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When your house belongs to your neighbour

Imagine waking up one morning to find out that the house you are living in and have listed for sale belongs to your next-door neighbours, and their house belongs to you.

That's what happened earlier this month after clients of mine asked me to review an agreement to buy a home while the offer was still conditional. The property is an attractive house in the Caledonia-Fairbanks area built in 2005-6.

Attached to the offer was a copy of the published listing and a 2005 surveyor's registered reference plan of survey showing a pair of semi-detached houses built on what had been one 35-foot lot. One of them was described on the plan as Part 1 and the other as Part 2.

I checked the title and responded to my clients and their real estate agents that the offer was fine, assuming that the house being purchased was Part 2, the one on the right side of the two semis as seen from the street.

Everything fell apart when the agent replied that the house her clients thought they were buying was actually Part 1, the one on the left side of the two semis.

My title searches revealed that both sides of the lot had been in common ownership until September, 2006, when the lot was divided into two separate ownerships with the consent of the City of Toronto Committee of Adjustment, and one of the two new houses was sold.

When the first of the two houses was sold, the lawyer who handled the transaction inadvertently switched the descriptions.

Unfortunately, nobody compared the registered title with the surveyor's reference plan to ensure that ownership of the proper house was being transferred.

As a result, the purchasers received and accepted title to the wrong house. That property was re-sold to the current owners in 2012, and again, the second owner's lawyer missed the fact that his clients were buying the wrong home — Part 2 instead of Part 1.

The original owners still own the second of the two houses — the one they were not living in and want to sell. The Toronto-Dominion Bank refinanced it in September and the title insurance company handling the transaction registered the mortgage on the wrong house.

The current lawyer for the sellers of the house my clients thought they were buying did not represent them when the mistake was made. In a detailed email, I explained the mistake to him and the two previous lawyers who had made the mistakes in 2006. Fortunately, the neighbour's lawyer had purchased title insurance for them and I assume the insurer will be picking up the cost of the necessary remedy.

I do not know whether the sellers to my clients have title insurance.

The mistake can be rectified in one of two ways. The owners can exchange deeds to correct the description, and in that case the mortgages on title would have to be discharged and re-registered on the correct lot. Another possibility would be to obtain a court order retroactively changing the numbers on the surveyor's reference plan.

Unfortunately, my clients were unable to obtain assurances from the sellers that the titles would be corrected by their projected closing date in January, 2013, and they terminated the transaction.

They would still be interested in the house if the sellers can acquire ownership of the correct property. In the meantime, the owners cannot sell their house since they don't own it.

The lessons from this sad case are:

- The most important document in a real estate transaction is the survey plan. Without one, there is no way to know with certainty whether the purchaser is getting the correct house. Title insurance may pay to correct a problem but it is never a substitute for a surveyor's real property plan.
- Buying a house without obtaining title insurance is very risky.
- Buying a house without first comparing it to a survey plan is even riskier.

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