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Home Forum / Elizabeth Rhodes

Homeowner hesitates over contractor's lien requirement

Q: A roofing contractor, who's registered and bonded, has given me an attractive written bid. However, I'm hesitant to sign it because it contains a statement saying my property could be subject to a lien to force me to pay any suppliers or workers this contractor fails to pay. What should I do?

A: Be glad that statement is there, says Kirkland attorney Jeanette Bowers Weaver of Jeanette Bowers & Associates. Since the contractor is required to disclose that lien information either before or as you enter into the contract, having it written into it "demonstrates the contractor is familiar with what the law requires," she says. "It's actually a good sign that a contract provides that disclosure."

It also protects contractors from clients who don't pay up, because without it contractors can't bring a lien claim in court, she adds. This disclosure is required of contractors who perform any job on a residential property.

The next big issue is protecting yourself in case this guy fails to pay his bills, sticking you with them instead. Bowers Weaver says you can do that by stipulating you won't pay his final bill until he provides you with lien releases from all subcontractors and suppliers involved with your job. And that's something he won't get from them until he pays them in full.

One last thing: The state requires construction contractors (as well as plumbers and electrical contractors) to be registered and bonded. Before hiring one, you can confirm this by calling the Department of Labor and Industries' automated line: 1-800-647-0982.

Q: I live in a townhouse community governed by a homeowner's association. Can the association and board dictate what I can and can't possess in my own home, even though I own the land my townhouse is built on?

A: Since you own your land, it sounds like you probably live in what's called a zero lot line subdivision rather than a condominium, notes attorney Samuel Jacobs of Mosler Schermer Walstrom Jacobs Sieler & Evezich.

Both types of congregate housing can have rules, called covenants, and Jacobs says our state's courts have decided that "covenants are appropriate ways for people to enhance their own living environment, so courts do generally tend to enforce them."

However, condo associations must enforce them evenly for all residents, and they can't enact any covenant that violates discrimination or other laws.

You don't say what rule your association has that's riled you. Jacobs says he'd need to know more before he could tell you if the board is within its rights.

However, it's not uncommon for boards to have rules limiting the size of pets, or prohibiting owners from storing flammable materials in garages. Some put restrictions on motor-home or boat storage. And some forbid you from renting out your unit.

By law, prospective owners must be given these rules before they buy, and Jacobs strongly suggests they be read and understood.

"This kind of living is right for some people and not right for others, and people need to think about that before they buy into a structure like that," he says.

Q: My house has a large, old tree that overhangs the newer apartment building next door. The building's owner says he's had my tree trimmed twice and now wants me to foot the bill to trim it again. He says otherwise I'm legally responsible if his roof rots as the result of my tree. Is this true, or is he blowing smoke? To me this smacks of the classic case where a person builds across from a pig farm — then demands the pigs go because they stink.

A: Bellevue attorney Greg Home says he's not buying your analogy.

Porcine smells are naturally carried by the air, but your leaves are falling directly onto the apartment roof because they grow over the roof. And that, Home says, could constitute a nuisance.

So what should you — or your neighbor — do about it? Home provides the basics on tree problems such as yours.

The fact that your tree was there first doesn't give it the right to overhang neighboring property. That's why the law gives this neighbor the right (but not the obligation) to prune back that which overhangs his boundary. That's provided he doesn't come onto your land or do such aggressive whacking that he damages the tree's health.

You, on the other hand, don't have to trim this tree unless you know it's defective and thus dangerous — or a judge orders you to do so.

The latter could happen, Home says, if the neighbor can make a case that the leaves are a nuisance. That wouldn't be easy if the leaves blew in from a tree that doesn't overhang the property. But you admit the tree does, so he could have a case.

However, Home says its no slam-dunk that you'd be culpable if these leaves caused your neighbor roof rot. The reason: The law will hold the owner at least partially responsible for the roof's condition. He can't simply neglect to clean it and then blame you.

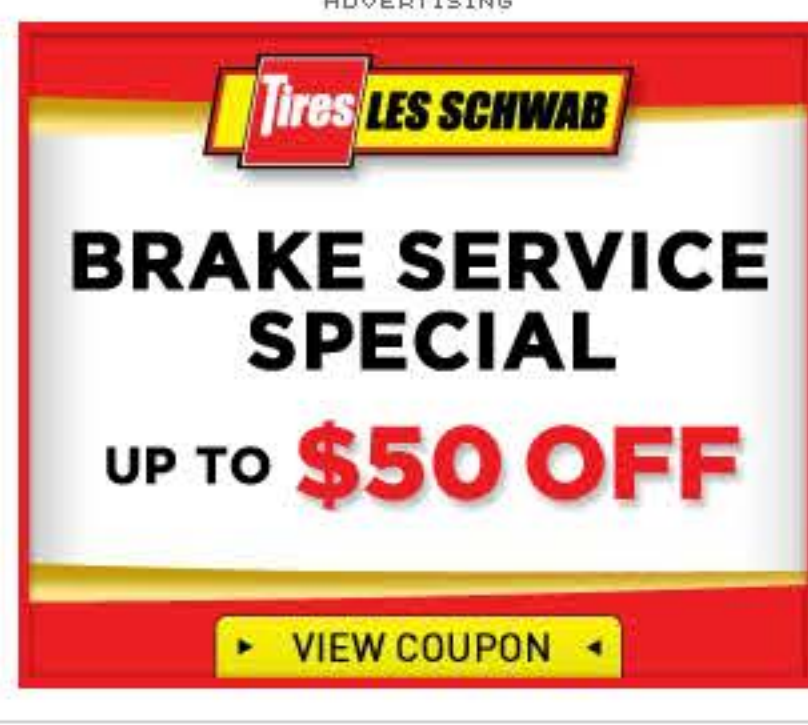
At this point you should ask yourself how much of a problem you're willing to let this become and how much preserving neighborhood harmony is worth.

Should the neighbor make serious noises about forcing the issue in court, you "might find it more cost effective to routinely trim back the tree than to go to court and pay lawyers," Home counsels.

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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