



Originally published Saturday, December 16, 2006 at 12:00 AM

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Home Forum **Homeowner agreed to rules when he bought**

A reader writes: "The covenants, conditions and restrictions (governing documents) for my subdivision require that owners of boats, trailers and recreational..."



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Seattle Times staff reporter

Q: The covenants, conditions and restrictions (governing documents) for my subdivision require that owners of boats, trailers and recreational vehicles keep them behind a fence. One homeowner has declined to comply and parks his RV on the street. His rationale is that the street is public, and therefore the association has no jurisdiction. Is he right?

A: He's not, says attorney Michelle Ein with the Seattle law office of James Strichartz.

A plat map of your lot and street "will likely show that each lot owner actually owns to the center of the street, and what was dedicated by the developer was an easement to the public for the purposes of using the street," Ein said.

If that's the case, the street is considered property within the association, and the association can impose restrictions on how homeowners use it.

"But there's a better argument here than that," Ein continued. "People who buy in [a neighborhood with] a homeowners' association are buying subject to the covenants, which they agree to abide by.

"So what you're doing when you're imposing a rule — such as not parking RVs on the street — is regulating the actions of the owner. You're not regulating the street."

As long as a rule is enforced uniformly and in good faith, your association is within its rights to insist that homeowners follow it.

Q: We hired a contractor to do a bathroom remodel. He finished about 90 percent of it and then stopped. We told him we'd pay the balance of his bill when he finished. His response was that he'd report it as a bad debt, which could damage our credit rating, if we didn't pay immediately. We didn't have a contract that said what work was involved. What should we do now?

A: Because you lack a written contract, you have no choice but to pay him now, says Kirkland attorney Jeanette Bowers Weaver.

Here's why: The law says a contractor is entitled to full payment upon substantial — not actual — completion, and you can't withhold final payment until all work is finished unless you have a contract that allows this.

"The law does not define substantial completion precisely," Bowers Weaver said. "Lawyers and the courts guesstimate that it's somewhere in the 90 to 100 percent range, but there's no case which says precisely what percentage."

In the future, you can avoid such situations by insisting on a written contract. It should detail the full scope of the project, the timeline for completion, the payment schedule and what happens if these conditions are not met.

The contract also should include a hold-back provision that requires final payment only upon satisfactory completion. That's your insurance against ending up in the same uncomfortable position again.

Q: A fire destroyed my Florida timeshare unit two years ago. It hasn't been rebuilt because of insurance problems. I can't sell it, and I can't even exchange my week there for a stay in another timeshare resort because I have nothing to exchange. Yet I still have to pay the assessments. Who can I call to get help with this situation?

A: Knowing where to turn for help can be a dilemma for timeshare owners who, like you, live in a state other than the one where their vacation resort is

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located.

So here's some advice from Stephany Madsen, senior vice president of the American Resort Development Association, a timeshare trade association:

If you've been unsuccessful in resolving your problem with the resort's management, "go to the state regulatory agency where that resort is located, regardless of where you live," Madsen said.

You'll find a list of U.S. and Canadian agencies, as well as addresses and links to their Web sites, at www.arello.org. That's the Web site of the Association of Real Estate License Law Officials.

If Florida regulatory officials can't help you, it's time to consult a Florida real-estate attorney.

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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