'As is' purchase of property may have bought the easements as well

by Ilyce_Glink

Q: We bought a home that was sold 'as is' by the lender. The house sits on a 20-acre parcel of land. The home had been foreclosed upon.We understand that the "as is" referred to the structural parts of the house. We accepted the condition and had a plumber come in to check things out. After we closed, our new neighbor came over and informed us of two easements he had on the property.One easement is for the driveway, which isn't a problem. The other easement is to share the water well that is on the property. Apparently, not only do we share the well, but the pump for the well and the pressurizer, which is in the basement. We basically supply water to our neighbor.I've spoken with my real estate agent, who told me that she knew nothing of these easements. She said she did not see them listed on the title documents and must have "overlooked" them. Nothing was mentioned at the closing about these easements and now we are required to supply this neighbor with water.Can I sue the agent and the title company for not disclosing these easements? If we had known about them, we would have either not bought the home, or revised our purchase offer.We simply don't want either to be dependent on our neighbors or to have these people depend on me to pay my electric bill so that water continues to pump into their house.A: Please see an attorney to help you figure out what sort of easements are attached to your property, if any. The neighbor may claim to have an easement but may have to back up his claim with written documentation. That documentation might even have to be recorded with the local recorder of deeds office or clerk's office in order to be valid.You may also have a title issue, but first ask the attorney to help you sort through the paperwork to determine what you are required to do for your neighbor. But in general, taking the property on an "as is" basis may also include any and all easements that are attached to the property, not just its physical condition.However, your purchase contract would have had language relating to the condition of the title to the home and what exceptions to title you would have required to accept. If you obtained title insurance when you bought the home, the title company would have itemized all matters that affected the title to your home as of the day of your closing.If at your closing, the easements were disclosed on your title insurance policy, you closed on the purchase of the home with those easements "disclosed" to you. If you did not purchase a title insurance policy and the easements are valid, you purchased the home and will have to take the home subject to the terms of the easement.Lastly, if you purchased title insurance and the title insurance commitment did not disclose the easements, you might have a claim against the title company for their failure to raise the easements. A good real estate attorney should be able to help you in this regard.Assuming that these easements are valid and you don't have a claim against the title company, you have to decide how you want to handle them. If the easement requires you to supply water, but not pay for it, you may be able to bill your neighbor for the cost of providing him with water - even if the neighbor had never before been given a bill for these services. If the terms of the easement are in writing, your rights and responsibilities might be spelled out in that document.Faced with such a bill, you might propose that the neighbor dig a new well for himself, on his own property. You may even want to contribute to the cost of the new well, in exchange for the neighbor agreeing to cancel the easement.Once again, a competent real estate attorney should be able to identify any legal options you have and whether you were not provided with the proper disclosures.Of course, the time to hire an attorney was before you made your offer on this foreclosed property, so that you could be sure you knew exactly what you were getting into before you closed. Q: I will be turning 40 this December and I am still renting an apartment. I am single with no children, earn $50,000 a year, live in Austin, Texas, and don't plan on moving anytime soon.I've been putting 15 percent of my paycheck into my 401(k) over the last four years. Before that, I was a social worker and didn't make that much money, so I'm way behind in saving for retirement.I currently live in an 850 square foot 1-bedroom apartment with a study and I pay $820 per month. There are some new condos being built near where I live, but a 600 square foot unit starts in the $200,000 range. A 1,300 square foot home in Austin starts at about $160,000 and to get something at that price, I'd have to have a 40-minute commute to the suburbs.The thing is, I love apartment living. I am not into painting, yard work, home repairs or piddling around the house. I love to be in the city. I like to eat out, spend time in coffee shops and bookstores, and I enjoy traveling two to three times a year.But I've been told 1,000 times over that I am throwing money away and need to purchase a home. What if it's not MY American Dream?My concern is that 30 years from now, when I am 70 and it's time to retire, I will wish I had a house that was paid off so I wouldn't have to worry about paying the rent. I also see prices in Austin continue to go up substantially each year and I feel as though if I don't buy something soon, I'll be priced out of the market in the near future.There is a new development being built that is five minutes from where I live. The condos there cost around $160,000. The neighborhood is changing but I feel that in five years, prices will be higher than they are today.What should I do?A: It's clear that you haven't really made up your mind whether you want to buy something (because you believe in a home as an investment) or keep on renting. To figure out what you want to do, you'll have to dig a little deeper and pull out your calculator.If you don't wish to be a homeowner, then you have to examine the reason why you'd go against what your heart and mind are telling you. Do you feel that you might be missing out on an investment worth having? Is making this investment in your future worth giving up some of your lifestyle today?Do the numbers. If it costs you $820 per month to rent today, you have to figure that will go up substantially over time. Will your income rise as well?Now calculate how much it will cost to own your own place. You'll have a mortgage, real estate taxes (which will go up), insurance, plus you'll have to maintain the property. If the property value rises, you'll make back some of that cash. If the value of the home remains where it is, or only goes up slightly, you won't.It will cost you something to live, so do the numbers and decide. Buying a house or a condo doesn't have to be a "forever" decision. You can buy property and, five or seven years down the road, sell it and go back to being a renter. Or, you can sell and buy something else in which to live.I can't make the decision for you. But if this new condo is located only five minutes from where you live right now, and will cost just about the same each month as renting, it's probably a good idea to buy.But keep this in mind: In some real estate markets it is up to 35 percent less expensive to rent than it is to own a similar property. While you might get some tax savings, if the difference between the cost of renting and owning is significant. Financially, you might be better off renting than buying.

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