

# NEW YORK REAL ESTATE

## But You Said ... !

### Four common seller misrepresentations, and how to avoid getting stuck.

By S. Johanna Robledo

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Illustration by Peter Arkle

The buyers were assured that a lovely roof deck would be theirs alone. “Private,” the web listing said. But it wasn’t until the board interview—post-contract signing, post-six-figure deposit—that they learned the truth: Only a sliver of the roof was theirs. The rest, including a section that abutted the master bedroom, was common space. It’s an argument that’s not yet settled, months later, and the lawyers have been called in.

The fact is, sometimes sellers and their brokers get things wrong or even flat-out lie to the other side, and New York, says real-estate attorney Jerry Feeney, is “a buyer-beware state.” (Brokers’ websites include fine print disclaiming responsibility for errors.) If you have even a slight suspicion, it can’t hurt to ask a few too many questions, especially about these four often-misrepresented points.

#### Bedrooms

“To be considered a [legal] bedroom, a room must have a window that overlooks the street or a garden,” explains real-estate lawyer **Adam Leitman Bailey**. Lot-line windows—those on the sides of a building that might be blocked by construction next door—don’t count. A bedroom must also have light and ventilation and, if built after 1929, be eight feet wide and tall. And it can’t serve as a dining room or a passage to another room. You personally may be content to sleep in an unofficial space, but when it comes time to sell, your quasi two-bedroom will become a legal one-bedroom, and you’ll take a price hit.

**Advice:** If you have any question after your walk-through—particularly if you’re hazy on the definition of a lot-line window—ask the building’s management company as well as the sales agent.

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#### Square footage

Another commonplace cheat, because so few buyers measure and do the math. In 2008, a Russian financier sued El-Ad Properties, redevelopers of the Plaza, alleging that they’d shortchanged him on square footage, among other things. (El-Ad countersued for defamation; they ended up working out a deal.) Malcolm Carter, a broker who blogs about industry practices, says square footage is “the single fuzziest” point of fact. There are multiple ways to compute it—do you include the space inside partition walls? Or under the fridge?—and some sellers and brokers just eyeball it.

**Advice:** If negotiations are hinging on price per square foot, hire an assessor of your own to measure. If you've signed to buy a place from floor plans, and after it's built "the size of the apartment is 10 percent [less than promised]," you can likely terminate the contract and get your money back, says attorney Jeffrey Reich, of Wolf Haldenstein Adler Freeman & Herz. If the discrepancy is less than that, you'll have a harder time getting out of the deal.

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### **Building policies**

"We live in a world of gray," laments Prudential Douglas Elliman's Leonard Steinberg, referring to rules about pets, subleases, and the like. Steinberg once had dog-owning clients who were far into the buying process when they discovered the condo's bylaws were unclear about pet ownership. They requested language in their contract expressly allowing pets, which was granted. (That would have been a lot harder to arrange in a co-op that requires a two-thirds-majority vote to change the house rules.)

**Advice:** Another one for the management agent. Dog and cat people (and, for that matter, snake and iguana and potbellied-pig people) should ask for updated bylaws before signing anything. Board minutes can also outline recent policy changes.

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### **Bedbugs, noise, and other disrupters**

"You're not going to get this information from sellers and their brokers, because they only have to talk about what they know," says BrickUnderground.com's Teri Karush Rogers. Noise complaints are on the rise, says **Bailey**, who's handling several such cases. One Harlem couple, after years fighting the neighbors, hired a sound engineer who found that the din from above was 40 times the legal limit.

**Advice:** Karush Rogers recommends that if you have even an inkling of a problem, you demand language covering bedbugs in the contract. A new state law requires co-op and rental buildings to alert prospective residents to infestations; have your broker include a bedbug question in the checklist sent to managing agents during due diligence. As for un-neighborly noise, discreetly ask the building staff when you visit. Occasionally, previous renovators have removed soundproofing walls, which can justify a complaint to the Department of Buildings. Regarding street noise, you're generally stuck, but calling 311 might help. Maybe.