



DAVE WINDSOR ANSWERS YOUR REAL ESTATE QUESTIONS

Building Encroachments Can Be Serious

Dear Dave: We are selling our Duplex in Mountain View that we bought 10 years ago and the financing for the buyer has stalled because the building encroaches onto the neighbor's lot. Our Realtor told us not to worry when we bought it but now we have a big problem. Can you please help?

Answer: Based on your story, your Realtor did you a serious disservice telling you not to worry. However, we might be able to save the day!

There are 2 issues here, and the first presumes you financed it through Conventional financing when you bought it, because an As-Built survey was probably not required at the time by the lender. It would also appear that nothing showed up on the Title Report to raise a red flag.

1. You will need to apply for a Letter of Non-Conforming Status from the Municipality

because, if the structure encroaches on the neighbor's lot, it certainly encroaches on the Zoning setback of 5 feet required from the property line.

The Application will cost you \$135 to lodge and the Muni is typically fairly understanding of neighborhoods constructed back in the 1950's. You will also need to attach an updated As-built Survey.

The Muni will most likely grant you non-conforming status and this determination should be recorded for permanent attachment to your title in the property. The Municipality, typically, will not concern itself about the encroachment onto the neighbor's lot because that could only be subject to a civil dispute between the 2 neighboring owners.

2. Here is the tricky part. A financing institution will not finance this property without an Easement in Perpetuity to be granted to you by your neighbor. That is, your neighbor must voluntarily con-

sent to a notarized, permanent easement on his lot for your building encroachment.

Once you have this signed, notarized document drawn up and recorded, your title will be clear for a financed sale, so I hope you are getting on well with that neighbor and he is a kindly soul.

Conclusion: All buyers beware and always demand an accurate and legible as-built survey for residential property, and demand it be fully explained to you by your real estate representative.

Dave

Windsor

