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# Phil McCollum's Real Estate Articles & Advice Newsletter

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## Articles and Advice

### 2010: year of the turnaround?

By Dian Hymer

A spurt in home sales in 2009, aided by low interest rates and the first-time homebuyer tax credit, has led some economists to forecast a turnaround in the housing market this year. Other forecasters feel this is too optimistic a projection.

Among those who see improvement in the 2010 market is Lawrence Yun, chief economist for the NATIONAL ASSOCIATION OF REALTORS® (NAR). Yun hopes that the extension of the first-time homebuyer tax credit will provide a new pool of buyers to absorb the additional foreclosures that will hit the market this year.

He expects existing-home sales to rise 13.6 percent in 2010; home prices should go up 3 to 5 percent, with wide geographic differences. The average rate on 30-year fixed mortgages will range from 5.3 percent in the first quarter to 5.8 percent by year end. This forecast assumes there will be no major economic surprises. The weak job market remains a concern.

The Mortgage Bankers Association (MBA) has a slightly different take on the 2010 housing market. MBA predicts existing-home sales will increase approximately 11.2 percent. Interest rates should be about 5.6 percent by the end of 2010. The unemployment rate is expected to peak at 10.2 percent and gradually decline in 2011. National average home prices should stop sliding during the first part of the year and stabilize, depending on area and price range. The November 2009 Economic and Housing Market Outlook from Freddie Mac expects there will be an increase in foreclosures and short sales this year, even though foreclosures declined significantly in some of the worst foreclosure markets (like Las Vegas) at the end of last year. RealtyTrac reported that foreclosures nationwide decreased 8 percent in November 2009.

Zillow.com, an online real estate marketplace, reported in December 2009 that stabilization and increased home prices were found in 48 of the 154 markets tracked. However, Zillow forecasts a decline in demand as interest rates rise. Foreclosures are expected to stay high and could challenge recent stabilization. Some economists think prices will continue to decline in some areas through this year. Others feel that at best, the economic and housing recovery will be a bumpy ride. And, we could bounce along the bottom for some time. Few expect home prices to rebound quickly.

HOUSE HUNTING TIP: There will be significant variation from one market to the next. Areas that have a good diversified economic base and limited inventory of homes for sale could stabilize in 2010 and see an improvement in home prices. Areas that are bloated with foreclosure and short-sale inventory and have a weak local economy probably won't see a turnaround this year.

Credit tightening would put a damper on the market. On Dec. 12, 2009, Fannie Mae took steps to make mortgage qualification more difficult. A significant change is that the maximum allowable debt-to-income ratio is being lowered to 45 percent from up to 64 percent. This means that the housing cost plus all other debt can't exceed 45 percent of the borrower's income. Buyers with strong credit and assets have a chance of approval with a debt-to-income ratio of 50 percent. 2010 is not expected to be a banner year for housing. But it could be a year of improvement for some niche markets and some price ranges. Expect to see more purchase offers made contingent on the sale of the buyers' home. Credit tightening has made it impossible for most buyers to qualify to own two homes at once.

There will likely be an increase in short-sale listings. Buyers have shied away from these listings in the past because they took so long to process, and were often denied by the lender. Lenders are now more open to approving short sales than they were a year ago. THE CLOSING: Hopefully, they'll improve their performance in 2010.

*Dian Hymer, a real estate broker with more than 30 years' experience, is a nationally syndicated real estate columnist and author.*

### Southern California Home Buyer's Fair March 13 and March 14

With interest rates at historic lows and home prices at affordable levels now is an ideal time to buy a home. Chances are you have many questions, ranging from how to find and qualify for a mortgage loan to what steps are required to get from finding a home to closing escrow and moving in.

The answers to these and many other crucial questions about the home-buying process will be the subject of more than 60 educational seminars presented in English and Spanish by a wide variety of real estate experts at the Southern California Home Buyer’s Fair on Saturday and Sunday, March 13 and 14, at the Los Angeles Convention Center in downtown Los Angeles.

The Southern California Home Buyer’s Fair is co-sponsored by the CALIFORNIA ASSOCIATION OF REALTORS® and the Los Angeles Times. This free, two-day trade show and educational forum was expressly created to give you all of the information you need to successfully navigate the road to homeownership -- whether you're a first-time buyer, investor, or existing homeowner looking for the most up-to-date information about today's real estate market.

The Southern California Home Buyer's Fair also will feature exhibit booths where visitors can obtain information from industry experts about a vast range of programs pertaining to homeownership and the home-buying process.

For more information about the Southern California Home Buyer's Fair, please visit www.homebuyersfair.com.

## Solution for icy gutters

By Paul Bianchina

With winter's storms comes the problem of ice buildup on the roof. No one relishes the thought of dragging out a ladder and trying to get all that ice out of the gutter. But if you allow it to build up in there, you are essentially forming the foundation that an ice dam will start building on, and once the ice dam takes hold it's a lot harder to get rid of.

The best solution is to be proactive and attack the ice before it actually becomes ice. That means taking some precautions to keep all that water from freezing in the first place.

There are several steps you'll need to take, starting in the fall with cleaning out the gutters. Keeping your gutters and downspouts free of leaves and pine needles should already be an essential part of your fall chores, and it's also an essential part of keeping that ice from building up.

Anything designed to catch the leaves and needles and keep them from getting into the gutters can also be a problem when it comes to ice buildup. Those barriers can create a number of small crevices that trap ice and snow, making it difficult to keep them clear and the water running through them freely during the winter. If you live in a cold climate, any type of leaf barrier on your gutters is probably not a great idea.

**Heat tape in gutters and downspouts**

Once the gutters are clean and barrier free, heat tape is the easiest way to keep them free of ice. Heat tape is simply a long strip of electrically heated, rubberized cable, available in different lengths. It has a grounded (three-prong) plug at one end, and is plugged into a properly grounded, GFCI-protected electrical outlet (GFCI is an acronym for ground-fault circuit interrupter).

The tape is laid in the bottom of the gutter, or it can be clipped so that is hangs along the sides of the gutter, near the bottom. A strip of heat cable is also extended down the inside of each downspout. Most heat cables are safe for use with both metal and plastic gutters.

There are different types of controls available for activating the heat tape. The best is a thermostat control, which will activate the tape when the outside air temperature falls to a certain level, typically around 35 to 40 degrees. This will allow the tape sufficient opportunity to prevent the ice from forming as the temperatures continue to drop.

And since the operation is automatic, it eliminates the worry of you having to activate anything. Remember that the tape is designed to prevent the ice from forming -- it's not there to melt the ice after it's already in place.

**Heat tape on the roof not as effective**

You will also sometimes see heat tape recommended for use on the roof itself, installed in a zigzag pattern along the eaves, on top of the roofing. The theory is simple. The electrically heated cables melt the snow as it falls, creating channels around the cables that allow for drainage, keeping the roof clear.

No snow buildup means no ice, which means no ice damming. But there are some mixed opinions on just how effective this method actually is.

For one thing, there is the initial cost of all that cable, and the cost to operate it. Heat cable uses about 5 watts of electricity per foot, so a 100-foot cable is the same as having five 100-watt light bulbs burning. A typical house can require several hundred feet of heat cable on the roof, so that's a lot of additional utility bills.

In areas with a lot of snow, there's also evidence that the snow buildup is simply too great around the cables to make the cleared paths very effective. Freezing happens a short distance away from the cables, and the ice dams occur anyway.

Perhaps of greatest concern is the potential for fire danger. I personally have seen several roof fires over the years that have been started by heat cables on the roof that that have malfunctioned, that have been damaged somehow, or that have simply worn out.

All in all, using the heat tape to keep your gutters and downspouts free of ice and snow, then taking other precautions such as good insulation and ventilation in the attic, will be better long-term solutions to ice damming than the installation of heat tape on the roof.

## Rate-lock dos and don'ts

By Dian Hymer

Interest rates dropped at the end of last year after creeping up over the summer, with 30-year fixed-rate mortgages with interest rates below 5 percent readily available.

Mortgage interest rates change as often as two to three times in one day. Securing the lowest rate possible is every borrower's goal. However, it's impossible to time the finance market, just as it's impossible to predict exactly when the housing market will peak or slide.

In this low-interest-rate environment, many buyers are locking in a rate, either when they submit their loan application and purchase contract, or some time before closing. A lock-in is a commitment from the lender to hold an interest rate for a period of time. Points (the lenders original fees) can also be locked.

The length of the rate lock varies from seven days to 60 days and possibly longer. However, it's more expensive for a longer lock -- about 1/8 percent to 1/4 percent in rate or points for each additional 15 days.

Today, it's wise to lock in your rate for 45 days if you lock when you submit your package. With delays due to appraisal issues and lenders asking for additional documentation, it can take this long to close the loan.

There are advantages and disadvantages to locking in a rate. If rates fall after you lock, the lender probably won't give you the lower rate. If rates rise after you lock, the lender should honor the locked rate as long as you close on time.

Some lenders offer a "float down." This would come into play if interest rates were to drop between the lock data and the date your loan documents are drawn. The lender probably won't let your locked rate float down to market rate, but to something in between. A float down is a one-time-only option.

HOUSE HUNTING TIP: Because rate locks have an expiration date, it's essential to provide as much financial documentation needed to qualify you for the mortgage as soon as possible. This will speed up the approval process.

Lenders require much more personal financial information than they did several years ago. Ask your loan agent or mortgage broker at the time you submit your loan application what personal financial data the lender will require -- like pay stubs and information supporting your cash downpayment and cash reserves (in bank accounts, IRAs and 401(k)s. If you're self-employed, you'll need to provide tax returns for the last two years.

After your loan package is submitted to underwriting for approval, there could be other conditions that must be met. If you drag your feet producing additional documentation, this could delay approval and jeopardize your rate lock.

Extensions of rate locks are sometimes granted, but don't count on it. If the delay is due to a slowdown in the lender's processing, the lender might agree to an extension, especially if interest rates haven't changed much. But, if the delay is due to your failure to provide the materials necessary to qualify you for the loan, don't expect a sympathetic ear.

Try to get the lender's rate-lock commitment in writing. Some lenders will do so, but many give only verbal agreements, which are hard to enforce.

Lenders often give processing priority to purchase loans over refinances. If you're refinancing and rates are low but threatening to rise, lock in for 45-60 days.

Now is a great time to refinance not only because interest rates are low, but because there will be fewer home sales during the winter months and less competition to worry about in terms of getting the loan closed on time.

THE CLOSING: Get a copy of the Federal Reserve Board's "A Consumer's Guide to Mortgage Lock-Ins" at http://www.federalreserve.gov/pubs/lockins/default.htm.

*Dian Hymer, a real estate broker with more than 30 years' experience, is a nationally syndicated real estate columnist and author.*

## CFLs today

**Energy-Saving Bulbs Offer More Choices, Less Mercury, and Easier Disposal**

By Michelle D. Alderson

General Electric introduced the first compact fluorescent light bulb (CFL) to the market in 1992. In that same year, the U.S. Environmental Protection Agency (EPA) established the ENERGY STAR label as a “voluntary labeling program designed to identify and promote energy-efficient products to reduce green house gas emissions.” CFLs were one of these newly regulated products. The energy-saving bulb wouldn’t find popularity, however, until the new millennium when mainstream America became more conscious of energy conservation and the environment. Today, the CFL is still growing in popularity; consumers like that it saves energy -- and money. According to the EPA, in 2007, Americans saved $1.5 billion by switching to ENERGY STAR-qualified CFLs. The CFL light bulb has also improved greatly in the past 30 years with more lighting choices, regulation of its mercury output, and easier disposal.

**Choosing the Right CFL**

Initially there was only one type of CFL available and consumers didn’t have the option to use CFLs in diverse lighting fixtures such as chandeliers, sconces, and ceiling fans., Different sizes and wattages of CFLs are now available, as well as bulbs for three-way lamps and dimmers. Following is a quick guide that will help you choose what type of bulb to use with the different lighting fixtures in your home.

**Chandeliers**

Type of bulb: Low-wattage covered bulbs that are not as bright as regular CFLs, such as a 40-watt bulb.

**Ceiling Fixtures**

Type of bulb: Spiral or covered bulbs with 2700 to 3000 K.

Choosing between a covered or spiral bulb is an aesthetic choice with a ceiling fixture that has an open shade. **Table and Floor Lamps**

Type of bulb: Spiral or covered with 2700 to 3000 K in lamps that have a fabric shade or warm-colored glass. For lamps that have more of a blue-colored glass shade, choose a CFL with 3500 to 4100 K.

**Sconces** Type of bulb: Low-wattage covered bulbs that are not as bright as regular CFLs, such as a 40-watt bulb. As with ceiling fixtures, choosing between a covered or spiral bulb is just an aesthetic choice with a ceiling fixture that has an open shade. **Recessed Lighting**

Type of bulb: Indoor reflector. Since recessed lighting is used often, use a bulb that is longer lasting.

**Mercury and Disposal**

The mercury content in an ENERGY STAR CFL cannot contain more than five milligrams of mercury; most contain less than four, which is just enough to cover the tip of a ballpoint pen, according to the Lighting Research Center at Rensselaer Polytechnic Institute (RPI). Disposal is getting easier, but a CFL cannot be thrown into the trash like a regular lightbulb. Home Depot and IKEA recycle CFLs and you can also visit Earth911.com to find out other local recycling centers. To clean up a broken CFL properly, instructions will differ based on the surface (for example, carpet or hardwood floors), but the first thing to do is ventilate the room. Go to the EPA Web site at http://www.epa.gov/mercury/spills/index.htm#flourescent for the correct procedure.

For more information on CFLs, including how they work, visit ENERGY STAR’s website (http://www.energystar.gov/index.cfm?c=cfls.pr_cfls).

## No capital gains tax on home exchange?

By Benny Kass

*DEAR BENNY: My husband and I built a townhouse in 1983 for $33,000. We lived there for a few years and then rented it out for 17 years, taking all the tax advantages such as depreciation, etc.*

*In 2003 we sold it for $90,000, and did a like-kind exchange with a house that my husband built. That house has been rented for the past six years and now has a market value of $190,000. We have no liens on the home and would like to sell it and put the money towards our dream home.*

*If we moved into the home and lived there for two years, would we have to pay capital gains taxes when we sell the home?*

*We've asked our certified public accountant (CPA) and she said we would have to pay capital gains because we took depreciation on the properties. We also asked a friend who worked for the Internal Revenue Service and he said as long as we lived in the home for at least two out of the last five years before we sold the home, we would not have to pay capital gains tax. Who is correct? --Jeanne*

DEAR JEANNE: I believe your CPA is correct. Any depreciation that you took after May 6, 1997, will be taxed. And based on a new 2008 tax law, the gain must be allocated between the rental and the personal use starting after Dec. 31, 2008. The portion of the gain allocated to the rental period will be taxed.

I would always follow the advice of your paid accountant, rather than that of a friend, even if he or she works for the IRS.

*DEAR BENNY: My husband and I just signed documents to refinance our home. The entire process was long and frustrating. The appraisal was done a month ago, but the lender never notified us that the appraisal value was lower than what we needed to refinance. We found this out almost one month afterwards and only after we called to ask how things were going. The communication with the lender was extremely poor, but that wasn't the biggest problem.*

*The lower appraisal value meant we had to pay down the loan by $20,000 in order to refinance. Our house has three bedrooms, and four of the six sales comps were two-bedroom houses.*

*Adjustments were made only for the overall square footage, not for the number of bedrooms.*

*We felt the amount was inaccurate for our area and asked the lender to have the appraisal reviewed. I gave the lender additional comps and the same appraiser replied with a second report with no change in value. There were numerical discrepancies between both reports. One comp ended up with a higher value, as the first report omitted to make any adjustments. I contacted both the lender and appraiser by e-mail and did not receive a response to these errors.*

*In the past few weeks a house in our neighborhood of similar size and lot has sold for more than $100,000 above what our house was valued at. I looked at the open house and this house had only one bathroom and a single garage compared to our two bathrooms and double garage. In order for that house to sell, it would have had to appraise at the amount offered.*

*I've read all sorts of stories about low appraisals happening, but these appraisals affect homeowners from refinancing and buying a home. Have we been wronged and is there anything we can do? If an appraisal is so important to the loan process, it should at the least be correct and not contain errors. --Maileen*

DEAR MAILEEN: I can't agree with you more. Although appraisals are not an exact science, they are crucial to the selling, buying and refinancing process.

But the appraisal process has been dramatically changed in the past year. As a result of a compromise agreement between the New York Attorney General and the major mortgage secondary lenders such as Fannie Mae and Freddie Mac, mortgage lenders have much less impact on how appraisals should come in. Most lenders are now required to follow what is known as the "Home Valuation Code of Conduct." Perhaps the most significant part of this new code is that mortgage lenders cannot select an appraiser. The lender must contact an appraisal company who will assign an independent appraiser to prepare the valuation report.

What do you do if you are not satisfied with the appraisal? Eventually, an Independent Valuation Protection Institute will be established that will have the authority to review all such complaints. However, that entity has yet to be created.

So in the meantime, if you get no satisfaction after talking with your lender, you can complain to Freddie or Fannie. The Federal Housing Administration (FHA) has not adopted the code, so if your loan is backed by FHA, complain directly to the local FHA office in your area.

These new procedures have created major problems for the lending community and for homebuyers and homeowners. However, the underlying concept is important: Appraisals should be totally independent and not based on what a mortgage lender would like to hear so that he can make any loan -- no matter how bad it may be.

*DEAR BENNY: We own a commercial condo building that we bought in 1985. If we sell it now, not only do we have to pay capital gains tax, but also recapture all of the depreciation we have taken on it over the years. It is still used in our business, but it is pretty much totally depreciated, so almost all of the sales price would be subject to recapture as far as I understand. Will a 1031 Starker exchange help us in any way if we decide to sell this location? The only reason we would consider selling it is that the parking situation there is getting more and more crowded, but we don't have to sell. What is your advice? --Caleb*

DEAR CALEB: Yes, a Section 1031 exchange (also known as a Starker exchange) should be considered if you really want to get rid of that property. You would have to carefully follow the rules, because they are strict.

For example, when you sell that property, you cannot have any access to the sales proceeds. They have to be put in escrow to be used only to buy the new property. The replacement property must be identified within 45 days from the date you sold the relinquished property, and you must take title to the new property within 180 days from the date of the earlier sale.

Keep in mind that a 1031 exchange does not mean that you avoid paying any capital gains tax. Your tax basis from the relinquished property becomes the tax basis of the replacement property. Thus, you only defer, not avoid, paying the tax.

This is complicated and you must talk with a tax attorney who understands the process.

*Benny L. Kass is a practicing attorney in Washington, D.C., and Maryland. No legal relationship is created by this column.*

# Features

## FHA program funds fixers

By Dian Hymer

Investors have been taking advantage of low interest rates and discounted prices to buy run-down foreclosure properties, sometimes 10 or so at a time. They fix up the properties enough to be rented until the market turns, which could take years. When the time is right, the investor puts the finishing touches on the improvements and hopefully sells for a profit.

This can be a risky strategy for an inexperienced homebuyer. It's hard to compete with investors who make all-cash offers. Investors usually have a team of contractors who can do the fix-up work. If they're working on several properties at once within close proximity of one another, it's more economical than fixing up one property at a time.

Financing the improvements to fix up a property in today's market is difficult. Construction financing is virtually nonexistent. Most conventional financing requires a 20 percent cash down payment. Before the subprime mortgage meltdown, fixer buyers often used a home equity line of credit (HELOC) to finance improvements.

Today, you would need to have enough equity in the property to tap this kind of money. For instance, if you made a down payment equal to 50 percent of the market value, you might be able to find a lender that would give you a HELOC for up to 30 percent of the value.

HOUSE HUNTING TIP: Another option that doesn't require a huge outlay of cash is to use the FHA 203K mortgage program that is designed specifically to provide financing for repairs and renovations to single-family residences. It is available only to owner-occupants, not investors. The maximum mortgage amount varies with location. It's currently $729,750 in high-cost areas like the San Francisco Bay Area.

The program works like this: Suppose you buy an $800,000 home using your savings for the cash downpayment and a $729,750 loan from FHA. FHA 203K loans are available with as little at 3 to 5 percent cash down, plus some cash reserves to pay contractors' initial payments. The interest rate is a little higher than it is on a standard FHA loan.

When you make your offer, be sure to include a 45-day financing contingency and a 60-day closing. The seller won't be happy with a 45-day financing contingency. However, if the listing has been on the market for some time with no offers, your chance of acceptance is good.

After your offer is accepted, you and your real estate agent walk through the property and create a wish list of all the repairs and improvements you'd like to make.

Then a contractor and FHA inspector preview the property and either approve or disapprove the items on your wish list. They might even add something to the list that they think needs to be done, like a new roof. Let's say the approved amount for rehab is $40,000.

An appraisal is done giving two values: the property in its "as is" condition and the property after the improvements have been done. To get approval, the cost of the improvements ($40,000, in this case) plus the "as is" price can't exceed the appraised value of the property after the renovations are complete.

After approval, the $40,000 for improvements is deposited into an escrow or trust account. Up to five releases can be made during the course of renovation. The work must start within 30 days of closing and be completed within six months.

THE CLOSING: The FHA 203K program can also be used to refinance and finance renovations.

*Dian Hymer, a real estate broker with more than 30 years' experience, is a nationally syndicated real estate columnist and author.*

## The lot-line shocker

By Benny Kass

*DEAR BENNY: I purchased my home in September 2000. My survey indicated that my fence was encroaching on my neighbor's property by three feet. My home was built in 1955 and I am the second owner. The four-foot chain-link fence has encircled this property for approximately 40 years, and my neighbor (who inherited his home from his parents) indicated that he had no plans of erecting a fence because his companion is claustrophobic.*

*Recently, however, my neighbor and his contractor began constructing an addition to his home that will include a six-foot wooden fence. Of course, now he wants his three feet back. His proposal is to move my fence over three feet, reset it, remove/replace my existing double gate with a single one at his expense, and draw up a contract for both of us to sign.*

*I went to both my city assessor's office, and maps and surveys office. Both offices confirmed that my fence was on his property in the back of the house (three feet) and that his fence was on my property in the front of my house by three feet. I did speak to him about this new development, telling him that I wanted an attorney to intercede on my behalf. Needless to say, he wasn't too pleased with my decision. What can I do? --Francine*

DEAR FRANCINE: You, or preferably your lawyer, should explain that he may lose the three feet based on the concept of "adverse possession." This means that if you have used someone else's land openly and without permission, you can file a suit for adverse possession. Different states have different periods of time in which you have to use that property.

However, if you pursue this avenue, you run the risk that he countersues you claiming adverse possession of the property in front of your house.

I strongly suggest that you try to resolve this on a friendly basis. It may be that you will have to retain an attorney who can try to mediate an amicable solution. Perhaps each of you can give up a portion of your land. Otherwise, litigation may be your only recourse.

*DEAR BENNY: I just read your response on a question about publishing the names of delinquent owners. I served as our first treasurer since turnover of our 234 single-family-home association. I, too, was asked that question and responded as you suggest, deeming it a* *confidential matter.*

*Would there be any legal problem if the names of members in good standing were posted and kept current as payments are received? Those not on the list would then be considered in arrears. I can see a possible problem in which a delinquent owner pays before an updated list appears, causing him or her to feel falsely accused of delinquency. I guess I may have answered my own question, but would appreciate a response. --Les*

DEAR LES: You are a brave man for serving as treasurer in your community association. Service on a board of directors is frustrating, time-consuming and without pay. But, it is your home and you want to make sure it keeps its value; that's why most board members take the time to serve.

Yes, you have answered your own question. I support letting homeowners know who is delinquent with their association fees. But, as you suggest, there is risk involved. If you state in some public communication that, for example, "Mary Jones owes the association $350," what happens if Mary just paid the money? She has been defamed and could sue the association for libel.

So whether you post the names of delinquent owners or you post the names of current owners, you have to make sure that you put a date on that published information. I see nothing wrong with saying that "as of Dec. 31, 2009, Mary Jones owes $350." Even if she made a payment the next day, your publication was accurate.

More importantly, however, every association should adopt a zero-tolerance policy about delinquencies. If an owner is delinquent for more than 30 days (or whatever the legal documents state) immediate collection efforts must be taken. Of course, the board can consider hardship cases on a "case by case" basis.

*DEAR BENNY: My contractor still has many small jobs to finish with our house. If he doesn't do these jobs that we've already paid him for, what are my options? I am completely frustrated with our contractor. --Rex*

DEAR REX: I hope this will be a lesson for homeowners who hire contractors for remodeling or other work in their house: Make sure that you hold back 10-15 percent of the total job until (1) the work is completed, (2) you are satisfied with the job, and (3) the contractor gives you a release of liens signed by the contractor and all subcontractors. Although there are forms for this release of liens, you can just prepare a statement saying that all payments have been made and have it signed by everyone.

The first thing you should do is determine whether the contractor is licensed as a home improvement contractor in your state. Many such laws state that if a contractor does not have a license and takes some money up front, he must give back all of the money you've paid, regardless of how good the job is.

Next, talk with the contractor and see what the problem is. Give him a deadline to complete the job, and tell him that you will have to terminate him, get another person to complete the job, and sue him for the difference between what you paid him and what you may have to pay another contractor.

If you are dissatisfied with his work, try to find a consultant who will inspect the work. If it is determined that it is not up to quality standards, again tell your contractor that you will have to sue him if he does not immediately make the necessary corrections.

Unfortunately, it may be that your only remedy is to file suit. But litigation is time-consuming, expensive and always uncertain. Sometimes it makes more sense to tell yourself that you made a bad deal, fire the contractor and complete the job with someone else.

One more suggestion: Many contractors ask you to sign what I call a "two-page special" contract. It merely states in general terms what work will be done and how you will pay for this work. If you are planning to do a job that costs $25,000 or more, I recommend that you insist that the contract be on an American Institute of Architects (AIA) form. The AIA has a number of balanced form contracts that contain a lot of consumer protections. You can find the AIA on the Internet at www.aia.org.

*Benny L. Kass is a practicing attorney in Washington, D.C., and Maryland. No legal relationship is created by this column.*

## Paying rent during a short sale

By Benny Kass

*DEAR BENNY: I live in a duplex that has recently been listed as a short sale. Since it appears that my landlord has not been making the mortgage payments, what should I do with my rent payments? I have not been contacted by the landlord or the listing agent, so I'm not sure what I should do. Any suggestions? --Chris*

DEAR CHRIS: I know it is tempting not to pay your monthly rent, but even though your landlord is not paying his mortgage (or at least that is what you suspect), and even though the property is being considered for a short sale, your landlord is still your landlord.

You are living in the apartment, and are legally obligated to pay your rent. What the landlord does with your money is his business.

More importantly, if the short sale does not happen, and the lender decides to foreclose on the property, there is a new law that can protect you. Congress passed the "Protecting Tenants at Foreclosure Act," which became effective on May 20, 2009. According to the law, a "bona fide" tenant in a foreclosed property has the absolute right to remain in the house for a minimum of 90 days. Note that if your state law provides a longer period of time, state law will apply.

But in my opinion, if you are not paying your rent, you may not be considered a "bona fide" tenant and may not be able to take advantage of this new law.

*DEAR BENNY: We have a rental home and would like to exchange it for a rental home in another part of the state. What length of time does the new house have to be rented before we could move into it? My husband's mother (age 90) who is still living independently in another state will be moving in with us when we make the move. She is getting frailer and needs to move to a place without stairs. I need a knee replacement and also need a house without stairs, and the new property meets our needs. Do these medical problems affect the timing? --Kathy*

DEAR KATHY: I am afraid that these medical issues are not relevant in an exchange. The current property is called the relinquished property and the new one is called the replacement property. Section 1031 of the Internal Revenue Code allows taxpayers to exchange one investment property for another. If done correctly, any capital gains tax that would normally have been paid when the relinquished house was sold is deferred to a future time. The technical term is that the tax basis of the relinquished property becomes the basis of the replacement property. This is known as a "like-kind" or "Starker" exchange.

The rules are quite strict, and must be followed without exception. In your situation, you will have to rent out the replacement house for a minimum of one year, or at least make good-faith efforts to rent it.

The Internal Revenue Service generally follows what is called the "old and cold rule." In other words, if at least one year has elapsed from the time you obtained the replacement property, so long as you have followed all of the 1031 requirements, you can move into that property at the end of one complete year.

The rules involving Starker exchanges are complex; you must consult with a tax attorney before you go down that path.

*Benny L. Kass is a practicing attorney in Washington, D.C., and Maryland. No legal relationship is created by this column.*

## Freeze-proof your pipes

By Paul Bianchina

As winter temperatures go down, the risk of a frozen pipe goes up. Pipes can freeze in homes of any age and condition, and no matter what type of material your pipes are made from. So don't make the mistake of thinking that because your house is new it's safe, or because your house is older the materials are somehow stronger. The only way to prevent a frozen pipe is to keep it warm, and luckily that's not too hard to do.

Pipes are vulnerable any time they're in a location where they're exposed to low-enough temperatures for long-enough periods that the water inside them can freeze. Once the freezing occurs, the water expands, rupturing the pipe, splitting the seam between the pipe and a fitting, or damaging components such as cartridges inside faucets. Once the pipes warm up and the ice melts again, the damage becomes evident -- often in the form of a flood inside the house!

Although a frozen pipe can occur just about anywhere, pipes in unheated attics and underfloor basements and crawl spaces are at the most risk. And ironically, the better you insulate the ceiling and the floor, the more you put pipes in those areas at risk. Heat that had been escaping from the house into those areas used to be keeping the pipes warm, so when you add insulation and stop heat loss from the house, the attic, basement and crawl space become colder, and pipes are more vulnerable.

**Keep the water pipes insulated**

Any water pipes that are not buried in your underfloor, wall or attic insulation need to be insulated. The easiest method for the do-it-yourselfer is to use a foam sleeve, which is pretty much like slipping a bun over a hot dog. The sleeves are actually long foam tubes, and are available with different interior diameters to fit different pipe sizes. The tubes are slit along one side, so installation is simply a matter of opening up the slit and fitting the tube over the pipe.

At each elbow or other fitting in the pipe, cut out a wedge from one side of the tube so that it will bend around the joint in the pipe. Cutting can be done with scissors or a sharp utility knife. After you bend the tube around the fitting and snap it over the next pipe, it should stay in place on its own, and the seams and elbows don't require any sealing. If you do need to seal any odd joints or patch in any small pieces, you can hold things together with utility tape from the home center or hardware store where you purchased the foam sleeves.

The pipes can also be wrapped using scraps of fiberglass insulation. This is less expensive than the foam sleeves, but a little more time consuming if you're not used to the process. Typically, fiberglass batt insulation is cut into strips. It's then wrapped around the pipes, either in a spiral fashion or by folding it lengthwise over the pipe. As the insulation is installed, it's held in place with a spiral wrapping of very fine copper wire, which is available on spools from any hardware store or home center.

**Close foundation vents and look for air leaks**

Now for a small bit of controversy, close off your foundation vents! Use foam blocks or other insulation, and seal the vents to prevent cold air from entering. The vents are there to allow air to circulate under the house and remove unwanted moisture, and they should remain open during whatever part of the year that temperatures remain above freezing. But during the winter, when humidity levels are low and the risk of a frozen pipe outweighs the need for ventilation, be sure they get closed off.

Attic vents are a different story. Due to their location and the year-round need for attic ventilation to prevent ice damming, they should not be closed off. You should, however, carefully examine the area around each vent to be certain that no pipes are exposed to the air coming in from the vent.

If you find a pipe that is adjacent to a vent, double up the amount of insulation that's on the pipe, and permanently close off that portion of the vent that's directly exposed to the pipe.

Another thing that can greatly increase the chance of a pipe freezing is to expose it to outside air. This often happens when the pipe is installed near a foundation vent or an attic vent, or in an exterior wall in which holes were drilled for plumbing or wiring.

In any open walls, use expandable foam sealant to close off any holes and gaps in the framing. In colder climates, pipes should never be installed in exterior walls, and pipes should never be run in exposed soffits or other uninsulated framing areas.

Exterior faucets are another potential freeze problem. When installing a new exterior faucet, your best bet is to use a freeze-proof type (freeze-proof faucets are required by code in some areas), which has a long stem that extends back into the insulated portion of the house, so it shuts the water off at a spot where it's not exposed to freezing outside air.

If your house is not equipped with freeze-proof faucets, you can insulate them quickly and easily by installing an insulated dome over them. The dome is simply a large foam shell that fits over the faucet, and is held in place with a strap or a long hook.

All of the materials you need for pipe insulation, including faucet domes, pipe wraps, wire and other material, can be found at any home center or plumbing supply retailer, as well as hardware stores, discount stores and most lumber yards.

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