

## *Toronto Star Articles on Illegal Basement Apartments*

Bob Aaron

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### **Illegal basement flat proves costly mistake**

Is a homebuyer entitled to know in advance whether a basement apartment is legal or not? Does a real estate agent have an obligation to disclose to potential purchasers if a second suite in a single-family home complies fully with zoning bylaws, building code and fire code?

I've spent some time recently reading realtor ads for Toronto-area homes with basement units. They present an interesting range of wording, from a simple statement that the home contains a "basement apartment," to the puzzling "basement apartment (non-retrofit)" and finally to the more definitive "basement apartment with retrofit." Of course, what's missing in each case is one of two words, which I have yet to see in a real estate ad: either the word "legal" or the word "illegal."

For obvious reasons, homes are almost never advertised as having a basement apartment, which is either illegal (it's not a great marketing tool) or legal (no-one wants to sign a guarantee that the unit complies with all applicable laws and regulations).

As I pointed out in this column last week, there is no single government authority, which provides written certification that any given basement unit is legal. A fire code retrofit certificate is only one of a number of requirements necessary to certify legal status. Owners must also be able to certify compliance with regulations of the Electrical Safety Authority and with all applicable zoning and housing standards bylaws. These relate to things like ceiling height, window size, parking spaces, smoke detectors, bathroom ventilation, and the fact that basement units cannot be created in homes less than five years old.

Something as simple as a loose or missing handrail down a staircase can turn an otherwise legal apartment into one which does not comply with housing standards regulations.

One real estate agent found out the hard way recently that the failure to reveal clearly that a basement bedroom was illegal can be extremely costly. Back in 2001, James and Eila Morrison hired David Nelson as their real estate agent to find a house for them in Sault Ste. Marie, Ont. They specifically told Nelson that they required a house with four bedrooms. Nelson was present with the Morrises when they viewed a house on Birkshire Pl., which had a basement room containing a bed, a desk and a filing cabinet. Assuming this was a fourth bedroom, the Morrises signed an agreement to buy the house.

Before closing, the Morrises discovered that Sault Ste. Marie has a bylaw that prohibits bedrooms below ground level (Toronto does not have an equivalent bylaw.)

They refused to close the deal and were sued for damages by the owner Margaret Jean Malpass. Before trial, James Morrison died and Eila Morrison settled the action with the

seller Margaret Jean Malpass by paying her \$50,800 plus expenses. Following the settlement, Morrison pursued her claim against the agent, Nelson, for negligence, breach of contract, and breach of his trust duty to her.

At trial last year, Morrison's evidence was that Nelson did not mention the bylaw that prohibited basement bedrooms, nor did he correct the impression she may have had that the basement room was a legal bedroom. The property feature sheet did not indicate four bedrooms. Nelson, on the other hand, testified that he discussed the legality of a basement bedroom with the Morrises, and he told them that the Birkshire Pl. house only had three bedrooms. In November, last year, the court awarded Morrison more than \$62,000 representing the settlement she had made with the vendor.

**Justice Peter Grossi ruled that Nelson owed the Morrises a positive duty to tell them that he believed the basement bedroom might not comply with the municipal bylaw. He wrote in his judgment that an agent must fully and fairly disclose to his clients all material information regarding the property, which might affect their decision-making.**

Applying this decision to the thousands of Toronto basement apartments may well mean that purchasers in this city are entitled to full disclosure from their agents of the legal - or illegal - status of below-ground units.

Wording like "basement apartment (non retrofit)" and even "basement apartment with retrofit" in real estate ads might not be sufficient any longer.

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Bob Aaron  
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## Basement suites must meet requirements

### *Thousands fail to comply with regulations*

The recent death of a single mother in a Toronto basement apartment fire is a reminder tragic fires can and do occur in every type of dwelling unit. For landlords everywhere, it should underline the importance of ensuring that their below-grade residential units comply with all relevant fire code, building code and zoning bylaw requirements.

Based on my own experience, I believe many of the thousands of basement apartments in the Toronto area fail to comply with one or more of the governing regulations.

Real estate agents have become very creative in using euphemisms for the term "illegal basement apartment." Some of the more common expressions are granny flat, nanny suite, income potential, second suite and, my favourite, "no warranty as to retrofit status." Sadly, there appears to be no single source of intelligible, reliable information on how to create a new basement unit, or to legalize an old one.

I started a search recently with the City of Toronto's Second Suite information kit (available at the Access Toronto counter in the main lobby of City Hall, and at the old civic centres in York, East York, Etobicoke, Scarborough and North York). It contains a number of pamphlets and booklets about renovating, building permits, smoke alarms, building costs and responsibilities of landlords. But there is virtually nothing about the actual physical requirements for basement units: size, fire protection, zoning, parking, window area, ceiling height, exit requirements and similar basics.

An online search revealed some very helpful information at <http://www.landlordselfhelp.com>, and <http://www.carsondunlop.com>

Jim Laughlin, the city's deputy chief building official, advised that if you have a house less than five years old, forget about a basement apartment. So-called conversions can only be done in "existing" homes. Under old legislation introduced by the former NDP government, basement apartments created or legalized between July 14, 1994 and Nov. 16, 1995 are grandfathered if — and it's a big if — they complied with health, fire and building code standards. Apartments created during this time don't have to meet current zoning bylaws, but they do have to meet all the other requirements.

Fast forward to July, 2000, when the Ontario Municipal Board approved a Toronto bylaw to permit second suites (basement units) across the entire city. The bylaws of the six former Toronto municipalities have now been amended to contain harmonized zoning standards.

Laughlin explained that new basement apartments can now be created and old ones legalized if certain minimum requirements are met:

- ★ The detached or semi-detached house must be at least five years old.
- ★ The front of the house cannot be significantly altered to change its appearance from that of a one-unit building.
- ★ Stairway exit walls and a continuous ceiling in the unit must have appropriate fire-rated drywall separations from the other unit. Exit doors must have a specified minimum size and thickness.
- ★ The unit's exits must satisfy the Fire Code (if existing) and the Building Code (if new). While it is best to have a separate exit for the unit, a shared exit is acceptable in some circumstances.
- ★ The basement unit must be smaller than other units in the building.
- ★ Certain property standards must be met concerning minimum ceiling heights (6 feet, 5 inches) and minimum window sizes.
- ★ All units must have operating smoke alarms. A carbon monoxide detector may also be required.
- ★ Bathrooms have to have either a window or exhaust fan.
- ★ Inspections by the Electrical Safety Authority and the local fire department are required for existing units.

The fire inspection is often called a fire code retrofit certificate, but compliance certificates from the fire department and electrical authority alone do not mean that the apartment is completely legal.

- ★ An additional parking space is required for the new unit in most areas of the city.
- ★ Newly created units require building permits before construction begins.

Anyone interested in creating or legalizing an existing basement apartment will have to become familiar with parts 9 or 11 of Ontario's building code, the fire code, electrical code, the zoning bylaw, property standards bylaw and the credit limit on a bank loan necessary to fund all of the work. It may appear to be a regulatory nightmare, but Laughlin says the city will help guide people through the process.

Anyone building a second suite or buying a house that contains one should seek the professional help of an experienced architect or contractor experienced with below-grade living accommodations.

The consequences of doing it wrong can be deadly.

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