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Home Forum / Elizabeth Rhodes

Are owners liable when condo codes are updated?

Q: My condo building has a major code violation — no fire walls in the attics. The condo board refuses to fix this, saying that the building was built in the 1970s before the code required fire walls, therefore the situation is grandfathered in. If a death or accident occurs due to the building not being up to code, can the association be sued? Would its insurance cover this, or would coverage be denied, due to the fact that they knew there was a problem and refused to fix it?

A: There's no legal requirement to bring an older building up to current code, says Bellevue attorney Ted Watts of Oseran, Hahn, Spring & Watts. Therefore, if the association were sued following a fire, Watts says, the lack of fire walls "would not likely be found to be a dereliction of duty."

As for the insurance, as long as policyholders "are in compliance with the law, then they have coverage — even if they knew the building was out of (current) code," says Karl Newman, president of the Washington Insurance Council. So the basic answer is "yes," the precise loss would be covered. That's true even if the cause is negligence; a candle left untended, for example.

But standard insurance coverage may not be enough, Newman stresses, because rebuilt buildings commonly must be brought up to code. "Let's say one-third of the condo building burns," Newman says. "The association is often required to bring the whole building up to code, including the part that's not damaged. Unless they have what's called a 'codes-and-ordinance endorsement' on their master policy, the extra cost comes out of the homeowners' pockets."

A codes-and-ordinance endorsement is not standard on most policies. It's extra, and so it costs extra. Newman says individual condo owners can pay to have essentially the same type of extra coverage added to their own homeowners policy. It would pay in the event they get hit with a special assessment because the association lacked this extra coverage.

Q: I'm considering buying a partially remodeled house. Before running out of money, the contractor did extensive work on the foundation, plumbing, wiring, etc. However, the interior has only studs and a subfloor. The contractor says it will cost $70,000 to finish the job. What do I need to do to protect myself concerning the work he did, beyond getting an inspection and checking for permits? And is there anything I need to be wary of in terms of purchasing an unfinished house?

A: Kirkland attorney Jeanette Bowers Weaver says your best protection is to put some strong contingencies into your purchase offer so you can back out of the deal if it starts to look questionable. The three contingencies she recommends: an inspection of the house, an inspection of the neighborhood and a financing contingency that will cover loans for the house itself and for the work necessary to finish it.

Because the home's interior is exposed, she suggests you hire a construction expert rather than a home inspector. "I'd ask the construction expert to get all the plans and all the permits. If the work done wasn't permitted, (the local building department) will demand it be permitted and you'll pay those permit fees." The construction expert also can assess the quality and correctness of the work already done, can compare it to the plans and can help you evaluate whether $70,000 is a reasonable amount to finish the project.

(As an aside, Bowers Weaver suggests you carefully consider those plans. You'd need to hire an architect to redraw them if you don't like them. This will alter the sum needed to complete the project.)

Additionally, if you're not working with a knowledgeable real-estate agent, you should be, Bowers Weaver says. Preferably that agent will have experience with unfinished homes; if you can't find one, you should hire an attorney to carefully review your purchase-and-sales contract. The point here: You need to understand exactly what's being proposed in that contract and have it work in your favor. For example, you don't want it to require you to hire the builder to complete the work. However, you should have a stipulation in it that the contractor warrants the work already done. "I'd be asking for a 10-year warranty," she suggests.

Q: Last winter, we bought a new townhome on Queen Anne. Later we discovered that our gas bills have a "new customer charge." It's a five-year charge to pay for gas installation to our unit. The presence of this charge wasn't disclosed to us before buying. Our agent told us we got a good deal on the townhouse, and unless we want to sue the developer, we're stuck. Is this true? The developer won't talk to us about it.

A: The disclosure statement, commonly called Form 17, that the seller gives the buyer answers all sorts of questions about the property. But as Seattle attorney Brian Ritchie points out, these very specific questions primarily address defects in the property. A new customer charge "is not what one would generally consider a defect." Ritchie says you could take your case to Small Claims Court and argue that the builder should pay this amount because it wasn't disclosed to you. If the sum you're paying is significant, a judge might side with you. However, Ritchie says, "If it's say, 10 bucks a month, it's not worth it."

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

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