

April 12, 2019



Non-Conforming Property Okay So Long As You Don't Burn It

Dear Dave: We have a Tri-Plex, built in 1970, in the Sand Lake area. It's on R1 zoned land and, recently, we had some serious fire damage to one of the units – about \$50,000 actually. We heard that you cannot rebuild property in contradiction of the zoning, even if it was grandfathered before the fire. Is that true?

Answer: Most of the zoning in the Sand Lake area took place in 1972, so your Tri-plex was likely a legal non-conforming property even though now zoned R1 for single family residence only. If you have a non-conforming property you should ascertain its status as soon as possible because you won't be able to sell it if it is illegally in contradiction of zoning.

While downtown Anchorage was zoned as early as 1946, other parts of the city were zoned between 1969 and 1984. If your building was constructed prior to zoning in your area you can apply for, and likely be granted, a 'Letter of Non-conforming Status' from the Municipality. Your application can be a simple letter enclosing an As-built survey less than 2 years old and a check for \$135. Additional info such as photographs go a long way also.

Drop these off in person to the

helpful staff at the Municipal Offices on Elmore and a letter of non-conforming status will be issued in a couple of weeks. Once you have the letter it is highly desirable to have it recorded at the Public Recorder's Office downtown. Now you can always prove it is a legal piece of property.

So what happens if you have a fire? If the entire building is destroyed you will not be able to build the Tri-plex over again (or any other non-conforming building). However, you may be in luck. Since it was only one unit damaged (i.e. less than 50 percent of the structure) you are allowed to reinstate the Tri-plex. \$50,000 damage sounds like less than 50 percent of the building, so it's okay to rebuild that unit to its previous specifications.

Dear Dave: I've been told that new construction houses have a 10 year warranty, required by the State of Alaska. Is this true and, if so, would that include Sonotube supports for the front porch that have heaved and separated our porch from the building?

Answer: There is a clear Statutory Warranty on new construction homes for one year. Whilst you are encouraged to consult an attorney, Statutes referencing a 10 year period or other builder liability are

'sketchy'. I don't know of any successful structural claims beyond the one year period except when gross negligence was involved.

In general terms, the sonotube problem may be debatable as to whether it is claimable or not. Within one year most builders would help you, but it depends on the circumstances – e.g. Was the porch standard to the package? Were local soil conditions such that frost heaving was common? Did the builder provide the lot, or was he asked to build on your pre-existing land? These types of questions would arise, and certainly be argued after the one-year warranty period though within the first year it would be a pretty mean builder who would resist resetting the sonotubes. Keep in mind that soil movement goes with the territory in Alaska and extensions of the building not on the foundation can never be guaranteed not to move.

Dave

Windsor

