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Skip the permit/approval process - roll the dice

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By Rey Archambault,

Archambault & Associates John Smith is a lucky guy. His brother-in-law, Tony, is a Jack of all trades and, over the years, has helped John build a new deck, finish John's basement and add a bedroom by converting previously unfinished bonus room space above the garage into a bedroom for his teenage daughter. The latest project, a full bath in the basement, has been a tremendous relief to the family's morning "rush hour" bathroom schedule. The weekend do it yourself projects have saved John thousands of dollars in labor costs and, he rationalizes, enhanced the value of his property, while making the home more suitable for his growing family. The problem is, John and Tony never obtained permits for the work they completed.

Sound familiar? The example of John and Tony is fictitious, but their story is all too real. Appraisers come upon situations frequently where homeowners have made improvements or repairs to their homes while circumventing the permit/approval process within their local communities, either intentionally or due to a lack of knowledge regarding the statutes. Each of the 169 cities and towns statewide defer to the state building code, which spells out situations requiring a permit and those where a permit is not required. One local building official indicated that the exceptions are relatively few and pertain to basic maintenance and cosmetic items such as painting, interior trim, replacement of floor coverings, and partial roof repairs to name a few. The vast majority of electrical, plumbing, building mechanicals jobs and full roof replacements require a permit.

Many view the permit process as primarily a money grab, designed to generate permit fee income to the town and tax assessment increases upon completion of permitted projects. Others argue it is just another instance of big government overstepping its bounds and infringing on the liberties of ordinary citizens. While permits and resulting higher assessments do add to a community's coffers, the primary reason for permits is to insure projects are completed in a good and workmanlike manner, using proper materials and that no zoning ordinances are violated. Issues the permit-inspection process seek to alleviate include structural deficiencies, safety issues such as faulty electrical wiring, improper installation or venting of plumbing and HVAC equipment which may cause a build-up of carbon monoxide or other poisonous gases, and wall partitions and exterior doors separating living space from garage or mechanical rooms which do not bear proper fire ratings, though this list is by no means inclusive.

What might the ramifications be if the permit process is ignored? Fast forward to present, where John Smith has just signed a contract to sell his home. His buyer requests a home inspection and the buyer's lender requires an appraisal prior to issuing a mortgage commitment. The home inspector, trained in his field and likely having a working knowledge of residential construction, finds issues requiring attention or repair and indicates some of the work does not appear to be up to building code standards. The appraiser, in the course of his (or her) evaluation process, notes that

tax assessor's records indicate the basement as being unfinished, thereby not recognizing below grade rooms and the bath, makes no mention of the deck and further indicates living area above grade which differs from the appraiser's calculated area due to inclusion of the bonus room. Now John has a problem.

The buyer wants assurance from the seller that the improvements in question were done to code. The appraiser, in the course of due diligence, finds no evidence of building permits or certificates of compliance for issues in question and indicates in the appraisal report that value will not be attributed to these improvements, or will be recognized subject to verification of permits and certificates of compliance. Not recognizing the value of these improvements will likely result in an opinion of value below the sale price, nixing the deal. In conclusion, subject to proof of permits becomes costly. Building and electrical inspectors will likely require access to concealed plumbing, wiring and HVAC conduits, meaning partial demolition of previously finished space, require repairs by licensed contractors to bring sub-par work to code, or possibly require demolition of the improvement altogether if the overall quality or condition is deemed significantly substandard. If John walks away from this deal, he will likely encounter the same problems with a future buyer. The same scenario holds true for homeowners looking to tap home equity in a property. Non permit conditions could effectively render a property unable to be pledged for collateral. And what of the risk John has taken in failing to obtain permits in the event of a fire or other event resulting in an insurance claim for property damage or worse, due to serious injury or loss of life? Might the insurer have grounds to deny a claim? Suddenly, John's decision to avoid obtaining building permits seems very ill advised.

It is incumbent upon real estate professionals - appraiser's and agents alike - to do their due diligence and identify potential areas of concern regarding the properties they evaluate or list to sell. Failure to do so exposes them to potential liability in the event of a future loss, financial or personal. Exposing non permit issues may not win an agent or appraiser many friends as a particular deal dies on the vine, but the potential exposure the real estate professional has avoided for his client may prove priceless.

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