



Alaska REAL ESTATE BY DAVE WINDSOR

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 be granted, a 'letter of non-conforming status' from the Municipality. Your application can be a simple letter enclosing an as built survey, copies of the Property Inventory Sheets (obtainable at 3rd floor, City Hall), and a check for \$130.

Drop these off at the Municipal Offices on Bragaw 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 its 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 of 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 re-setting 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.

Dear Dave: We are putting CO detectors in our home to prepare for putting the property on the market. Is it just near the bedrooms that CO detectors are required?

Answer: Alaska Statute 18.70.095 (a) governs the code for Carbon Monoxide alarms and is enforced in Anchorage by the Municipality. The following is the published recommendation:-

1. Place the CO alarm adjacent to the room containing the boiler, water heater, furnace or other carbon based heating appliance, include the floor above and the floor below the appliance.
2. Place a CO alarm inside the dwelling unit near the door to the attached garage or car port.
3. Install a CO alarm in the hallway outside the sleeping rooms in each area of the dwelling where sleeping areas are located.
4. Install a CO alarm outside the kitchen area if there is a carbon based fuel appliance present.

In new construction the CO Alarms are hard-wired and interconnecting so that, when one goes off, they all do. In existing homes without hard-wiring they should be plug-in with battery backup.

Dear Dave: We are selling our home in Fairbanks and have listed with a Real Estate licensee. Are we obliged to include the Refrigerator, Washer and Dryer?

Answer: When Real Estate is listed for sale, Buyers can assume that ALL the Real Estate is included. Real Property is, by definition, land and everything attached to the land such as fences, trees and the house. In turn, everything attached to the house is Real Property. This would include such things as light fixtures, built-in shelves and cabinets, and built-in appliances.

Since the refrigerator, washer and dryer are not usually built-in like the dishwasher or range, they are not part of the Real Estate. They are more like the television or furniture which are considered personal property. A microwave may be considered part of the Real Estate if built-in, but not if sitting loosely on a shelf or counter-top. Your Real Estate licensee will advise you on what automatically goes with the property, but be sure to clarify with the licensee anything you wish to take with you.

Dave Windsor, an Associate Broker at RE/MAX Dynamic Properties, has been practicing real estate in Anchorage, Alaska for over 25 years and his services are available to home sellers and buyers or, if you have a question of general interest to the public that would benefit from his knowledge and experience, please email windsor@alaska.net. Dave will respond in this column in the near future. Previous columns are archived at Dave's website www.davewindsor.com.

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