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Do they have recourse? Depends on the wording

By Elizabeth Rhodes
Times business Reporter

Q: After we signed a lease-option agreement to buy a house we discovered the seller never obtained a permit to add a third bedroom and that room's construction is so poor a wall moves when pushed.

We're afraid this could doom an inspection and sale. Do we have any options other than walking away?

A: You may have a legal claim for negligent misrepresentation or fraudulent concealment or even an equitable claim for rescission, says Seattle attorney Lawrence Glosser, of Ahlers & Cressman. Each is a specific legal theory that could entitle you to some recourse.

But whether you have any or none of these claims depends on the wording of your lease-option agreement. That's why Glosser says you should have a real-estate attorney review it and advise you on your options.

"There are a lot of issues with these agreements if they're not properly drafted," he says.

It's not uncommon for them to be drafted by amateurs, have mistakes and omissions, and be unenforceable.

Glosser also recommends you have a licensed building professional determine if the third bedroom could be made legal and what it would cost to bring its construction up to par.

If you decide to go forward with the purchase, you can use this information to renegotiate with the seller — pointing out that if your deal falls through the seller will have to disclose the defects to the next buyer. In this market that no doubt means the seller will have to fix them for any buyer.

Q: The contractor building town houses next door has undermined and damaged our fence. I've called and written to him twice. No response.

How can I prevail upon him to restore our fence to its previous condition?

A: Court is your best option since the contractor won't talk to you. Attorney Tony Rafel, of Rafel Manville in Seattle, suggests you take your case to Small Claims Court, where you can represent yourself.

Take photos of the damage (and look for "before" shots that show the fence before construction) to use as evidence.

Get professional repair estimates so you have a dollar amount to use as part of your lawsuit. Ask the pros who provide those estimates to support them in court, if it comes to that.

Finally, check online to see if the contractor is registered, as required, with the Washington Department of Labor and Industries. Go to www.lni.wa.gov and click on "Trades & Licensing."

If he is registered, he'll have a contractor's bond and you can make a claim against it in your court action. "That will get his attention," Rafel says.

But wait until you're sure the damage has stopped before filing your suit because once it's resolved you can't go back and ask for more money for damages.

Home Forum answers readers' real-estate questions. Send questions to erhodes@seattletimes.com or Home Forum, The Seattle Times, P.O. Box 1845, Seattle, WA 98111, or call 206-464-8510 to leave a question. Sorry, no personal replies. More columns at www.seattletimes.com/columnists.

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