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Home Forum

Townhouse Size Doesn't Match The Model Unit's

By Elizabeth Rhodes
Seattle Times Staff Reporter

Q: After seeing the model unit we bought a townhouse in a new development. When it got to the framing stage we discovered it's 2 feet narrower than the model, thus we're shortchanged 200 square feet. The builder can't enlarge it now, so he's offering to build us one exactly like the model. However he wants $30,000 more because he says the lot is more expensive. Can we require the builder to build us a townhouse at no additional cost?

A: To know how strong your negotiating position is, Kirkland attorney Jeanette Bowers would have to know what your purchase contract says. Does it stipulate more square footage than you're getting or that you're buying the same model (for example, "the Bayview") the builder showed you? If so, Bowers says you have a strong case that there was an "express warranty" and the contractor has violated it.

Even absent those contractual details, if the builder led you to understand you were getting a duplicate of the model unit, that could constitute an "implied warranty." If he breached either warranty, and in doing so misrepresented the square footage to you, then the next step is deciding fair compensation.

From the facts presented, Bowers says this is difficult because she doesn't know whether the missing 200 square feet represent a significant or a nominal loss; that obviously would depend on the total square footage and how the loss affects the floor plan. But in general, she doubts you can force the contractor to build you another unit identical to the model. However, it may be possible to come up with another solution, such as lowering the sales price or giving you upgrades on the unit you purchased. She suggests you hire an attorney to negotiate a settlement with the builder.

Q: Since we bought our house three years ago, it's appreciated from $200,000 to at least $250,000. Can we get rid of our PMI without having to refinance?

A: The rules around private mortgage insurance (PMI), which protects lenders when borrowers default on their mortgages, are very complex. Here's a short version.

The federal Homeowners Protection Act of 1998 took effect July 29 of this year. It stipulates that mortgages closed on or after that date may be eligible for cancellation of private mortgage insurance (PMI) once the loan balance is amortized down to 80 percent of the original property value. This act doesn't address PMI for homeowners whose loans predate July 29. Thus there's no federally enacted cancellation policy for homeowners like you, who have older mortgages. When and how PMI can be canceled is up to individual lenders. However, the act does require lenders to send borrowers with PMI annual notice of their cancellation policies. Read yours to know the particulars in your case.

That said, many mortgages are sold on the secondary market to Freddie Mac and Fannie Mae. Last spring, both announced PMI policy changes. Mortgages held by Freddie Mac will be treated under the rules of the Homeowners Protection Act no matter when they began. And Fannie Mae will now allow borrowers to automatically terminate PMI halfway through the loan - for example 15 years into a 30-year mortgage. How to know if your mortgage is held by Freddie or Fannie? Write to the address on your newest PMI documents (or where you send your payment) and ask.

Q: Without my permission, the tenants of my rental house called a repair company and had the furnace fixed. The bill was $600. They told me that when it broke they called me twice and left messages, and getting no answer went ahead that day and had it repaired. Did they have the right to obligate me for such a large amount?

A: In a word, no. The state's Landlord-Tenant Act has rules both landlords and tenants must follow when dealing with repairs, explains attorney John Rongerude. Depending on the severity of the problem, the landlord has varying time limits for commencing repairs. For example, work must begin within 24 hours if the problem is a lack of hot or cold water, electricity or heat. However, the timeline on a minor problem is 10 days.

A crucial point is when the clock starts for the landlord - that by law is when he or she receives written notice of the problem. If your tenants didn't send you notice in writing and didn't give you 24 hours to begin work, then they violated the law. Still, the underlying question is who's responsible for the bill. Rongerude says, "I think a judge would say it's the landlord's responsibility to fix the furnace, so basically the landlord should pay for it."

However, were you to end up in Small Claims court, he says it's conceivable you and the tenants might be ordered to divide the bill - if you could prove you could have accomplished the repair for less than $600. Home Forum answers readers' questions every Sunday in the Home/Real Estate section. Send questions to Home Forum, Seattle Times, P.O. Box 70, Seattle, WA 98111, or call 206-464-8510 to leave your questions on Home Forum's recorded line. The e-mail address is erhodes@seattletimes.com

Sorry, no personal replies.

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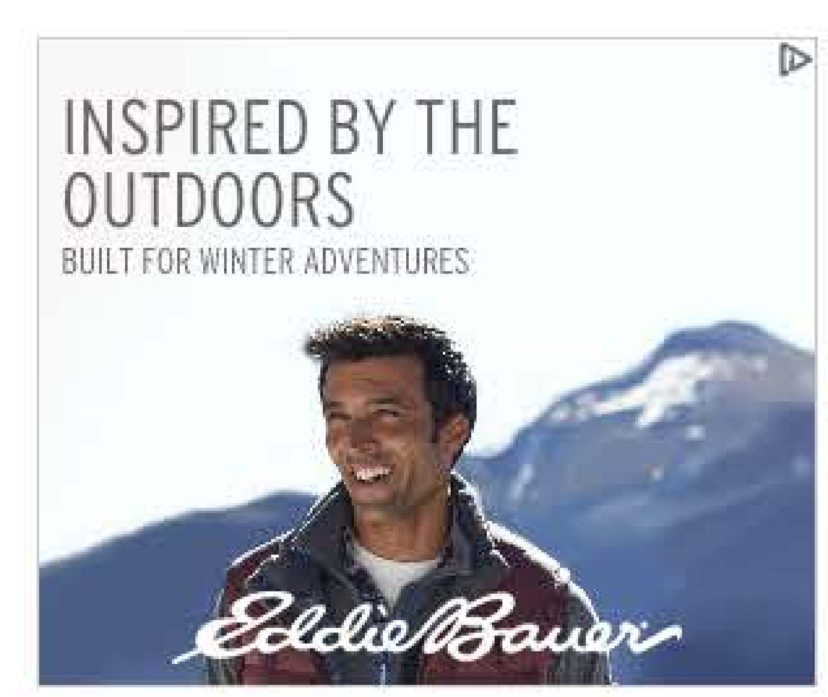

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