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 Home Forum

**Kitchen redesign plan crossed the line**

By Elizabeth Rhodes  
 Seattle Times staff reporter

**Q:** Last spring I hired a firm to remodel the small kitchen in my condo. I made clear that my budget was \$20,000, and it agreed the job could be done for that. However, the initial design cost more than \$35,000, and despite several revisions it still cost more than \$25,000. I called the deal off and want half my \$1,500 retainer returned because the firm was not able to provide a design within my budget. It's declined. How can I get my money back?

**A:** If you signed a contract with this firm, your answer may be in there. Kirkland attorney Jeanette Bowers Weaver says you should read it, looking for three key things:

- Was the requirement to create a design for no more than \$20,000 clearly stated?
- What does the contract say the \$1,500 retainer represented? "Sometimes customers think they're paying a retainer, but they're actually paying toward time and materials," she said. Drawing up the plans certainly constitutes time invested.
- Does the contract require arbitration in case of a dispute? This is not standard, but it is fairly common, Bowers Weaver said.

If the contract is clear, and you believe it is in your favor, you must arbitrate to get your refund if that's stipulated in your contract. The cost of doing this, which involves hiring professional arbitrators, could well exceed the \$750 you want refunded.

If arbitration isn't included in your contract — or there is no contract — then your case "is perfect for small claims court," Bowers Weaver said. A verbal agreement would be enforceable. The more proof you have — such as notes of conversations or canceled checks — the better chance you stand of prevailing in court.

One way to protect yourself from these situations is to write as much detail as possible in the "memo" line at the bottom of any check. For example, in a situation like yours, Bowers Weaver would have written "\$1,500 retainer, prepayment for a kitchen remodel not to exceed \$20,000 in construction costs."

Once the check is cashed, any language on it becomes binding — even if the recipient has crossed it out, Bowers Weaver said.

"I've seen it trump a contract where there's ambiguity in the contract," she said.

**Q:** My question seems pertinent after Katrina and Rita. If my home is destroyed, what happens to my mortgage? Is it just forgiven? What about a home-equity loan? Because it's based on the equity in the home, and the home is destroyed, is that loan forgiven?

**A:** A good place to look for answers to questions like these is in the mortgage documents you signed. They will tell you whether there are any conditions under which a loan would be erased.

You'll most likely find that the answer is no.

Mortgages and home-equity loans are based not on the home's survival, but on its value when the loans are approved. Therefore, having the home destroyed is not a factor in whether the loan remains valid.

Lenders require mortgage-holders to maintain homeowners insurance, said Tom Ward, a loan officer for US Bank's Home Mortgage office in downtown Seattle.

"Technically it's supposed to be insured for the cost to reconstruct, and we assume it can be built again," Ward said. "The cost of construction does move up, so when you're looking at coverage, what you want is replacement cost."

Homeowners need to review their policies annually to make sure they're not underinsured.

In cases where severe destruction and widespread damage may delay rebuilding for months or years, Ward says homeowners should contact their lenders immediately. They may postpone mortgage payments or make other concessions.

**Q:** A small strip of my property is on the other side of my fence, which makes it appear that it's part of the neighbor's yard. To protect this strip from adverse possession I want to give this neighbor written permission to use it. What do you think of this?

**A:** Attorney Tom Peterson of the Socius Law Group says moving the fence to the property line is the sure-fire way to defeat an adverse-possession claim.

Maintaining that strip also would do it. But if the neighbor won't let you in his yard to do a little weed-whacking, then you're stuck unless you can do yardwork by hanging over the fence.

As for the letter idea, "it's true that permission defeats adverse possession," Peterson said. But there's a potential problem here: What if the owner doesn't respond to your letter or does so but does not accept your permission?

Peterson says that if that happens, you can't assume that your neighbor won't claim the property. The issue might have to be resolved in court.

He suggests that if you do write such a letter, include language telling your neighbor that you will assume he accepts your permission unless he responds otherwise.

You could record this permission at the courthouse, but you should ask an attorney first to make sure you were doing so correctly.

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](mailto:erhodes@seattletimes.com). Sorry, no personal replies. More columns at [www.seattletimes.com/columnists](http://www.seattletimes.com/columnists).

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