Society discipline panels over the last 16 years, it seems to me that a good argument can be made that the anonymous RECO panel reached the wrong conclusion and imposed an unduly severe penalty.

Although the property was technically known as a link, it was clearly and obviously detached to anyone standing at the curb looking at the property. Despite the fact that the agent involved admitted to a breach of the code of ethics, it seems to me that he was under no obligation to do so and should have been given the benefit of the doubt due to the ambiguous terminology.

Visually, the house was detached, even though it was technically classified as a link house. I'm not sure the agent did anything wrong, or if he did, it was a technicality only, resulting in no loss to the homebuyers. I doubt that it merited an \$8,000 penalty.

The RECO panel's decision fails to discuss the obligations of the selling agent and the buyers' lawyer to show them the R-plan before closing. Had this been done, I doubt the case would ever have reached the RECO discipline panel.

I wonder whether the result would have been the same if one or both of the adjacent owners had dug up the connecting foundations or footings, which serve no physical purpose, and simply demolished a few inches so that the houses were no longer "connected."

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