

Leaky roof could be a case of seller misrepresentation, but it's tough

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Q: I read your recent article about the buyers who bought a home and subsequently found out that no heat was coming into their bedroom because the room had no duct work. The question was related to non-disclosure by the seller.

My question is regarding a “misrepresentation” by the seller. My sellers said the roof was 8 years old with a 25-year warranty. Recently, heavy rains resulted in a roof leak. When a roofing contractor came to inspect the roof, he said the roof was more like 20 years old, or older. When he was inspecting the attic, he found a pot in the attic positioned to catch water from a roof leak.

So, clearly the seller knew about the leak. I pulled the permit from the city, and the roof was indeed more than 20 years old. This was only the latest in a series of misrepresentations made by the sellers and their agents.

How would you respond under this scenario? I lived in the home for four years prior to finding out about the roof. Thank you.

A: We can't address other misrepresentations you've encountered since living in the home because you didn't describe them, so let's discuss the roof. We wonder whether you had the home inspected before you made your offer, as any professional home inspector should have found the pot in the attic and alerted you to the possible true age of the roof.

It has been four years since you closed and only recently had a problem with the roof. At this point, we don't know if a newer roof would have had the same problems or not. In some parts of the country, vicious hail or wind storms could cause a serious leak even in a new roof.

We also don't know what you would have done differently if you had known the roof was 20 or more years old when you purchased the home. If the kitchen pot in the attic had been left there from a recent leak that the seller's patched, the roof might have been in pretty good shape at closing, albeit at the end of its useful life.

So many questions, so few answers. You remember the seller telling you the roof was 8 years old, but was that really what you were told? Did you receive a written disclosure form that had the age of the roof listed? We've seen situations where a seller is asked about the age of the roof and the sellers may not know and estimates it



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based on his or her knowledge or what the prior seller told them.

We don't know how long the sellers lived in the home. We can imagine a situation where your sellers purchased the home a year or two before you and their sellers told them that the roof was relatively new and your sellers repeated that information to you.

There are too many variables here for us to determine if you have a legal action against the seller. If the roof had been 8 years old, but the seller had put on the least expensive roof available, you might have still ended up where you are now. Some roof warranties are only 5 to 10 years while others last up to 50 years.

While you may have a claim for misrepresentation (on this and perhaps other “misrepresentations”), we're not sure what your recovery would be now. We also don't know whether the seller disclosure laws in your state would help you four years after your closing. And even if you can prove fraud by the seller, we should warn you that the cost of litigation might be more than the recovery would get from your seller.

You're in a tough spot. You might need to pay for a new roof. And, if you proceed, you'll have to also fund litigation expenses (although if you win, you may be reimbursed for those in addition to winning damages). Please consult with a litigation attorney in your area who has successfully litigated seller disclosure cases to determine what your rights and remedies might be, given your circumstances, and how much it might cost to get you there.



A message from the Umatilla County Board of REALTORS®

To get the best return on your home, you need to make your home look its best. Here's the checklist that will help you do it.

Floor coverings

- o Dirt or stains?
- o Excessive wear or damage?
- o Area rugs clean and stain-free?

Walls and ceilings

- o Dirt, fingerprints or other stains?
- o Nail or thumb-crack holes, tape residue?
- o Cracks, chips, water damage?
- o Need for repainting or new wallpaper?
- o Neutral, light colors for roomy environment?

Doors

- o Dirt, fingerprints or other stains?
- o Need new paint?
- o Open/close easily without squeaks?
- o Latches/handles secure and working properly?

Windows

- o Glass sparkling clean/chip- and crack-free?
- o Open/close easily?
- o Latches/handles/locks secure, working properly?
- o Dirt and fingerprints on frames or sills?
- o Screens clean and without holes?
- o Storm windows in good condition?

Window coverings

- o Dirt or stains?
- o Excessive wear or sun damage?
- o Open/close easily, hardware working properly?

Lighting

- o Lighting makes a room feel more inviting
- o All bulbs working and proper wattage?
- o Broken switches, exposed wiring?
- o Table and floor lamps working properly?

Pet areas

- o Clean, organized, odor-free?

Entryways and hallways

- o Clean and free of clutter or obstructions?
- o Welcome mat(s) clean and inviting?

Closets and storage areas

- o Clean and well organized?
- o Clutter and excess junk removed?
- o Clothes hung neatly and not jammed together?
- o Shoes and boots neatly stored/stacked?

Kitchen

- o Every surface sparkling clean?

- o Countertops organized, all but daily use appliances?
- o Refrigerator spotless inside and out?
- o Organized? Spoiled food discarded?
- o Frost removed? Light bulbs working? (Buyers look!)
- o Oven/stovetop clean? Burner trays cleaned?
- o Sinks clean; faucets working properly and leak-free?
- o Garbage disposal in good working condition?
- o Cupboards/pantry spotless, organized?
- o Dishwasher clean and stain-free?
- Living room, dining room, bedrooms, den and study**
- o Everything thoroughly vacuumed/dusted?
- o Excess furniture removed for roomier atmosphere?
- o Remaining furniture clean and in good repair?
- o Wood and other surfaces clean and polished?
- o Bookshelves neat, organized and clutter-free?
- o Children's games/toys stored neatly?
- o Fragile items removed and stored?
- o Smaller valuables removed/locked away?
- o Window coverings open for views and sunlight?
- o Mirrors clean and in good repair?
- o Ashtrays cleaned and kept out of sight?
- o Fireplace clean, logs/kindling stacked neatly?
- Bathrooms**
- o Every surface sparkling clean?
- o Countertops organized, free of clutter? Fresh soap?
- o Sinks spotlessly clean, faucets working properly?
- o Tub and shower surfaces clean?
- o Towels stain-free and hanging neatly?
- o Shower curtain clean and in good repair?
- o Toilet extra-clean and working properly?
- o Closets organized and clutter-free?
- o Medicine cabinet clean, “personal items” removed?
- Utility Space**
- o Clean and well-organized?
- o Clutter and excess “junk” removed?
- o Remaining items stored/stacked neatly?
- o Everything thoroughly vacuumed/dusted?

IS YOUR HOME READY?

Umatilla County Board of Realtors
Marsha Morgan
2016-2017 President

