

Chapter Five

Home Ownership

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Introduction

THE RIGHT TO OWN PROPERTY is so deeply embedded in the American legal system that the Bill of Rights places the right to property on an equal level with the right to life and liberty. The Fifth Amendment to the Constitution declares that no one may deprive someone of life, liberty, or property without due process of law and prohibits the government from taking private property for public use without paying just compensation for it.

Owning property carries with it responsibility on the part of the homeowner. You may be able to hire someone to change a faucet washer, fix a broken windowpane, or cope with rising water in the basement, but there are some legal matters that you should understand to make sure your ownership is not jeopardized. This section covers a basic introduction to the law of home ownership, including rights and restrictions, title questions, financial issues, ownership options, liability and insurance, remodeling, working with contractors, and issues involving shared ownership in condominiums, cooperatives, and other common interest communities.

Property Rights and Restrictions

Q. What are my rights as a homeowner?

A. Generally, what you do with the home you own is up to you. You have a right to maintain or neglect, preserve or remodel, keep, sell or give away, and enjoy your home as you see fit. These rights, however, are limited by federal, state, and local laws and statutes. For example, under the federal Fair Housing Act, you may not discriminate when renting your property. In terms of local statutes, your home must conform to zoning and building codes in your municipality. If your garage is falling down and thus creating a potential hazard, the community may be able to force you to repair or raze it. Likewise, zoning codes may prevent you from adding a three-story addition.

Although the rights our society and the law afford to homeowners are extensive, they are not absolute. The people who live around you also have rights, so the law places certain restrictions on the use of your property. If you are not mindful of zoning, building codes, easements, water rights, and local ordinances on noise, you could find yourself in trouble.

Sidebar: Rights to Natural Resources

You may use, sell or restrict the use of your property's natural resources, from stands of timber on the surface to minerals lying beneath. Note, however, that because surface and underground water, oil, and gas move about without regard to property lines, you don't necessarily have the right to pump out as much as you want from a well on your property. Removing resources such as these is subject to state and federal regulation. For example, if there is a stream running through your land, in most states you cannot dam it up to the point where downstream neighbors do not get water.

Zoning Limitations

Q. How do zoning codes affect my property rights?

A. To avoid urban mishmash, municipalities often restrict business and industry to particular designated areas. Other areas are zoned residential, including apartment buildings, or zoned strictly for single-family homes. If your neighborhood is zoned residential, you won't have to worry about a pool hall or gas station going up next to your house, but it also means that there are certain restrictions on what you can do with your property.

Zoning laws vary among communities. While some municipalities mandate few if any zoning restrictions, others enforce very strict zoning laws, controlling such items as the maximum size of a dog house and the height of a fence. If you are planning to build any sort of addition or new structure, check with your local building department about zoning restrictions on your property. If you are still unsure, consult a lawyer.

Q. Can zoning codes prohibit me from running a business in my home?

A. A typical residential zoning law probably would not preclude you from operating a home-based business that would not alter the character of the neighborhood, such as telephone sales, freelance writing, or mail-order distribution. But if the home-based business will require signs and frequent traffic from customers, check with the local department of building and zoning before making any kind of investment. Also, be sure to ask about anything you must do to license your business.

Q. Is there a way to avoid zoning restrictions?

A. Most communities allow you to apply for a variance if you wish to make a minor change to your property that would violate zoning restrictions. Essentially, a variance is permission from the governing body to deviate from the zoning laws. The zoning department can provide materials explaining how to seek a variance. The steps may involve a public hearing, an appearance before the planning commission, and approval by the town governing board. It is up to you to show that the proposed change is required by a hardship caused by the shape, condition, or location of your property, and will not alter the character of the neighborhood or reduce neighboring property values.

If your plans call for a major change, you may apply for a zoning change. For example, if you live near the boundary of an area zoned commercial and you want to turn your 19th-century house into a doctor's office, you might be able to persuade the zoning authorities to extend the boundaries a bit. Again, you would have to show that the change would not hurt property values and convince your neighbors that it would not diminish their property rights.

Restrictive Covenants

Q. What are covenants?

A. Covenants, also called conditions, consist of private restrictions designed to maintain quality control over a neighborhood. A builder may draw up covenants affecting a new subdivision he or she is developing, although they also exist in older subdivisions. Covenants typically restrict such things as lot size, square footage, and architectural design; they also may prohibit satellite dishes, boats and motor homes, certain types of fences, and unsightly activities such as auto repair.

Q. How do covenants affect my property rights?

A. Covenants "run with the land," which means that they bind all future owners of the property unless all property owners in the affected subdivision join in releasing them. Covenants may restrict your use of your land even if municipal zoning laws permit the proposed use. You should have received a list of the covenants from your real estate agent when you bought your home. If not, a list should be available from any existing homeowner association. As with zoning codes, you may be able to negotiate a minor variance, such as building an addition slightly higher than the covenant's limit.

Note that covenants must comply with state and federal laws. Old covenants that prohibit homeowners from selling their homes to persons of certain races and religions are not enforceable.

Easements

Q. What is an easement?

A. An easement on your property indicates that someone else may have a right to use part of it for a specific purpose. A common example is a power company's easement to run a power line over your back yard. The developer normally establishes these types of easements when the subdivision is plotted or the house is built in order to provide utilities to the development.

Neighbors also may have an easement on your property, whether to use your driveway to get to their house (a positive easement) or one that restricts you from blocking their view of the lake (a negative easement). Or they might have a profit (short for the French term *profit a prendre*, which means "profit to be taken"), allowing them to remove something from your property such as raspberries, coal, or timber.

Q. How are easements created?

A. An easement or profit may be created by a deed, by a will, or by implication--such as if a previous owner divided a single lot in half and the only access to the back lot may be through the front one. Or, if a neighbor has been using your property in some way for a long time, such as by driving on your private road, he may be able to secure a prescriptive easement to continue doing so whether you want him to or not. Courts are willing to grant prescriptive easements when the neighbor has been engaging in the activity in question for a period of years that varies by state (usually between five and fifteen years) and the property owner has not physically stopped him, such as by erecting a locked gate. Oddly, one of the requirements for gaining a prescriptive easement is the property owner's objections--such as your telling him not to drive on your road over and over for years, without putting up a gate. The reasoning seems to be that if I give you permission to do something, you cannot claim it as a right.

Sidebar: Checking Out Easements

Easements are recorded at the county courthouse, but they may be scattered among various plats, deed books, and mortgage books. The best way to find out about them is through a professional title search, which most likely transpired if you obtained title insurance or an opinion of title before buying the house. If you discover an easement, check the wording. When a document grants an easement to a particular person, the restriction may cease when he or she dies or sells the property. But if it's granted to someone and "his heirs and assigns," it's probably in effect no matter who owns the property. Unless and until the easement expires, your legal obligation is to refrain from interfering with that right.

Other Restrictions**Q. What other restrictions might affect my property rights?**

A. If your home is listed on the National Register of Historic Places, other restrictions may exist. But generally, private owners are free to alter, add to, convert, or even demolish their home--even if it is on the historic places list. The only restriction if a home is listed is that no federally funded or federally licensed program may harm a home on the list without a hearing before a federal agency.

Some communities have their own historic preservation ordinances, which may affect what you can do to your property. In Marblehead, Massachusetts, for example, homes in the historic district are prohibited from exterior renovations without permission from a local committee.

Q. What about regulations on activities in my home?

A. The general rule is that activities in the privacy of your home are your own business with three exceptions: when your activities are illegal; when you are violating zoning codes, such as by running a prohibited business from your home; and when the activities make it difficult for other people to enjoy their own homes. Common sense dictates that if you mow your lawn at 4 a.m. or blast your stereo at midnight, you should not be surprised if someone calls the police. Local noise ordinances may restrict the hours in which you can conduct certain noisy activities.

Likewise, most activities that are illegal in public are also illegal in private--such as selling cocaine or serving alcohol to minors. Police generally need a search warrant to enter your home. To get a warrant they must show a judge "probable cause"--reasonable evidence that they are likely to find something illegal inside.

Safeguarding Property Rights

Title Insurance

Q. What is meant by the term "good title"?

A. Good title, also called "marketable title," means you legally own your home and have the authority to sell it. Traditionally, this was determined by a study of the public record to determine the chain of ownership back to the very beginning of the property, as well as any encumbrances such as liens on the property. This study is called an abstract, and some buyers, especially in rural areas, still rely on an abstract and a lawyer's opinion as to what it shows for evidence of title. But metropolitan mortgage lenders, who rarely know much about any specific property, have made abstracts obsolete by insisting on title insurance.

The chief problem with the abstract system is its lack of accountability. What happens if the abstract company or the lawyer issuing an opinion on the property fails to uncover a flaw in the title and it costs you, the new owner, a great deal of money? You could sue, but you'd have to prove that someone was negligent. With title insurance, the insurer agrees to pay covered claims whether anyone was negligent or not. Essentially it's a thorough search of the public record, just like abstract and opinion, but backed by insurance.

Q. How does title insurance work?

A. Title insurance is the opposite of your home's casualty and liability insurance, which repay you in case of injury or damage occurring after the effective date of the policy. Title insurance only covers matters that occurred before the policy's effective date, but were discovered later. Instead of having to pay premiums year after year to maintain the coverage, you only have to pay once to be covered as long as you own the property. Note, however, that many lenders insist on a new policy before refinancing, to make sure their new loans will have first priority. They want to know if you have taken out a second mortgage, obtained a home improvement loan, or been subject to a court judgment between the original mortgage and this one. (For more information about title insurance, see the ["Buying and Selling a Home"](#) chapter.)

Q. What's the difference between an owner's policy and a mortgagee policy?

A. The owner's policy covers losses or damages you suffer if the property really belongs to someone else, if there is a defect or encumbrance on the title, if the title is unmarketable, or if there is no access to the land. The latter could occur, for example, if you would have to cross a private road to get home and the owner of the road refuses permission. The lender's mortgagee policy includes all four of these protections. But it protects only the lender (although the owner is protected indirectly if the home is lost since the loan is paid off and the owner's personal liability is limited). Particularly important policy clauses for the lender are the ones that cover losses the lender would suffer if another creditor were first in line. Owner's policies are more expensive, and in fact, if the same insurer issues both, the concurrent mortgagee policy will probably cost far less--in part because the insurer doesn't have to search the records twice. The limit of the owner's policy is typically the market value of the house at the time of the purchase, while the mortgagee policy is for the amount of the mortgage. The premium is based on the amount of coverage, and may vary greatly by state. If you are refinancing, your new title insurer will probably rely on the work of the individual or company who did a title search when you bought the home. If you provide the prior policy as evidence of a good title, the new insurer will simply bring it up to date by checking what you have done to

affect it, such as loans or partial sales. If a big problem surfaces that the original title insurer should have caught, the second insurer may go after the first to cover the claim. Likewise, if you have an abstract, the insurer may bring it up to date and base the policy on that. Contact a lawyer if you have questions about your title policy.

Sidebar: WHAT ISN'T COVERED BY TITLE INSURANCE

Title insurance policies are standard in most states, although the forms may vary somewhat from state to state. An owner's policy usually does not cover one or more of the following matters (often referred to as standard exceptions), unless, in most states, an additional premium is paid and the necessary evidence is furnished to the title company. (In some states all you have to do is ask to eliminate the standard exceptions, and furnish appropriate information.) When the evidence is furnished and the insurance coverage is given, this is frequently referred to as extended coverage. The standard exceptions are:

- claims of people who turn out to be living in the house (such as the prior owner's tenants or someone living without your knowledge in your lake cabin) if their presence there is not a matter of public record;
- boundary line disputes;
- easements or claims of easements not shown by public records
- unrecorded mechanic's liens (claims against the property by unpaid home improvement contractors); and
- taxes or special assessments left off the public record.

(In addition, in much of the country, and particularly in the western states, mineral and/or water rights are a standard exception.)

Other important exclusions from coverage include zoning; environmental protection laws; matters arising after the effective date of the policy; subdivision regulations, building codes and the effect of any violation of these rules; matters known to be created, suffered or assumed by the insured; and matters not shown in the public records and not disclosed to the insurer. Exclusions need to be removed by special endorsements and probably will result in additional premiums. As noted, title insurers will also list as a special exception anything they find that might turn into a claim, whether it be this year's property taxes or the power company's easement across the property, even in a policy "without exceptions." Check your current policy to see what's on the list, in case there's anything you should be concerned about.

Ownership Options**Q. How does the deed affect property ownership?**

A. The ownership description on the deed has long-term significance--both in the duration of the title and whether you are free to transfer your interest to someone else. Today, the most common form of ownership is "fee simple." (The term "fee simple" comes from feudal England, where a noble landholder would grant an estate, called a fee, to a faithful subject in exchange for service or money. If the lord intended for the tenant to be able to keep the estate in the family after he died, he would include the phrase "and his heirs" in the legal document. That's still the phrase to include on a deed if the owner is to hold the property in fee simple, able to sell it or bequeath it).

Fee simple is the most complete form of ownership, because, in theory, title in fee simple is valid forever. People who own property in fee simple may sell it, rent it out, transfer it to their beneficiaries, and to some extent limit its use in the future. Under some of the older forms of ownership, such as an "estate for years," the title reverts to the former owner at some specified time.

While it is still possible to transfer property as a life estate, it is rarely done because it severely restricts the new owner's ability to sell the property. A life estate, for example, would allow owner A to bequeath or give the house to B, perhaps his wife, until she dies, then to C, their child. Owner B could not sell the house, but only has the right to live in it. People used to create a life estate to lower estate taxes, but today most people would prefer the flexibility of a trust to gain the same end. Sometimes people use a life estate to give title to a descendant who may better qualify for financing, while retaining an assured roof over their head.

The way in which your deed lists ownership has critical long-term implications, including who can transfer interests to someone else, how much of the property is available to one owner's creditors, whether the property goes through probate when one party dies, and whether the surviving owner faces a tax on any capital gain when it is time to sell. Couples who have children from previous marriages may want their home equity transferred to their children at death rather than to their spouses. It is important to think about what you want the deed to accomplish, because depending on your state law, at least four ownership options are available--sole ownership, joint tenants, tenants in common, and tenants in partnership. In some states, married couples also may opt for tenants by the entirety. (For more on these topics, see the chapters on [buying and selling a home](#) and [wills and estate planning](#).)

Q. What is the most common form of ownership?

A. For couples, whether or not married, joint tenancy is the most common form of ownership. Under joint tenancy, each person owns an undivided interest in the real estate. At the death of one joint tenant, the interest of the decedent, by operation of law, is immediately transferred to the surviving owner, who becomes the sole owner of the property. When property is held in joint tenancy, the beneficiaries of a deceased joint tenant have no claim to the property, even if the deceased mistakenly tried to leave the property to them. Most couples choose this form of ownership to avoid having their home involved in probate.

Tenancy by the entirety operates similarly but requires that the tenants be spouses and the property is their homestead. This form of ownership is not recognized by some states. Consult an attorney to determine the form of ownership most advantageous to you.

Q. What is a tenancy in common?

A. Tenancy in common gives each owner separate legal title to an undivided interest in the property. This allows the owners the right to sell, mortgage, or give away their own interests in the property, subject to the continuing interests of the other owners. When one owner dies, the interest in the property does not go to the other owners. Instead, it transfers to the decedent's estate. This might be an appropriate form of ownership for those who want their beneficiaries, rather than the other owners, to inherit their interest in the property.

Q. What's the difference between joint tenants and tenants in common?

A. Two or more people who own a home as joint tenants or as tenants in common are each considered the owner of an undivided interest in the whole property. That is, if there are two owners, each owns half, but not a specific half such as the north half. If there is a court judgment against one owner, the creditor may wind up owning that person's interest in the house. In some states, an owner may sell his or her interest to someone else whether or not the other owner approves. Such a sale ends a joint tenancy, so the new owner becomes a tenant in common with the remaining original owner(s). (The arrangement is complex if, say, A, B, and C own a house as joint tenants and A sells her interest to D. B and C are still joint tenants with respect to two-thirds of the property, but tenants in common with respect to D's third.)

The chief difference between joint tenants and tenants in common is the "right of survivorship." If one joint tenant dies, the property automatically belongs to the other owner or owners, avoiding probate. If three people own it and one dies, the other two automatically each own half. If the owners are tenants in common, the other owners have no rights of survivorship--they would inherit the deceased's interest in the property only if it was specified in his or her will.

Q. How do you stipulate that you are joint tenants?

A. The deed must specify that the property is held as joint tenants. The usual language for this is "Mary Smith and Amy Smith, as joint tenants with right of survivorship and not as tenants in common." That way if there is a question, say from Mary Smith's children who think they should inherit her half-interest in the property, the intent of the owners will be clear.

It is especially important to specify joint tenancy on the deed. Otherwise the law assumes that the owners are tenants in common (except, in some states, where their ownership constitutes tenancy by the entirety if they are married to each other, as explained below).

Sidebar: DOES OWNING A HOME AFFECT YOUR ESTATE

Ownership in a property could very well affect your estate, depending on its terms and the type of ownership you have in the home. For example, if you are a joint tenant, your home will pass directly to your joint tenant and will not be a part of your estate. As you acquire equity in your home, your estate could be vulnerable to federal estate tax or state inheritance tax if the equity along with your other assets exceeds certain statutorily established sums. If you do not have a will, you should consider preparing one now that you own a home. (For more details, see the chapter on [estate planning](#).)

Q. What is tenancy by the entirety?

A. If the co-owners are married to each other, at least one other option may be available, depending on their state law. The other form is for married couples to share ownership as a "tenancy by the entirety." Its roots lie in the common-law concept that a husband and wife are one legal entity. As with a joint tenancy, this form bears a right of survivorship; if one spouse dies, the other automatically owns the property.

In most states that still recognize this form, a husband and wife who purchase property together are considered tenants by the entirety unless the deed very specifically states that they are tenants in common (or joint tenants) and not tenants by the entirety. Otherwise, a deed saying "to John Smith and Mary Smith, his wife," creates a tenancy by the entirety.

What if one spouse wants to transfer a half interest to someone else during the marriage? The ability to do so depends on where the couple live. In most states that recognize tenancy by the entirety, the property can be sold only if both spouses sign the deed, indicating that each is selling one-half interest. However, in some states either spouse may transfer his or her interest--including the right to survivorship. Therefore, it is important to know what law applies in your state.

Q. In what states are these various options available?

A. Sole ownership, joint tenancy, and tenancy in common are available in all states, though certain specific details of ownership may vary by state. Tenancy by the entirety is available in about 40 percent of the states, most of them in the eastern half of the country. See the next answer for the community property states.

Q. Are there any special considerations if you live in a community property state?

A. Ten states—Alaska, Wisconsin, Louisiana, Texas, New Mexico, Arizona, Idaho, Nevada, Washington, and California--plus Puerto Rico have adopted a different concept of the relationship of husband and wife, which is rooted in Spanish law. These states consider any property acquired during a marriage, except by gift or inheritance, to be "community property." Each spouse owns half of the community property. Each may transfer his or her interest without the other's signature. But there's no right of survivorship; when one spouse dies, half of the couple's property--including half of the house--goes through probate.

If you live in a community property state, the law assumes that the house that you acquired during the marriage by the efforts of either spouse is community property unless you specifically say otherwise in the deed. Both husband and wife must sign to transfer the property to someone else.

Q. Which form of ownership is best?

A. That depends on your circumstances. You or your spouse may want to be able to bequeath half of your house to someone else. For example, if you are in a second marriage with children from the first, you will want to avoid joint tenancy with your spouse because your children could not inherit your interest. But if you want to avoid having the house

tied up in probate after one of you dies, joint tenancy might be a good idea. If you are married and have reason to expect creditors to come after your house, you may want the protection offered by a tenancy by the entirety, if available in your state, because property owned by both of you in that form generally isn't subject to a judgment against one spouse.

If you live in a community property state, be aware of two significant tax advantages of holding the house as community property rather than as a joint tenancy. The first advantage has to do with tax on capital gain, which is the difference between the selling price and the house's "basis," its cost when you took possession. If you hold the property as community property, when the surviving spouse inherits the whole, the property receives a new tax basis (called a "stepped-up" basis) which reflects its current value. The practical effect of this is to minimize capital gains taxes if the survivor sells it soon thereafter. Unless your profit on the sale is more than \$250,000 this may be irrelevant, because since 1997 tax law has allowed people to exclude the income from sale of their primary residence, up to \$250,000 per person or \$500,000 per couple, as many times as they wish as long as they've lived in the house at least two years.

Let's say the property was purchased initially for \$250,000 and is now worth \$600,000. Without the stepped-up basis you could owe capital gains taxes on \$100,000, which is the profit on the house less the surviving spouse's \$250,000 exclusion. With the stepped-up basis you would owe nothing if it sold for \$600,000. But if you hold it as joint tenants, only half an interest changes hands when one spouse dies, which means that only half the property gets a stepped-up basis.

The other tax advantage to community property involves estate taxes. Every American may bequeath up to \$1 million without paying federal estate taxes. (In some states, you still may be liable for state inheritance tax on lower amounts.) If you and your husband have more than \$1 million and hold all your property as joint tenants, it will not be part of your husband's estate when he dies. You will own all the jointly held property free of federal estate taxes. However, your estate has increased substantially, and since it exceeds the \$1 million exemption it will be subject to federal estate taxes when you die. If you live in a community property state, your husband's one-half share of the couple's community property is his estate. The portion passing to you as his spouse would not be subject to federal estate tax because of the marital deduction. The remaining portion of the estate, if it exceeds \$1 million, would be subject to tax.

Q. Should a married couple ever title their house in only one name?

A. One of the chief concerns when considering property ownership in a single name is liability for court judgments. For example, take the case of a house in the husband's name alone. Let's say he loses a lawsuit over a car accident and his insurance won't cover the judgment. Because the property is solely his, it could be sold to cover the judgment. (In twenty-two states some protection is offered through a homestead exemption, which allows families of two or more people to keep a small house to live in. But the maximum lot size and value are usually quite small; in one state, for example, it is a quarter acre and \$2,500 value.)

Some people might want to title the house in only one name precisely to avoid such judgments. For example, a doctor without malpractice insurance might want to deed the house to her husband. But consult an attorney about all the aspects of your situation, including tax and possible fraud implications, before making such a decision.

Sidebar: CHANGING THE FORM OF OWNERSHIP

It's fairly simple to take care of the paperwork of changing the form of ownership. Basically you sign a new deed and file it with the local recorder of deeds. But using the wrong deed or the wrong wording can result in serious consequences. Consult an experienced property lawyer to make sure you consider all the aspects of your situation and get it done correctly. A straightforward change will probably have a minimal cost.

Q. How does the form of ownership affect the property settlement in a divorce?

A. In about 90 percent of all divorces, the property is divided up by the parties themselves in out-of-court settlements, often with the help of lawyers and mediators. Husband and wife decide what is fair and reasonable in a process of give and take. In contested divorces, it's up to the judge to decide who gets what. Years ago, courts in most states had no authority to redistribute property in a divorce, so their job was to sort out the legal titles. Only jointly held property was subject to judicial division. But today courts are more concerned with what is fair than with whose name is on a deed. They consider a wide range of factors, from the length of the marriage to the needs of each party.

So who gets the house? If there are minor children, usually the home goes to the custodial parent. If there are other assets to divide, the non-custodial parent may get a bigger share of them to balance out loss of the home. If not, courts typically award possession of the house to the custodial parent until the children grow up. Then the house is to be sold and the proceeds divided between the parties. If neither party can afford to maintain the home, the court may order it sold promptly and the equity split.

Handling Property Constraints**Q. What is a lien?**

A. A lien, which dates back to English common law, is a claim to property for the satisfaction of a debt. If you refuse to pay the debt, whoever files the lien may ask a court to raise the money by foreclosing on your property and selling it, leaving you with the difference between the selling price and the amount of the lien. (Your mortgage lender, though, should be first in line for payment.) It is possible to lose a \$200,000 house over a \$5,000 lien, though any homeowner with a house of such value probably would find a way to satisfy the lien.

There are several types of liens, any of which creates a cloud on your title. For example, a "mechanic's lien" or "construction lien" can occur if contractors or subcontractors who worked on your house (or suppliers who have delivered materials) have not been paid. They may file a lien at the local recording office against your property. If the lien is not removed, it can lead to foreclosure or inhibit your ability to sell your home. Liens often are filed in connection with divorce decrees. If two homeowners divorce, the court often will grant one of them the right to remain in the house. When that owner sells it, however, the ex-spouse may be entitled to half the equity. The divorce decree would probably grant that spouse a lien on the property for that amount. If everything goes as it should, the ex-spouses will get the full payment of their respective shares at the closing.

Unfortunately, things don't always go as they should. Suppose the woman you bought your house from was subject to such a decree, but her ex-husband had given her a quit-claim deed to the property conveying ownership to her but not mentioning his lien. She might leave town with both halves of the equity--and the lien would stay with the property. The ex-spouse still has a right to extract his equity from the sale. In that case the title insurer may disclaim responsibility, because the lien was not filed in the land records; however, some courts have ruled that insurers cannot do that. When a divorce occurs, insurers are on notice that this problem could arise--they should check the divorce decree. The best protection for someone purchasing a house subject to a divorce decree is to have a lawyer examine all relevant documents to make sure this problem does not occur.

Likewise, if you bought a home with your spouse but later divorced, your own divorce decree might give your former spouse a lien on the home for half the proceeds. That lien can hinder your ability to sell the home if your former spouse refuses to release the lien. A careful divorce lawyer will build a release mechanism--such as an escrow containing the deed and release--into the divorce decree.

Q. Can a lien be filed for unpaid child support?

A. Many states impose a lien on the property of divorced parents who fail to pay child support. That lien would have to be paid off before the property could be sold.

Sidebar: REMOVING A LIEN

If you discover a lien on your property, see an attorney to determine the best course of action. If the lien is valid, and for an affordable amount, the advice might be to pay it and clear the title. However, just paying it off is not enough. Have the payee sign a release-of-lien form, and file it at the county (or "land title") recording office to clear the recorded title. You can then decide whether to pursue the person responsible. If the amount of the lien is major and you believe it is not your debt, consult with your attorney about what action to take.

Q. What is "adverse possession"?

A. Although you have a right to keep trespassers off your land, under the law it is possible for a trespasser who uses the property for many years to actually become the owner. This entitlement is called adverse possession. It is very unlikely to occur in an urban or suburban area, where lots are relatively small and homeowners know when someone else has been using their property continuously. But if you own an unvisited beach house or hunting cabin, you might not know that someone has been living there continually for years.

Adverse possession is similar to a prescriptive easement, where a court declares that, for example, your neighbor has a right to keep his hedge on a strip of your land because it has been there for forty years. The difference is that while prescriptive easements concern use of the land, adverse possession concerns actual ownership. For a claim of adverse possession to succeed, the trespasser must show that his occupation of your property was open and hostile, which means without permission. As with prescriptive easements, granting the person permission to use the property cancels his claim to ownership by adverse possession. The occupation must also have continued for a certain number of years, generally ten to twenty years but sometimes fewer, depending on the state. And in many states, the trespasser must have paid local property taxes on the land.

This last requirement provides a way to avert loss of a property through adverse possession. If you suspect that someone has been living in your hunting cabin, check the property tax records for that county to see whether anyone has made tax payments on it.

A bit of vigilance will prevent problems in this area. You should post "no trespassing" signs to warn people that this is private property. Erect gates at entry points and keep them locked. Ask trespassers to leave, and call the police if they refuse. If you suspect that someone will keep on using your property (such as for a road to obtain lake access) despite your efforts, consider granting written permission to keep on doing so, especially if the use doesn't interfere with your use. This will bar adverse possession, which requires that permission not have been granted. To make the arrangement clear, ask for a written acknowledgment, and, if reasonable, a fee or payment.

Q. What constitutes an encroachment?

A. An encroachment occurs when your neighbor's house, garage, swimming pool, or other permanent fixture stands partially on your property or hangs over it.

In the case of a neighbor's roof overhanging your property or his fence being two feet on your side of the line, your rights might be tied to the prominence of the encroachment and how long it has been in place. If it was open, visible, and permanent when you bought your home, you may have taken your property subject to that encroachment. The neighbor may have an implied easement on your property to continue using it in that manner. If the encroachment is less obvious, you may only discover it when you have a survey conducted for some other purpose. In that case, you might have a better chance of removing the encroachment.

A house addition could be an encroachment if it starts twenty-three feet back from the sidewalk and the local setback ordinance requires twenty-five feet. The neighbors could band together and sue you, hoping you would be forced to raze your addition. Or you might have to live with your neighbors' disapproval, perhaps after paying a fine to the city for the violation.

It is even possible to encroach on an easement, for example, by locating the apron of your swimming pool on the telephone company's easement across your property for underground cables. In that case, the company would have a right to dig up the concrete and charge you for it.

Q. What can you do about an encroachment?

A. First, demand that the neighbors remove the encroachment. If they refuse, you could file a quiet title lawsuit or ejection lawsuit and obtain a court order. Of course, this isn't the best if you wish to maintain neighborly feelings, especially if the fixture in question is merely the cornice of his house. Further, if prior owners of the neighboring property have used that bit of your land for quite a few years, your current neighbor could ask a court to declare a prescriptive easement to maintain the status quo.

Second, you can sell the strip of land to your neighbors. Perhaps you didn't know quite where the boundary line was anyway, so you might agree on a new one on your side of the encroachment and file it with the county recording office.

Third, you can grant written permission to use your land in that way. This maneuver can actually ward off a claim for prescriptive easement or adverse possession, because perfecting either of these claims requires showing that the use was open and hostile (without permission). If you like this neighbor but may not like those who follow, you might grant permission only as long as that neighbor owns the property. Your attorney could draw up a document granting permission and file it for you.

The primary question when someone has encroached slightly onto your property is how important it is to you. Typically, disputes over encroachments arise when discord is present among neighbors. If everyone is getting along fine, chances are you can live quite happily even though your neighbors' fence does creep onto your land.

Government Rights to Property

Q. Can the government force me to sell my property?

A. Since ancient times, governments have had the right to obtain private property for governmental purposes. In the United States, this power, called eminent domain, is limited by the Constitution's Bill of Rights, which grants people the right to due process of law and just compensation if deprived of their property. The federal government and individual states may delegate their condemnation power to municipalities, highway authorities, forest preserve districts, public utilities and others. These authorities may force the purchase of private land for public purposes, such as constructing a new freeway or expanding a school playground. The scope of government's activity has expanded so much in recent years that almost anything counts as a public purpose.

If the government wants your land, you may hear about it informally at a public hearing on the matter. The best approach at this time may be to rally the neighbors in hopes of influencing the authorities' plans. For example, the town might be persuaded to narrow the proposed road that would eat up some of your yard. Your first official notice will be a letter indicating interest in acquiring your property (or a portion of it) for a certain purpose. That's when informal negotiations should kick into high gear. With or without your consent, the government then has your property appraised and makes you an offer, called the "pro tanto award," which you may accept or refuse. If you accept it, the government may ask you to sign a document waiving your right to sue for more money. Some governmental units offer a bonus to entice people into accepting the pro tanto award, because it's cheaper than going to court. In a typical project, about 75 percent of the property owners accept the government's initial offer. The rest sue for more, but three-quarters of them settle the case before trial.

If you think the offer is too low, retain a lawyer experienced in eminent domain cases to negotiate for you and prepare your case for possible trial. If the case does go to trial, it's a battle of experts who testify to the value of the property, which is ultimately set by the jury.

Q. Can the government seize my property without paying me?

A. If you've been convicted a crime, the federal government can seize any property used in the crime, including your house. The property may then be sold and the proceeds used to further the government's crime-fighting efforts. So if you own a crack house, your arrest and conviction may lead not only to jail time but also to permanent loss of the house and your equity in it.

For those of us who steer clear of crime, the good news is that recent changes in federal law make it far less likely that the government will seize your property. From 1970 to early 2000, police who even suspected you of committing a crime such as drug dealing or terrorism could seize any property that might have been involved, whether it was a car, an airplane, a boat or a house. So if the tenant in your rental house was suspected of growing marijuana in the basement, the police could seize the house and sell it. It would be up to you to prove that your property should be returned. That law cost innocent property owners enormous litigation fees just to get their property back.

After a seven-year legislative battle over these civil forfeitures, Congress amended the law. Signed into law in May, 2000, the new law prohibits the government from confiscating property unless it can show "by a preponderance of the evidence" that the property is substantially connected to the crime. This is a much higher standard of proof than "probable cause." Property owners no longer have to post a bond in order to challenge a civil forfeiture, and they have more time to file the challenge. If a property owner successfully challenges the seizure in court, the government has to pay legal fees. And if the confiscation causes substantial hardship to the owner, the government just may release the property.

Under the new law, as long as you're staying away from crime, one thing you almost certainly don't have to worry about is the government seizing your property and selling it. To be on the safe side, avoid the appearance of criminal activity in your house and vehicles. And if your property should be seized, retain a knowledgeable, assertive lawyer as fast as you can.

Sidebar: FEES FOR EMINENT DOMAIN CASES

Some attorneys who specialize in eminent domain cases work on a contingency basis; their fee is a given percentage of the difference between the initial offer and the ultimate settlement. You might want to set up a fee arrangement where you pay a flat fee or hourly rate for initial review, negotiation, and counteroffer, then switch to a contingent fee if the matter turns into a lawsuit.

Liability Issues

Q. Am I responsible if someone has an accident in my home or on my property?

A. The question of legal responsibility hinges on whether your negligence or carelessness contributed to an accident or injury. Homeowners are liable only if a court finds them in some way negligent (though many settle before this point if they or their insurer believes that a court would find them negligent). For example, a homeowner might be considered

responsible if someone slips and falls on his icy sidewalk. Other common injuries and negligence suits involve power lawn mowers, swimming pools, boats, and other recreational vehicles. Most homeowners carry insurance, and the insurance company generally handles any claims against the homeowner. It is only when the insurer believes the claim is unreasonable that the matter is likely to land in court. Even then, the insurer will furnish the attorney and pay any damages awarded (up to the limit of the policy), along with court costs.

Still, facing a lawsuit and going to court is no fun. Lawsuits involve months of depositions, motions, and counter motions before the trial even gets started. Even after a verdict is rendered, a party may appeal and the battle could go on for years. As a homeowner, you are far better off both preventing injuries on your property in the first place and protecting yourself with a solid insurance policy in the event the unavoidable and unexpected does occur.

Q. Am I responsible for anyone who enters my property?

A. Historically, the law identified various categories of people who might be injured on your property, and the category of the injured party dictated the homeowner's duty of care. Although in a few jurisdictions a trespasser is still categorized separately from "lawful" visitors, the courts in most states hold property owners to the same standard with respect to everyone: a duty to employ reasonable care in maintaining your property and to warn people of hazards. This means, for example, that if you permit someone to pick gooseberries on your property, you are obliged to warn the berry picker that the local gun club is holding target practice nearby.

Generally, courts hold homeowners responsible only if they are in some way negligent. The law does not expect the homeowner to guarantee that someone visiting his or her house will not get hurt. But it is the homeowner's responsibility to take reasonable care to protect people from known hazards.

Sidebar: LIABILITY RISKS

Negligence is usually the basis of a liability suit. Take steps to avoid the conditions that would prove carelessness. Some examples of cases in which a court might find you negligent:

- failure to maintain your property or creation of a condition that may result in injury or damage to someone else's property;
- knowledge of a hazard and lack of intent to eliminate the hazard, erect barriers, or warn people who enter your property;
- lack of care in maintaining or creating hazards that might attract children;
- actions or inaction that might cause damage to your neighbors' property.

Q. What happens if someone is injured on my property and we are both at fault?

A. While your best defense to any charge of negligence is that you exercised due care, there are several other defenses available. In some cases, a jury may decide that although a homeowner was partially responsible for what happened, the person injured was also partially responsible. This is called "comparative or contributory negligence." For example, if you forget to tell your houseguest that you have just dug a pit in your back yard for the new septic system, and the guest decides to get a breath of fresh air and wander around in the back yard in total darkness, a jury might find both of you partly responsible for your guest's broken leg. In that case, the jury might reduce the amount of the damage award you might otherwise have to pay.

In other cases, the jury might decide to absolve you of any responsibility because of what the law calls "assumption of risk." For example, when a Georgia homeowner and his neighbor were trying to get rid of a nest of wasps, the neighbor climbed a ladder and sprayed the nest with insecticide. The wasps swarmed out, and the frightened neighbor fell off the ladder. When he sued the homeowner for the resulting injuries, the court ruled that the neighbor knew perfectly well that wasps tend to swarm, yet he assumed the risk. Accordingly, the homeowner was not liable.

Q. What is the difference between natural and artificial hazards?

A. Generally, courts do not hold homeowners liable for injuries stemming from natural hazards such as lakes and streams, even if a child is hurt, unless some other negligence is involved. Homeowners are more likely to be responsible if the hazard was created artificially. For example, a man who was pushing a child on a tree swing while attending a barbecue in New York stepped back onto a rotted plywood board covering a sewer trap, which gave way under his weight. A court found the homeowners liable because they knew about the danger and made it worse by hanging the swing where anyone pushing a child on it would have inevitably stepped on the rotted cover.

On the other hand, take the case of a Nebraska man who just finished shoveling snow off his driveway in the freezing mist. While he was inside getting some salt to finish the job, the mail carrier slipped and fell on the driveway. The mail carrier sued, but the court ruled the homeowner was blameless because he did not create the hazard and was doing his best to eliminate it.

Q. What about liability in regard to children?

A. The law concerning a property owner's responsibility for children, even when they are trespassing, has changed over the years. In 1901, when a five-year-old drowned after falling into a water-filled uncovered excavation, the court ruled that because the child was a trespasser and the property owners didn't know there were children around the pit, they weren't liable. Even then, however, another legal doctrine was evolving, stemming from injuries caused to children playing on railroad turntables left unsecured in areas frequented by the public. In a series of late nineteenth-century cases involving such injuries, the courts found the railroads negligent. The courts ruled that some dangerous places look like such fun that landowners should expect children to come play.

The law calls these "attractive nuisances." Even though an uninvited child wandering into your yard to inspect the swimming pool might well be a trespasser, the law says you have a special duty to erect barriers to protect children from harm's way. That's why the Supreme Court of Georgia recently refused to dismiss a case against the owners of a swimming pool where a two-year-old drowned. The swimming pool was in the side yard of their home on a corner lot, three blocks from an elementary school. The yard and

swimming pool were not fenced in, and the pool had both a diving board and playground-type slide.

Another case involved a Michigan family that stopped at a private home to buy raspberries. While the adults were talking, two preschool boys wandered into the garage, where they found a loaded gun and one boy shot the other. The court ruled that although homeowners cannot be expected to make their homes childproof, those who have reason to expect children to come around--such as the couple who sold raspberries from their home--should expect children to act on childish impulses and should take steps to protect them.

The message is clear: If there is a way in, the child may find it and may get injured and you may be liable. That is why precautions such as fences, locked gates, and swimming pool covers--and good liability insurance--are so important.

Q. Am I responsible for damage caused by my children?

A. As a rule, parents are liable for injury and damage caused by their minor children (eighteen years of age and younger). Usually, such damage caused by children thirteen or under will be covered by your homeowner's policy. In many homeowner's policies, damage and injury are not covered if the children are older than thirteen and intentionally cause the damage or injury. The best way to avoid liability is to teach your children to respect other people and their property.

Sidebar: RECREATIONAL USE OF PROPERTY

If you own a lot of land and allow someone to use it free of charge for hunting, fishing, skiing, or some other recreational activity, you are probably not liable if the person gets hurt. In the 1970s, virtually all states enacted "recreational use statutes," designed to encourage people to open their land for recreational use without fear of liability. The statutes do not protect you if you charge a fee or if you're malicious in your failure to warn of hazards. For more information about such statutes in your area, contact a local attorney.

Q. If I host a party in my house, am I liable for my guests' actions?

A. Some courts have ruled that a host is not responsible for the conduct of guests, unless your parties routinely turn into brawls. Likewise, if one of your guests is horsing around and hurts himself, you probably will not be liable. But you might be liable if you let your guest drink too much, then put him into his car and send him out on the highway. That is what happened in a landmark New Jersey case, where the homeowners had been drinking whiskey for a couple of hours with one of the husband's subcontractors. They walked him to his car, saw him off, and called shortly to see if he'd made it home. He had not. Thoroughly drunk, he was in a head-on collision in which a woman was seriously hurt. The case went to the state Supreme Court, which held the hosts liable. It is a lesson worth remembering. Host liquor liability insurance policies are available.

Q. What about liability concerning my pets?

A. The law holds people responsible for the actions of their pets. Most states have so-called "dog-bite statutes," holding owners legally liable for injuries inflicted by their animals. If your state has no such statute, you may still be found liable under the common-law rule that owners are legally responsible if they knew the animal was likely to cause that kind of injury. You may also be found liable if you violated a leash law or a requirement to keep your pets fenced.

Many states and municipalities also have enacted "vicious dog statutes," which enable an animal control officer or a judge to declare a particular dog or specific breed of dog vicious and require the owner to confine the dog securely or muzzle it in public. Some states make it illegal even to own a breed of dog that has been declared vicious. Some cities have imposed an outright ban on all pit bulls, which they consider inherently vicious. Many jurisdictions ban wild animals such as wolves, bears, and dangerous snakes from being kept as pets.

If you own a dog or another animal that might injure someone, call your locality's animal control office to find out the laws in your area. Know your pet's temperament and keep it out of the path of strangers. Keep vaccinations current, and post warning signs if you think your pet might injure someone. These signs should be prominent and straightforward, such as "Beware of Dog," so people are clearly informed of the danger involved. However, the signs may not absolve you from liability if a child climbs into the yard and the dog gets out.

Q. Can I be held liable if my tree falls on my neighbor's house?

A. Traditionally, property owners were not responsible for damage caused by falling tree limbs and other natural occurrences on their property. However, they were responsible for damage caused by artificial conditions, such as a loose board from your lumber pile being carried by the wind through your neighbor's plate glass window. The current trend suggests that the courts are applying an ordinary standard of care to measure negligence in both cases. This means that maintaining your property in good condition is an important protection against a negligence suit.

For example, if your trees have visible rot, you should cut them down or trim rotted limbs before they can fall on your neighbor's property. Trees should be maintained well enough that, short of a tornado or hurricane, the wind won't blow things from your place over to your neighbor's.

If you excavate near the property line and cause your neighbors' land to sink, you may be liable whether or not their house is affected. Check with a civil or geological engineer if you think you have reason to be concerned. Your builder or contractor will know of one, or you can find one yourself through the Yellow Pages.

Similarly, if changes you make to the contours of your land cause excess rain water to pour onto your neighbor's property and result in damage, you may be liable. If you are planning to change the contours of your land, ask an attorney or your local building inspector about your state law.

Q. Are there other areas to be concerned about liability?

A. Basically, if you're acting reasonably and responsibly, maintaining your property and carrying homeowner's insurance, you shouldn't fret about liability. If you're planning any changes to your property, however, you should investigate local laws to ensure that any changes will not violate them. The following areas can hold special concern:

- **Waterfront areas.** If you live along a river or stream, state and local laws designed to protect wildlife habitats may preclude your clearing brush or changing the lay of the land. Do not act without checking with your department of conservation, natural resources, or wildlife, usually located in the state capital.
- **Pollution.** You could be liable for the cost of cleaning up pollution stemming from underground oil tanks or old dump sites on your property, whether or not you caused the problem in the first place. Look into this before you buy a piece of property, because there is not much you can do about it afterward. Ask the seller if there are any such problems, and have your attorney include a clause in your purchase agreement that covers you in the event such problems arise. If there is special concern because of the unique nature of the property, you might even consider hiring an environmental consultant.
- **Wetlands.** Federal laws govern the draining and filling of wetlands. If you have places on your property that are boggy even part of the year, avoid serious legal trouble by finding out what your responsibilities are before making changes. You might start with your state's department of environmental protection, probably located in the state capital. The federal Office of Wetlands Protection-- <http://www.epa.gov/OWOW/>; e-mail Email: OW-General@epamail.epa.gov --in Washington, D.C., also might be able to help.
- **Utility lines.** As a rule you are not liable for maintenance of utility lines crossing your property, but to be safe don't do anything to cause potential damage to them, such as planting fast-growing trees under them.

Q. What should I do if someone is injured on my property?

A. First and foremost, do all you can to help--express concern, ask what injuries might have been suffered, make the victim as comfortable as possible, call for medical assistance, etc. Do not, however, say anything to suggest or admit guilt or negligence. While it is natural to empathize with the injured party and want to soothe any pain and suffering, as well as your own feelings of guilt, it is not a good idea to complicate your potential liability with such statements. Rather, leave it up to the law to decide who was responsible.

Notify your insurer in writing (and speak to your attorney) as soon as possible. Do not talk with the other party or their attorney about liability until you have taken these steps. You may well decide later to offer to defray some medical bills of the injured party, but do this after you have had the chance to review the situation with a clearer head and the appropriate parties.

There is one other situation where the law requires you to act. If someone has been hurt on your property or is in danger, you may have a legal duty to offer humanitarian aid even though you had nothing at all to do with the injury. For example, a Minnesota cattle buyer became severely ill while inspecting a farmer's cattle. A court later ruled that the farmer had a duty not to send the man, who was helpless and fainting, out on the road alone on a cold winter night.

Sidebar: A CHECKLIST FOR A SAFE HOME

- Repair steps and railings.
- Cover holes.
- Fix uneven walkways.
- Install adequate lighting.
- Clear walkways of ice and snow as soon as possible.
- Be sure children do not leave toys on steps and sidewalks.
- Replace throw rugs that slip or bunch up.
- Reroute extension cords that stretch across traffic lanes.
- Repair frayed electrical cords.
- Keep poisons and other hazards out of the reach of children, even if you don't have children.
- Warn guests about icy conditions and other hazards.
- Restrain your pet.
- Erect barriers to your swimming pool; an automatic pool cover or a tall fence with a good lock that you lock, and an alarm on any door leading to the pool.
- Remove all guns or keep them securely locked and out of sight, where children cannot see them or gain access to them.
- Remove nails from stored lumber; secure any lumber piles.
- Don't leave ladders standing against the side of the house or garage.
- Don't let children stand nearby when you mow the lawn.
- Don't let your guests drink and drive or drive under the influence of drugs.

Liability Insurance

Q. What is liability insurance?

A. The liability portion of your homeowner's policy is designed to cover unintentional injuries on the premises and unintentional damage to other people's property. In other words, injuries caused by your negligence are covered; those you inflict on purpose are not covered. Given your potential liability as a homeowner, you are asking for trouble if you do not carry adequate liability insurance. It takes only one person who is seriously injured by your negligence to generate a huge liability award and deplete your financial nest egg, not to mention your psychological well being.

Q. What kind of liability coverage is provided by a typical homeowner's policy?

A. A typical homeowner's policy includes \$100,000 of liability insurance, which won't go far if someone is severely injured. For a slight increase in premium you can raise that to \$300,000 to \$500,000, and some companies offer coverage of \$1 million or more. Typically, coverage includes harm caused by your children and pets, except intentional harm if the child is over thirteen. If your pet attacks people routinely, the insurer may cancel your policy or refuse to renew it.

Most standard homeowner's policies **do not** cover:

- employees and clients of your home-based business, including the children in your home-based day care if you take in more than three children and have no special endorsement;
- claims by one member of the household against another;
- any disease you pass on to someone.

Sidebar: WORKERS' COMPENSATION

If you have a home-based business that involves people coming to your house, be sure to obtain a separate business rider. Also, if you have a swimming pool or other special hazard, check the policy provisions to make sure you're covered. If you have domestic employees, even part-time help such as nannies, you may be required to carry worker's compensation insurance, which costs a little more than \$100 per year. Worker's compensation sets limits on awards; if you don't have it, you could have to pay far larger damages, and there may be civil and criminal penalties if you don't carry it. Contractors working on your house should already have workers' compensation for their employees. You should ask to see proof of such coverage, and don't hire them if they don't produce sufficient verification or don't have adequate coverage.

Q. What is an "umbrella" liability policy?

A. An umbrella liability policy, also called a "personal excess liability" policy, is designed to protect you in case of a big judgment that would quickly eat up your regular policy coverage. These policies are relatively inexpensive because the insurers are betting you'll never need to file a claim. Their coverage takes up where your home and auto policies leave off; thus you will need to have certain levels of basic home and auto liability insurance before you can qualify for an umbrella policy. Generally, these would be \$100,000 in liability coverage on your homeowner's policy and \$250,000/\$500,000 on your auto (\$250,000 per person, \$500,000 per accident; or sometimes \$300,000 in single-limit coverage)

You also have to meet certain eligibility requirements, such as owning no more than four cars. If you've been convicted for driving under the influence of alcohol in the past three years, you are not likely to get approved for coverage.

Some umbrella policies pay the deductible amount that isn't covered by basic policies. Others impose a deductible, called a "retained limit," in certain circumstances. For example, if your homeowner's policy doesn't cover slander or libel (most don't without a special endorsement), an umbrella policy with a retained limit might require you to pay the first \$250 of a judgment for slander. The other kind would pay from dollar one. Note that most umbrella policies don't cover injuries you cause with your motorcycle and certain watercraft, such as high-powered speedboats.

Your premium for the umbrella policy will be determined based on the number of houses, rental units and vehicles you own. If you have one house and two cars, a typical premium costs \$100-150 for \$1 million in coverage. You will get \$2 million in coverage for only about \$50-\$100 more in premium costs.

Sidebar: WHO NEEDS AN UMBRELLA POLICY

People usually determine their need for umbrella liability coverage not so much by how many hazards they have on their property as by the assets they have to protect. After all, the wealthier you are, the more you have to lose if someone is injured on your property. Some people buy \$5 million in coverage, and some even take out umbrellas over their umbrellas. Consult your insurance agent to help decide what type and amount of coverage is best for you.

Sidebar: IS YOUR HOME A FIRETRAP?

The majority of house fires are caused by improper maintenance or use of heat sources or electrical appliances, or careless use of smoking materials. Fatal fires occur most often when there is no functioning smoke alarm to wake everyone. So take a few precautions to avoid becoming another fire death statistic.

- Keep combustible materials away from your furnace, wood stove, or other heating device.
- Use the proper fuel for the appliance. For example, don't rekindle your wood stove or kerosene heater with gasoline.
- Check electrical cords and replace them if they're frayed.
- Periodically have an electrician check your wiring to make sure it is safe.
- Make sure matches, cigarette butts, and ashes are extinguished before you go to sleep.
- Install a smoke detector on each level of your home near the stairwell. Test them regularly to make sure the batteries are fresh.
- Teach everyone in your family how to escape safely in case of fire:

- Drop and crawl because the good air is near the floor, test doors for heat before opening them, and don't be afraid to break windows to get out.
- Arrange a meeting place outside so no one goes running back into a burning house to rescue someone who's already safely outside.

PROTECTING YOUR PROPERTY

Homeowner's Insurance

Q. What kind of homeowner's insurance do I need?

A. Broadly speaking, a homeowners' policy is a package deal designed to pay for the repair or replacement of your house and belongings, plus extra living expenses if, say, you and your family have to stay in a motel for several months while your home is being rebuilt. It also covers claims and legal judgments against you for injuries people suffer in your home or damage you cause. How much the insurer pays depends, of course, on the limits of your policy, which in turn depends on how much you've paid in premiums.

Although details of insurance policies vary among companies, the general forms of coverage are fairly standard. Many homeowners opt for an inexpensive "basic" policy, called HO-1 or HO-A, which provides actual cash value of your home and contents in case of loss due to specific causes, such as fire. This minimalist type of policy usually satisfies lenders, because they are interested only in your ability to repay the mortgage, not rebuild your house.

Many financial professionals recommend policies that provide at least 80 percent replacement value, rather than actual cash value, of your home in the event of damage from specific causes, such as fire and theft. These are called "broad" policies or HO-2 or HO-B. In most cases, you're better off with replacement value, because it usually costs more to replace it than its "market" or "cash" value. Note that "replacement cost" is estimated by the insurance agent, and for an additional small fee, guaranteed replacement cost coverage will protect you if your agent has underestimated the cost of replacing your home. Another way to guard against under-insurance is with an "inflation guard clause," which increases the face value of the policy either according to the annual increase in local construction costs or by a given percentage every three months. This rider can reduce the chances of your being under-insured, but it doesn't guarantee replacement cost.

For the best protection, a comprehensive or "all-risk" policy covers any kind of damage except specific exclusions, such as floods and earthquakes. Even with this type of policy, however, insurance for luxury items, jewelry, art, and antiques may require separate riders. If you live in a condo or cooperative, an HO-6 policy gives you coverage similar to HO-2. A few companies do offer all-risk coverage for condo and co-op owners. As with any other type of significant purchase, it pays to shop around.

Q. What isn't covered by a homeowner's insurance policy?

A. Most policies specifically exclude damage caused by floods and earthquakes, and some policies will exclude or limit theft in high crime areas. This doesn't mean that you can't purchase insurance for these threats; it simply means that you must pay for riders on your policy. Homeowner's policies also provide little if any coverage for home businesses. If you're operating a home business, check with your agent to see whether your business is adequately protected.

Q. Does homeowner's insurance cover natural disasters?

A. Not necessarily, because the differing nature of these perils is treated differently by the insurance industry. Consumers are often confused about what their homeowners' policy covers and what it doesn't. The following guide shows what coverage is available for specific types of disasters and how you get it:

Floods. Homeowner's policies absolutely exclude damage from flooding, except for a narrow range of cases such as a pipe or water tank bursting. You can't get an endorsement to cover it at any price; however, if your community is in a flood-prone area, you can probably buy a special policy as part of the National Flood Insurance Program, administered by private insurers and backed by the federal government. Any insurance agent can sell flood policies. Cost depends on what measures your community has taken to reduce the risk of flood damage. Until your community meets the standards of the federal flood-control program, only limited coverage is available: up to \$35,000 for a single-family house and \$10,000 for its contents, for a cost of about \$250 per year. Once the community meets the standards you can get up to \$185,000 for a single-family house and \$60,000 for its contents. The premiums depend on the structure of the house and how close it is to the river, but in a moderately flood-prone area, \$60,000 of coverage on a house and its contents might cost about \$150.

Earthquakes. The state of California requires insurance carriers to offer earthquake coverage to anyone in the state who carries one of their homeowners' policies. Usually it's an endorsement to the regular policy, expanding the coverage for a fee. But if a California policyholder decides not to buy or renew the endorsement, the carrier isn't obligated to give him or her a second chance. Of course, given the risk, earthquake endorsements in that part of the country don't come cheap. The annual premium on a \$100,000 house could be anywhere from \$150 to \$1,200, depending on the location of the house and the materials used in its construction. Brick houses, for example, would be at the high end of the spectrum. Deductibles on earthquake endorsements are usually 10 percent of the coverage for the structure and its contents, figured separately. In other parts of the country you can get earthquake endorsements, often for next to nothing--but most people don't because they don't expect to need them.

Tornadoes and hurricanes. Although standard homeowners' policies cover windstorms, you may need extra protection if you live in an area such as Florida or Texas that is especially prone to hurricanes or tornadoes. In these areas, standard coverage may not be available; you have to buy a special policy such as the beach and windstorm insurance plans available in seven Atlantic and Gulf Coast states. As with flood insurance, any licensed agent or broker in those states can sell it.

Volcanoes are specifically listed as a covered peril in standard homeowners' policies, so that's one natural disaster you don't have to worry about.

Q. How much does homeowner's insurance cost?

A. The cost of homeowner's insurance varies greatly with the policy coverage and the age, location, and replacement cost of your home. It pays to shop around for the cost of insurance premiums, but be sure that you are comparing similar, if not identical, coverage. Another way to reduce costs substantially is to opt for a high deductible, such as \$500 or \$1,000 if you can afford to pay this amount yourself in case of damage. You also may qualify for a discount if you've taken particular safety precautions such as installing deadbolt locks or cabling your mobile home to the ground. Ask your insurance agent what discounts are available and what you would need to do to qualify.

Sidebar: SHOPPING FOR INSURANCE

Whether you're buying your first policy or shopping for better price and coverage, begin by listing your possessions and estimates of their value. Get your house appraised, either by an insurance representative or an independent appraiser, to figure out what it would cost to rebuild at current prices. Note valuables that might require special coverage. Then take the following steps:

- Talk with several different agents about your insurance needs. Ask them to quote premium costs with higher and lower deductibles. Compare costs and coverage. Check the reputation of the companies you're considering. Rating services such as A.M. Best & Co. (<http://www.ambest.com/>), Moody's Investor Services (<http://www.moody.com>), Standard & Poor's Corporation (<http://www.standardandpoors.com/ratings/>), and Duff & Phelps (www.dcrco.com) study companies' financial stability and ability to pay claims. A general site-- <http://www.insure.com/ratings/.html>-- provides much useful information. Your insurance agent should have the latest ratings for the companies he or she works with.
- Ask your agent to help you interpret the ratings scales, which vary between the services and can be confusing. You want to be reasonably sure your insurer will be able to pay your claim.
- Watch out for policies that limit recovery on personal possession to "four times the actual cash value." This could mean you would get less than you need to replace your old furniture and drapes.
- Avoid policies that limit reimbursements to what the insurance company would be able to pay for a given item, because the company could probably buy it wholesale.
- Keep your agent informed of additions to your house and major purchases that might affect the level of coverage you need.
- Periodically review your coverage to make sure you're adequately insured.

Q. What should I do if I need to file a claim?

A. The claims process for theft or damage to your home or its contents is fairly basic, but it will go more smoothly if you have taken inventory of your possessions and their worth ahead of time. In case of theft, first call the police. Then call your agent or company immediately. Ask whether you are covered for the situation, whether the claim exceeds your deductible, how long it will take to process the claim, and whether you will need estimates for repairs. Follow up your call with a written explanation of what happened. If you need to make temporary repairs to secure your home or protect it from the elements,

keep track of expenses, but don't make permanent repairs until the adjuster has inspected the damage.

Sidebar: TAKING INVENTORY

Although you don't need a detailed inventory to buy insurance, and you can eventually get a sizable check from the insurance company without one, the claims adjusting process goes a lot more smoothly if you have clear, accurate records. The time-honored method is to fill in a "household inventory" booklet available from your agent, recording purchase dates of furniture, equipment, and valuables and estimating replacement costs. It helps to attach bills of sale, canceled checks, or appraisal records. The more detail you can include, the better.

Another option is to use a computer software package designed to categorize records of personal possessions and make it easy to update them. Some of these programs can print out the records room by room, in case of partial damage to your house.

For a visual record, consider either photographs or a videotaped tour of your house, complete with commentary. Include the insides of closets and cabinets, and take close-ups of computers, jewelry and other valuables.

Send a copy of your inventory to your attorney, store it in a safe-deposit box, or leave it with a friend, but be sure to have a back-up in a safe place.

Q. What can you do if you have a problem with your insurance company?

A. If you're dissatisfied with the way your adjuster handles your claim, first talk to your agent. If that doesn't help, call the company's consumer affairs department. Then try the National Insurance Consumer Helpline (1-800-942-4242; fax 212-791-1807), which might be able to suggest a course of action. Finally, you could call your state's insurance department to complain and ask for help. If these approaches do not bring a satisfactory settlement, consider hiring your own, independent adjuster for an independent appraisal of your damage. You'll have to pay a fee of 10 to 15 percent of your final settlement. Check with your state insurance department, though, to find out whether public adjusters have to be licensed in your state. Don't do business with someone who comes to your door after a loss, claiming to be an adjuster; there are scam artists out there eager to take advantage of your misfortune.

If necessary, you could insist on arbitration of the dispute with your insurance carrier. An independent arbitrator selected by the attorneys for both sides will hear the arguments and decide what compensation you're entitled to. For the name of an arbitration organization near you, contact Arbitration Forums, 3350 Buschwood Park Drive, Suite 295, Tampa, FL 33618, 1-888-272-3453, Fax: (813)931-4618 (website: <http://www.arbfile.com/>) or the American Arbitration Association, 335 Madison Avenue, Floor 10, New York, New York 10017-4605, 212-716-5800, Fax: 212-716-5905, 800-778-7879 Customer Service (website: <http://www.adr.org>).

For disputes involving just a few thousand dollars, it's probably cheaper to present your own case in small claims court.

Security Issues**Q. What should you do if there is an intruder in the house?**

A. Everyone's afraid of finding someone in the house at night. If it happens, avoid a confrontation--your life is more important than your possessions. If possible, run away and call the police. If you can't get yourself and your family out of the house, lock yourselves in a room. If you're face to face with an intruder, stay calm and be cooperative.

What about self defense? You do have a legal right to protect yourself and your property, but recognize that you may end up in court if you shoot an intruder or whack him over the head with an iron pipe. You would have to argue that you really did act in self-defense or in defense of your property, and it would be up to the jury to decide whether or not to believe you.

Basically, the law says that you can use reasonable force to defend yourself if you're being attacked or if you have a reasonable belief that you will be attacked. That is, you don't have to wait until the intruder is actually coming at you with a knife. The key word here is "reasonable"; the jury would have to decide whether a reasonable person would have thought that a toy gun was real or that a hand going into the pocket was reaching for a weapon.

Q. What is considered "reasonable force"?

A. States vary widely on what they consider "reasonable force." In general, if you use force against an intruder, use no more than appears necessary. That is, if a shout sends the burglar running, don't pull a gun and shoot him in the back. If a single blow stops a burglar in his tracks, don't beat him to a pulp. If the intruder isn't threatening bodily harm to someone in the house, you're on shaky ground if you use deadly force. Some courts have held that a homeowner who could retreat safely isn't justified in beating or killing the intruder. Likewise, courts have held that a homeowner isn't justified in attacking a burglar if it appears that a shout or warning would be enough.

What about booby-trapping your home to keep burglars out? Despite the popularity of the movie "Home Alone," people have gotten into serious legal trouble for that sort of thing. Even if you're fed up with repeated break-ins, you can't set up a gun rigged to shoot anyone who comes through the window. First, it's not up to you to impose a death sentence on someone who might try to break in, and second, the next person through the window might be a firefighter trying to save you.

Sidebar: A CHECKLIST ON HOME SECURITY

How easy would it be for a crook to get into your home? Experts advise homeowners to begin by looking at their home as a burglar might. Identify the easiest place to get in and make it harder.

- Are there exterior lights on the front and back sides?
- Are there shrubs around your doors and windows that a burglar could use for cover? Better trim them.
- Do you have a privacy fence that could provide burglars with too much privacy?
- Do you have deadbolt locks on your doors? Do you keep them locked, even if you're out working in the yard?
- Are your doors solid, at least 1 1/4 inch thick, and do they fit snugly in the frame?
- Have you put in a specially designed lock for your sliding glass door? Could a burglar slide a window open from the outside and climb in? If you have double-hung windows, a removable nail pinning the upper and lower halves together is quite effective.
- Should you consider grates for your street-level windows? (Be aware that they can trap you inside in case of fire.)
- Would an alarm go off if an intruder stepped inside? Burglars hate noise.
- A sticker on your window declaring you have an alarm system may be enough to scare off some would-be intruders (whether you actually have an alarm system or not).
- Do you ever leave your house keys with your car keys when you have your car parked? Do you carry house keys on a key ring with a name and address tag? Do you hide a key in a secret place outside your home? Burglars know where to look.
- When you go on vacation, could strangers tell you're gone? Don't let mail and newspapers pile up outside, and make sure your lawn stays mowed and your walks stay shoveled. Use automatic timers for lights and a radio, and leave your blinds open in their usual position

Q. Does the law prohibit me from destroying wild animals on my property?

A. It depends on the animal. Many states allow killing of gophers, rattlesnakes, and coyotes without a permit, but most states impose hefty fines for killing other wild animals without a permit. Your state department of fish and wildlife has jurisdiction over wild animals, and a call to the nearest office will probably get you some advice. In some cases it isn't difficult to deter an invading animal. An eight-foot-high fence will stop most deer, and dried blood, as well as commercial mixtures, appears to repel rabbits. Storing trash so that it is not accessible to raccoons quickly forces these very smart (and often rabid) animals to find new stomping grounds.

It is true, however, that some animals are difficult to deter. Farmers lose thousands of dollars of crops to deer, pronghorns, and other graceful neighbors. In the West, ranchers cope with marauding bears and coyotes. Many states assist farmers with reducing the damage, and some reimburse farmers and ranchers for wildlife damage. Note that in most cases reimbursement programs, which are funded by hunting license fees, aren't open to farmers who bar hunters from their land.

Environmental Hazards

Q. What kinds of environmental hazards should I be concerned about?

A. A home can look and smell fine, yet have deadly lead dust in the air, cancer-causing radon in the basement, or an underground oil tank leaching oil into the water table. Although toxic waste regulations apply to homeowners in much the same way as they apply to businesses, no laws require asbestos, lead, and other contaminants to be removed from owner-occupied residences. It's a matter of health and safety for you and your family.

Q. How do I determine if there's an environmental problem in my home?

A. In some cases, you may find out about a problem accidentally, such as when a painter points out lead-based paint on your woodwork or a remodeling contractor finds asbestos around the furnace and won't proceed until it's removed. You might learn about lead the hard way when your children can't think straight, or about contaminated water when the whole family gets sick. Health problems from asbestos or radon, however, wouldn't show up for another thirty years. The only way to discover and correct the problem may be to hire an expert to conduct the right tests.

In a growing number of states, sellers are required by law to inform potential buyers of knowledge about asbestos or other toxic substances in the house. Then it's up to the buyer and seller to work out who's responsible for dealing with it. The seller might lower the price to compensate the buyer for having to cope with the problem. In other states, the general rule is "buyer beware." A seller can't set out to misrepresent or hide the condition or lie if asked, but there's no obligation to disclose the problem. These days, though, home buyers often make the offer contingent on a satisfactory result of testing. Regular home inspectors aren't usually qualified to test for lead or radon, so getting an accurate test would require hiring a qualified specialist.

If you intend to test for radon, asbestos, lead, or other household toxins, be careful about who you hire to test and deal with it. For example, people claiming to be asbestos consultants and contractors may find asbestos and try to convince you that it must be removed right away, even though the proper treatment for asbestos in many cases is to leave it in place. Then they'll remove it unnecessarily, which is a waste of money, and do so improperly, which can increase the health risk. To avoid such scams, do some research on the nature of each home toxin, and find out what services are available and what procedures and precautions the job involves to be done correctly. For names of licensed professionals in your area, check state or local health departments or Environmental Protection Agency (EPA) regional offices (EPA website: <http://www.epa.gov/htm>). As with any home improvements contractor, ask for references from previous clients, make sure the contractor has done similar projects, and get estimates from more than one. (See the "[Home Improvement and Repairs](#)" section later in this chapter for information on hiring contractors.)

Q. What is asbestos?

A. Asbestos is a fibrous material found in rocks and soils worldwide. Until the early 1970s it was widely used in flooring, walls, shingles, ceiling tiles, as insulation or fire retardant for furnaces and wiring. When the material crumbles or flakes, tiny asbestos flakes escape into the air. You breathe the fibers, they persist in your lungs, and with repeated long-term exposure you're likely to develop lung or stomach cancer.

Q. What should I do about asbestos in my home?

A. If the asbestos-containing material is in good shape--not flaking or peeling--and not likely to be disturbed, the best thing to do is leave it in place. But if it's going to be scraped, hammered, sawed, or otherwise disturbed in a remodeling project, a trained professional should be contacted to find a way to minimize the dissemination of the material.

Since total removal is expensive and difficult, intermediate options include applying a sealant or covering it with a protective wrap or jacket. It's tricky business, and even the cleanup needs to be done with a special vacuum cleaner to avoid scattering asbestos fibers. Don't try any of this yourself. Make sure the contractors you hire don't track it through the house or break the old material into small pieces.

To avoid conflict of interest, anyone you hire to survey your house for asbestos shouldn't be connected to an asbestos correction firm. The federal government, as well as some state and local governments, offers training courses for asbestos consultants and contractors. Ask to see documentation proving that everyone working with asbestos in your home has completed state or federal training.

Q. Why is lead dangerous?

A. Lead is a soft, metallic element occurring naturally in rocks and soil all over the world. Until fairly recently, it was commonly used in pipes, plumbing solder, paint, and gasoline. If you breathe particles of lead dust or drink lead-contaminated water, it accumulates in your blood, bones, or soft tissue. High concentrations of lead can cause permanent damage to the brain, central nervous system, kidneys, and red blood cells. Lead is especially dangerous for infants, children, pregnant women, and the unborn because growing bodies absorb lead more easily and their tissues are more sensitive to it. Also, a given concentration of lead is worse on a child's smaller body than an adult's. In residential buildings, lead in drinking water and lead paint pose the major dangers.

Q. What can you do about lead in drinking water?

A. Lead-based solder has been banned since 1988, but homes built before then often have lead solder that corrodes into drinking water. You can't tell whether pipes leach lead by looking at them, but a simple chemical test can identify it. If you want to have your water tested, ask your local, county, or state health or environment department about qualified testing laboratories. If you're having plumbing work done in an older home, check for lead pipes and make sure the plumber doesn't use lead solder. Even new faucets and fixtures can put some lead into the water. One way to reduce the risk is to run the faucet for one minute before using water for drinking or cooking. Never use hot water for drinking, cooking, or especially for making baby formula. Heat increases the leaching of lead into water.

If you do have lead in your water, several devices are available to reduce corrosion, including calcite filters, distillation units, and reverse-osmosis devices. Be aware that water softeners and carbon, sand and cartridge filters are not effective for removing lead. Get qualified advice before buying or leasing a device, as their effectiveness varies.

Q. What should be done about lead paint?

A. Lead-based paint was applied to some two-thirds of the houses built before 1940 and a third of those built between 1940 and 1960, according to the EPA. Lead paint tastes sweet, so children have been poisoned from chewing on flakes of paint. Also there is a potential danger from lead dust that is stirred up when lead-based painted woodwork is scraped, sanded, or heated with an open flame stripper. Then it settles in fibers and fabric and gets stirred up again by normal cleaning.

The only accurate way to tell whether your house has lead-based paint is to remove a sample and have it tested in a qualified laboratory. Contact a local, county, or state health or environmental department about where to find one.

If lead-based paint is in good condition and there is no possibility that it will be nibbled on by children, it's best to leave it alone. Otherwise, you can cover it with wallpaper or some other building material or completely replace the woodwork. Removing lead paint properly and safely is a time-consuming and expensive process that requires everyone else to leave the house during removal and clean-up.

If the house was painted on the outside before 1950, the surrounding soil is probably contaminated with lead. Don't leave patches of bare soil, and clean your floors and windowsills regularly with wet rags and mops. Make sure everyone in the family washes their hands frequently.

Also note that some states have strict laws regarding lead paint and rental units. In Massachusetts, for example, few landlords would rent their units to people with children under age six unless the unit had been de-leaded. That's because landlords can be held liable for any lead-induced illnesses that later develop in these children if the unit had not been de-leaded.

Q. What is radon?

A. Radon is a colorless, odorless, tasteless gas resulting from the natural decay of uranium in the earth. It comes into your house through small cracks, floor drains, wall/floor joints, and the pores in hollow block walls, and tends to accumulate in the lowest level of the home. It can also get trapped in ground water, so homes with wells are more likely to have a radon problem. Radon particles get trapped in your lungs, where they break down and release bursts of radiation that can damage lung tissue and cause cancer.

Q. How do you test for radon?

A. Testing for radon in well water requires sending a sample to a laboratory for analysis. Inexpensive test kits for radon in the air are available at hardware stores, but be sure they have been approved by a federal or state health, environmental or consumer protection agency. Long-term testing over a year is most accurate, but short-term testing can let you know if you have a potential problem.

Most homes contain from one to two picocuries of radon per liter of air (pCi/L). If rooms in your home have more than four picocuries of radon per liter of air, it should be reduced. This normally isn't a do-it-yourself project, but professional radon-reduction contractors can determine the source of the gas and seal leaks and install fans, pumps, or other equipment to keep it out. Special filter systems can remove water from your water supply. Depending on the number of sources, the amount of radon and the construction of the home, installing radon-reduction equipment costs anywhere from several hundred to several thousand dollars but in most cases is less expensive than de-leading.

Q. What is considered toxic waste?

A. Usually toxic waste is associated with chemical companies or nuclear reactors. But a residential property also can harbor toxic wastes that are potentially dangerous to the homeowner and neighbors. For example, many family farms have a ravine or back lot that's long been a handy place to dump discards, such as rusting metal objects or empty pesticide containers that haven't necessarily been rinsed out according to label instructions. Or a private home may have a leaky heating-oil tank buried under the back yard, either one still in use or an abandoned one that was never emptied when the heating system was converted to natural gas. Oil, pesticides, or other toxic substances from these sources can seep fumes into a neighbor's basement, contaminate nearby wells, or migrate through the water table until there's an oil slick on the nearest creek.

Q. Who is responsible for cleaning up toxic wastes?

A. The law may hold homeowners responsible for the cost of cleaning up toxic waste sites whether or not they had anything to do with creating the problem. Responsible parties are "jointly and severally" liable, including the current homeowner, the owner of the property when the pollution was caused, and the person or company who caused it (which could be a third party altogether). "Jointly and severally" means that any one of them can be forced to pay the entire cost. That may be the current homeowner, who is probably the easiest one to find. Then it is up to the homeowner to find the others and sue to recover the cost.

When someone discovers the problem and the city or county health department is contacted, an inspector will be sent out to conduct tests and determine the source of the pollution. The cost of investigation alone can be expensive. Then the department begins the process of cleaning up the site to enforce state regulations. The clean-up process might involve ordering the homeowner to hire a consultant and a remediation crew. If it is an emergency or an immediate threat to water quality, the agency may send someone in to clean it up, then sue the homeowner for reimbursement. But that is a difficult process; usually agencies first try to get the homeowner to take care of a problem.

The clean-up process may involve judgment calls and negotiation. Oil in the soil from a leaking tank, for example, will eventually degrade. Instead of hauling all the old soil out and replacing it, it might be less expensive to drill new wells for those affected. If your property has a toxic waste problem, hire an attorney experienced with environmental matters to help you through the process. It might involve obtaining an analysis to estimate how long before the waste would degrade and how far and fast it's likely to migrate until then. In some cases, the negotiations turn into a battle of experts.

What if you don't think you should have to pay for clean up because you didn't have anything to do with causing the pollution? Your only hope is the "innocent landowner defense," under the Superfund Amendments and Reauthorization Act of 1986, which limits the liability of a landowner who made "all appropriate inquiry" into the environmental condition of the property before buying it. That means the only way you would be off the hook is if you had the foresight to have an environmental survey done before buying the property to see whether it was contaminated by hazardous substances. That would include a visual inspection of the property and compilation of a history of past owners and their waste disposal practices, contaminant releases and violations, and other information. Chances are you didn't do that; it's the sort of thing lenders sometimes require for commercial loans because lenders also can be on the hook for toxic waste sites.

To prevent future problems, check with your local health authority to find out how to meet state regulations for disposal of motor oil, paint, antifreeze, and other toxic substances.

Financial Issues

Understanding Your Mortgage

Q. Who owns the mortgage on my house?

A. Traditionally, banks and savings and loan institutions owned most residential mortgages. Today, it is much more common for mortgages to be securitized and sold to investors such as mutual funds and insurance companies. This means that borrowers are usually dealing with a mortgage servicer, rather than the actual person or institution that holds the mortgage.

Q. What happens when your mortgage is transferred?

A. Most mortgages are sold soon after they are originated. This means that most mortgage holders will be dealing with at least two and possibly more mortgage servicing agents during the life of the mortgage. The mortgage servicer is responsible for collecting monthly payments and handling the escrow account, such as paying property taxes. The National Affordable Housing Act, passed in 1990, addresses the responsibilities of a mortgage servicer and consumer protection in this area. Under this act, lenders are required to do the following:

- Notify you at least fifteen days before the effective date of the transfer of your loan servicing. (The servicer has up to thirty days after the transfer if you have defaulted on the loan, the original servicer filed for bankruptcy, or the servicer's functions are being taken over by a federal agency.)
- Notice must include the following: name and address of the new servicer; date the current service will stop accepting mortgage payments and date the new servicer will accept them; and a free or collect-call telephone number for both servicers if you have questions about the transfer.
- The new servicer may not change any terms or conditions and this must be disclosed to the borrower. For example, if your former lender did not require that property taxes or homeowner's insurance be paid from an escrow account, the new servicer cannot demand that such an account be established.
- During a sixty-day grace period, a late fee cannot be charged if you mistakenly send your mortgage payment to your former servicer, and the new servicer cannot report late payments to a credit bureau.

Q. What can you do if you have a problem with a mortgage servicer?

A. Contact your servicer in writing if you believe a late penalty was improperly imposed, or for any other problem. Include your account number and explain why your account is in error. The servicer must acknowledge your inquiry in writing within twenty business days and has sixty business days to either correct your account or explain why it is accurate. During this time it is important that you not withhold any disputed amount of mortgage payment, which could allow the mortgage to be declared in default.

Q. What is an escrow account?

A. This is the account established by lenders to pay for such items as property tax and homeowner's insurance. The lender establishes the monthly amount required to maintain escrow by adding up the annual costs of property tax and possibly insurance and dividing by 12. This is the amount that is stipulated in your monthly payment.

The Real Estate Settlement Procedures Act limits the amount of money that can be held in an escrow account. The calculation is rather complex. Let's say the expenses paid by your escrow account add up to \$3600, or \$300 a month. The law requires that at least

once a year, the escrow account be no more than two times the monthly payment required, or \$600. The practical effect of this is that taxes are usually collected once or twice a year. Between collections, the account may have a sizeable balance, but immediately after the collection it should have no more than \$600 in the account. If you notice on your monthly statement that your escrow is larger than that sum, you have the right to question the lender. This happens more frequently than one might imagine, so take the time to figure out if your lender is following escrow regulations. Otherwise, you are paying more in monthly payments than you should be.

Q. How do I determine how much equity I have in my home?

A. Equity is the value of your unencumbered interest in your home. It is determined by subtracting the unpaid mortgage balance and any other home debts, such as a second mortgage or home equity loan, from the home's fair market value. For example, if your mortgage is \$50,000 and your home is worth about \$100,000, you would have \$50,000 in equity or 50 percent equity in your home. On the other hand, if the value of your home has fallen, you may have less equity than when you purchased the home.

Q. What can I do if falling home prices have cut my equity?

A. Many homeowners have found themselves in this sorry state, particularly if they bought their home in the mid to late 1980s when home prices were soaring. Now that prices have fallen drastically in some areas, homeowners are faced with the problem of having no or little equity in their property.

This is a particularly horrible situation if you are trying to sell or refinance. If you sell, you may owe the lender more money than you receive from the sale of the home, because the sale price is lower than the remaining mortgage. If you're trying to refinance, a lender will want to know that you have at least 20 percent equity in the home, but an appraisal may not bear this out. Be sure, however, to not accept the first appraisal. You may find another appraiser will value your home more highly.

Unfortunately, if your equity has fallen below what you owe on your mortgage, there is little you can do in this situation. If you must sell, you'll have to take a loss on your home and perhaps pay the bank to retain a good credit rating. If you are trying to refinance, you may be able to talk to your lender and renegotiate more favorable rates on your outstanding mortgage. The one exception is for homeowners who have FHA and VA loans, who can apply for a special refinancing without an appraisal. (See sidebar on ["Refinancing FHA and VA Loans."](#))

Q. Is there anything I can do if I can't pay my mortgage?

A. Most people get behind on their mortgage payments because of job loss, divorce, illness, and medical bills. The first thing to do if you are having trouble making your mortgage payments is to take the matter seriously. Many people refuse to face the facts that their home is on the line and delay doing anything until it is too late.

Most financial institutions do not like to foreclose on properties (see sidebar), and there may be ways to work with the lender to reduce your monthly payments or at least delay foreclosure until you can sell your house. That is why it is important to contact your lender as soon as possible. Call or write to explain your problem, and be sure to notify the lender of your account number to speed the process. Sometimes the lender will allow you to defer paying principal or may even refinance the loan at a lower rate to help make your payments affordable. If you can prove that you are actively trying to sell your home, your lender also may cooperate with reducing monthly payments.

Next, contact the nearest housing counseling agency, which offers advice and services to help you ward off foreclosure. If your loan is HUD-insured, for example, a

HUD-approved agency can help you apply for federal mortgage-relief programs that may provide temporary aid. If you have a VA-insured loan, contact a local VA office for assistance. In some states, filing for bankruptcy also may ward off immediate foreclosure, but you are well advised to contact an attorney to begin bankruptcy proceedings.

Q. What happens when a lender forecloses on the mortgage?

A. Depending on the state where you live, certain protections are afforded homeowners, but generally all your rights to your home will end if a foreclosure sale occurs or soon thereafter (usually no more than six months). This means that once a lender files a foreclosure suit, you must act immediately. In Illinois, for example, when a foreclosure suit is filed, the homeowner has ninety days to make up the back payments to reinstate the mortgage. After that date, the lender can legally require that the mortgage be paid in full within seven months of the original foreclosure notice. The important fact to remember is that you must act immediately to protect your home if your lender intends to foreclose.

Sidebar:

When the Lender Forecloses

Lenders do not like to foreclose on property because they usually will not retrieve the full amount of their loan. In most cases, the homeowner would sell and repay the mortgage if he or she could do so; so the practical consequences of foreclosure mean that the bank ends up with a property that is not worth the outstanding amount on the mortgage. A lender may recover all its money only if it is foreclosing on a home that has much more equity than the money owed on the mortgage.

Sidebar:

Liability on an Assumption

If you allow buyers to assume your mortgage, are you liable for the loan if they default? That depends on when and how your mortgage originated. For example, some assumable mortgages may dictate your responsibilities in case of an assumption. With loans insured by the FHA before Dec. 15, 1989, and on most assumable conventional loans, you remain liable for the life of the loan. On FHA mortgages originated after that date, you would share liability with the new owner for five years.

Refinancing and Home Loans

Q. How can you figure out whether it makes sense to refinance your mortgage?

A. This is an easy question for some homeowners—if you have a double-digit interest rate on your mortgage when rates have dropped to below 8 percent, there is no question that you will save money by refinancing. Other homeowners may need cash out of their home equity to fund other expenses, such as college tuition. Borrowing the money on your house and deducting the interest is almost always going to be cheaper than taking out a personal loan.

For others, the question is more difficult. First you need to compare interest rates to figure out how much you would save on your monthly payments, as well as the life of the mortgage. For example, on a \$100,000 mortgage, a mortgage interest rate of 7 percent versus 8 1/2 percent results in a savings of about \$100 a month, or \$1,200 a year on a thirty year loan. To more precisely calculate the difference, you will want to get an amortization chart from a banker or real estate agent. Compare what you are currently

paying in principal and interest per month with what you would be paying on the new loan.

Second, add up the costs of points, closing costs, title insurance, etc. of the refinancing. Third, you may want to also calculate the difference between your current payment's after-tax cost versus your future payment's after-tax cost. Because Uncle Sam gives you a tax break (fifteen to thirty-one cents per every dollar of interest paid, depending on your tax bracket) on mortgage interest, it is important to figure this into your calculations, particularly if you are in the top tax bracket and/or expect to be in an even higher bracket. Simply multiply the annual interest you pay currently by .15 or .31, depending on your tax bracket, to figure out your current tax savings. Then multiply your annual interest paid on the new loan versus the same number. For example, if you're currently paying \$7,800 in mortgage interest annually (\$650 per month) and you're in a 31 percent bracket, you currently have an annual tax savings of \$2,418 (\$7,800 multiplied by .31).

Q. Are there times when it doesn't make sense to refinance?

A. In almost all cases, you won't recover the closing costs for a few years, so if you are planning to sell your home in the near future, it makes little sense to refinance unless you can obtain a no-points adjustable-rate mortgage at a low "teaser" rate.

Q. What's the difference between a home equity loan and a second mortgage?

A. They are similar in that the interest on both is tax deductible (on loans up to \$1 million), and the home serves as collateral for both types of loans. They differ because a second mortgage usually consists of a fixed sum for a fixed period of time, while a home equity loan usually works as a line of credit on which you may draw over time. Typically, a home equity loan carries an adjustable interest rate, while a second mortgage carries a fixed rate, although this is not always the case in today's market.

Q. Which is better?

A. If you need a lump sum of cash, you are probably better off with a second mortgage because you will get a better interest rate on the loan. If you need money over a longer period of time, such as to pay college tuition or to pay for renovations planned over the next few years, it may be better to obtain a home equity loan. That way, you won't be paying interest on the money until you actually withdraw it when you need it.

Q. Do the same rules apply to original mortgages and refinancing?

A. When you refinance, you pay off the original mortgage and take on a new one. State and federal laws protect consumers in both cases, but you will want to go through the same steps as you would in obtaining a first mortgage. (See the ["Buying and Selling a Home"](#) chapter for advice on shopping for mortgage interest rates and mortgages.)

Sidebar:

Refinancing FHA and VA Loans

Homeowners who have an FHA or VA loan may be able to qualify for a special program, called FHA Streamline Refinancing, which does not require a home appraisal, employment verification, or qualifying ratios as long as the mortgage is current. If you want to refinance an FHA or VA loan, call your local HUD office for information.

Q. Can I deduct on my federal tax return the points I paid to refinance my mortgage?

A. With one exception, points paid on a refinancing must be amortized over the life of the loan, while points paid to obtain an initial mortgage may be deducted in the year the home was purchased. For example, if you paid two points to refinance a new thirty-year mortgage, you would be allowed to deduct one-thirtieth of the points paid each year over the next thirty years. If you pay off the loan before it is due, however, you may deduct any remaining amount in the year the loan was paid in full.

The exception to this rule is if you pay the points yourself and use part of the proceeds of the refinancing to pay for home improvements. Then you are allowed to deduct a portion of the points in the year of the refinancing. For example, if you paid \$2,000 or two points to refinance a \$100,000, fifteen-year mortgage and you used \$25,000 to renovate your kitchen, you would be able to deduct 25 percent of the \$2,000 or \$500 in the year that you refinanced; the other \$1,500 would have to be divided over fifteen years, allowing a \$100 annual deduction.

Sidebar:

Refinancing Tips

- Get a copy of your credit report before you apply and correct any errors.
- Make sure you have a minimum 20 percent equity in your home; otherwise, you'll be expected to put down more money or be forced to pay Private Mortgage Insurance (PMI).
- Make sure you understand the fee you will be charged when using a mortgage broker.
- Consider shortening the term of the loan, perhaps from thirty to fifteen years; you will pay more each month but save a lot in interest payments over the life of the loan.
- Be prepared to wait. Refinancing can take three months or more, because when mortgage interest rates decline, many homeowners jump at the chance to refinance.

Tax Considerations

Q. What tax breaks are available to homeowners?

A. On your federal tax return, both your local property tax and mortgage interest paid on your home loan (up to \$1 million) are deductible against other income as long as you itemize and do not use a standard deduction. "Deductibility" simply means that you don't have to pay federal taxes on the income you spend on mortgage interest and state and local taxes. In the early years of a home loan, for example, when most of your payment goes toward interest, you might shelter as much as a quarter to a third of your income. This deduction can be spread over both a first home and a vacation home, as long as the vacation home is not being used principally as a rental property.

Federal tax law also allows you to deduct interest paid on up to \$100,000 of a home equity loan as long as the total debt on the home (including the first mortgage) does not exceed the fair market value of the home.

You also may be eligible for a deduction of property tax paid on your home on your state income tax return, but this is not the case in all states.

Q. Is there any way to lower the property taxes on my house?

A. To lower property taxes, you need to lower the assessed value of your property, which is the basis of your taxes. By providing evidence that the assessed value of your home or business property is too high, you should succeed in lowering the assessment, as well as your property taxes.

In most states, an assessor or a board of assessors places a value on your property for tax purposes. If the property has recently been sold, its sale price will be an important

factor in setting the value. If there has been no recent sale, they will estimate its market value using other evidence. This assessment may be done annually or on some other schedule, such as every four years. In most cases, then, the assessor uses a complicated schedule to get from appraised value to dollar amount of taxes owed. For example, in many states, the value is reduced by a certain percentage, then multiplied by the local property tax or millage rate to establish the amount of taxes you will actually pay.

Your role in the process should begin when you get a notice indicating the assessed value placed on your property. If you think it is too high, you will want to file an appeal as soon as possible. To challenge the assessment, first look for obvious mistakes in the notice. Make sure the address and description of your property is correct. It may be necessary to look up the information about your home at the assessor's office. Check to make sure the number of rooms, bathrooms, square footage, etc. is accurate, and make a note of any discrepancies.

Next, check to see if you qualify for a special tax break. Some jurisdictions provide tax breaks to certain categories of property owners. For example, tax waivers of 10 percent or more may be available to owner-occupied homes, owners age sixty-five and older, disabled veterans, and persons with certain disabilities. Lastly, make sure the assessor has any information about damage to the property, such as flood or fire damage. If any of these conditions apply, ask your local assessor's office how to file an appeal and note any of these problems in your appeal.

Even if none of these special conditions apply, investigate whether the market value determined by the assessor is higher than the true market value of your property. Local real estate agents or the county registrar of deeds should be able to provide recent sales of comparable or similar properties in your area. Also, check the assessed value of similar neighboring properties; this is public information in most places. Remember, however, that the assessed value may reflect one-year-old values; in other words, the assessment usually is based on the market value of your home the previous year, not its current value. Once you have the information you need to protest your assessment, you will either be required to fill out a form or make an appointment with the assessment board. Be prepared to bring facts and figures. If your appeal fails, depending on your state you may appeal that decision to a special board of equalization, a board of appeals, a state court, or a special tax tribunal. State laws vary as to how and when property is assessed and appeal procedures. For specific information, consult your local government officials or your lawyer.

Sidebar:

Filing an Assessment Appeal

Most municipalities allow a limited time for assessment appeals; don't wait until you get your tax bill, which is usually too late. In most states, the procedures for tax appeals are relatively simple and homeowners may be able to represent themselves. If the case is complex or involves a large amount of money, you may want to consult an attorney or real estate appraiser.

Q. How can you qualify for a tax deduction on a home office?

A. If you run a business from your home, or work there for your employer's convenience, your office expenses are probably deductible. Depending on the size of your home and how much of it is designated office, the deduction can be significant enough to justify the extra effort needed to qualify. If your office meets the standards spelled out by the IRS, you can deduct the cost of repairs, furniture, computers and office equipment, extra telephone lines and other business-related expenses. You can also deduct a proportional

share of your home's **depreciation** (ordinary wear and tear), utility bills and insurance. Be aware, though, that you can deduct no more than your business actually generated.

Although you can no longer deduct the entire cost of a desk or computer the first year, you may claim **accelerated depreciation** if you use the item more than 50 percent of the time for your job. This allows you to claim most of the deduction the first two years.

The IRS, however, reserves the right to declare that your "business" is really a hobby, or that your home office doesn't meet its rather stringent standards for deductible business use of the home. For more on IRS standards in this area, see sidebar, "Your Home Office."

Managing Neighborhood Problems

Q. What's the best way to handle a dispute with a neighbor?

A. Unless you intend to move, resolving a problem amicably is in your best interest. Neighborhood spats typically originate from minor disputes over boundary lines, fences, junk cars, noise, pets, and trees. If the problem cannot be solved between the two of you, different disputes call for different remedies.

If a neighborhood problem is addressed in your local government's zoning code, which regulates which activities are permitted in a neighborhood, you may be able to turn to municipal officials. If you live in a condominium, cooperative, or planned subdivision, private regulations and a homeowners' association to back them up may provide support. If the offending activity is classified under common law as a nuisance, it might be either a crime or a civil offense under local law. And if the appropriate agency doesn't take action, you could file a lawsuit in court to stop the activity or in small claims court for monetary damages.

In all cases, you will want to know how the law, as well as municipal and subdivision regulations, can be put to use if you are unable to resolve things quietly.

Sidebar:

Step-by-Step Guide for Resolving Neighbor Problem

Step 1: Discuss the problem with the neighbor, who may not be aware that the late-night parties bother you or that Fifi is digging up your flower bed.

Step 2: Warn the neighbor. Obtain a copy of the applicable local ordinance (look in the "municipal code," which should be found in your local library or in City Hall or contact your local council representative). Mail it with a letter of warning alerting your neighbor of a violation of the law. Wait a reasonable time to see if the problem is resolved.

Sample Warning Letter

Dear Neighbor,

Just as you enjoy playing your stereo, I enjoy a quiet environment in my home. It is impossible for me to do so when your stereo is played at such a loud volume. Please read the enclosed municipal noise ordinance. You will see that the law requires that you comply and keep your stereo to a reasonable volume. I trust that we can resolve this matter amicably, so that I will not be forced to contact the authorities. Thank you for your anticipated cooperation.

Step 3: Suggest mediation. Try to work out the problem with a impartial third person mediator to resolve the dispute informally.

Step 4: Contact the authorities. If all else fails, call the police and/or file a civil lawsuit against the neighbor.

Q. How can I tell if my neighbor is violating a zoning ordinance?

A. City or county zoning regulations may limit the height of fences, the use of property for commercial purposes, or the decibels of noise allowed at night. In some cases, city officials notice a violation and issue a citation, but usually it is up to the neighbors to complain. If you suspect a zoning violation is causing the problem—such as the transformation of your vegetable garden into a shade garden thanks to your neighbor's new 12-foot fence—check with your city hall or town council to see if there's a regulation on the books. Either town hall or the local library should have copies of municipal ordinances.

Q. What can I do if my neighbor is violating a zoning ordinance?

A. Notifying the neighbor that he is violating an ordinance may take care of the problem. To file a complaint, you may have to contact the city attorney or the controlling agency, such as the local zoning board. If the city takes up the cause for you, it will require less effort and expense on your part than filing a nuisance suit. You won't receive money, however, because your neighbor will either be ordered to comply with the zoning rules, pay a fine to the city, or both.

Sidebar:

Handling Disputes in Common-Interest Communities

If you live in a common interest community, check the bylaws and regulations of your development to see whether there is a rule against the activity in question. Your homeowners' association can be a powerful ally. After all, if a neighbor's actions are bothering you, they may be equally troublesome to other residents of the development. If your neighbor refuses to comply with your initial requests, consider asking other neighbors if the situation bothers them, too. They may be willing to sign a petition or a joint letter to the homeowners' association, which is more likely to draw the attention of the board than a complaint from an individual.

The association will investigate the complaint, ask for input from the offending neighbor, then take a vote as to whether official action is warranted. If the board feels your neighbor has violated its governing rules, it will likely begin by issuing a formal warning letter. In extreme cases of noncompliance, homeowners' associations have referred the matter to the city attorney or have filed their own nuisance suits against the offending resident.

Q. What constitutes a nuisance?

A. A nuisance is the legal term for a person's unreasonable action that interferes with your enjoyment of your property. Anything from noxious gases to annoying wind chimes may constitute a nuisance. The law of nuisance involves a balancing test, weighing the social value of the activity against the social value of your use and enjoyment of your property. Accordingly, authorities who have to deal with nuisance complaints expect them to be reasonable. For example, your distaste for your neighbor's cooking odors will not be enough to sustain a nuisance complaint.

Q. What can you do about a nuisance problem?

A. If your local ordinances make a nuisance a crime (usually a misdemeanor), the offender might be given a citation to appear in court at a given date, or he or she might even be arrested, held until posting bond, and ordered to appear in court. If convicted, he or she may be fined and/or jailed. If your local ordinances make nuisance a civil violation, he or she would face civil charges in court. The penalty for a civil violation is a fine.

Whether the alleged nuisance violates a civil or criminal city ordinance, the city carries the burden of prosecuting the case. Your role as the complaining neighbor is limited to testifying if the case goes to trial. Again, any money collected will be in the form of fines paid to the city, not to you.

The other option is to file a nuisance suit yourself. Here you would bear the expense of bringing the case to trial, including filing fees and legal counsel, but if you won you could collect monetary damages from the neighbor. A less expensive approach that may be available in your area is to file in small claims court, which would cost less and probably be faster. Either way, to prevail against your neighbor in court you will have to show the following elements:

- The neighbor is doing something that seriously annoys you. It helps to show a copy of a letter you wrote asking the neighbor to stop or modify his behavior.
- The neighbor's actions have reduced your ability to use and enjoy your property.
- The neighbor is responsible for his actions.
- In some states, the neighbor's conduct must also be unreasonable or unlawful.
- A specific amount of money or an injunction directing the neighbor to do or to refrain from doing something would adequately deal with the annoyance.

Q. How can I handle disputes over boundary lines?

A. Disputes about boundary lines are less common than other neighbor-related problems, in part because of modern surveying techniques. As a rule, boundary lines are set forth in the property description in your deed. Sometimes, though, if the property was originally recorded decades or even centuries ago, that description may be a bit murky.

If you and your neighbor are unsure where the boundaries lie, there are a number of alternatives:

- Spend a few hundred dollars to hire a surveyor.
- File a "quiet title" lawsuit asking a judge to determine the location of the boundary line. This is even more expensive because you will have court filing fees and possibly a survey if the court so requires.
- Agree with your neighbor that a certain imaginary line or a physical object, such as a fence or a large tree, will serve as the boundary. Each party should sign a "quitclaim" deed, granting to the other neighbor ownership to any land on the other side of the line. Be sure to record the deed by filing it in the county records office (often called the "registry of deeds").

Sidebar:

Watch Those Boundaries

Before you erect fence or other structure on your land, make sure that it is indeed your land. If you innocently but mistakenly erect a fence on your neighbor's property, you may be liable for trespassing on your neighbor's land. Your neighbor could ask the court for an injunction to make you tear down the fence, as well as money for any damage you may have caused to his or her property. The same applies in reverse: if your neighbor starts building on a parcel you feel is rightfully your land, notify him or her immediately. If you

allow the construction to continue and wait too long to complain, you may be giving up your right to that strip of land. After many years of uncontested use, courts sometimes grant the party that has used the land a "prescriptive easement" allowing them to continue doing so. How far over the boundary is enough to complain about? The reasonableness of the circumstances may dictate whether a court will support you. For example, a judge may not be too sympathetic to your request that a neighbor relocate a building that is an inch over your property line. However, if that building is flush with your windows and blocking your sunlight and air, the court may feel differently.

Q. What can I do about noise?

A. In densely populated areas, noise is one of the most common sources of neighborhood tension. Some municipal ordinances limit noise to a given number of decibels. If the police have a decibel machine, you can ask them to measure the noise your neighbor is creating. This provides useful documentation should you need to proceed against your neighbor in court.

Timing is critical, though. Accordingly, many municipalities regulate noise levels during certain "quiet times" when most people sleep. They typically begin between 10:00 p.m. and midnight and last until 7:00 or 8:00 on week days; on weekends they often extend to 9:00 or 10:00 a.m. But some noises may be unreasonable at any time, such as playing an electric guitar so loud that it makes a neighbor's walls shake.

As with any nuisance, start by asking the neighbor to tone down the volume and explain why. Keep a log of the noise—when it occurred, how loud it was, and how it affected your household. If the neighbor doesn't respond even to a letter, consult with your town council about local ordinances that might need enforcement. Consider a lawsuit only as a last resort. .

Q. My neighbor is letting his property fall apart. Is there anything I can do?

A. Blighted property decreases the value of surrounding homes and will frequently incur the wrath of surrounding neighbors; but unless they are governed by subdivision rules on exterior maintenance, homeowners are generally free to choose how their property looks. The exception occurs when a place is so neglected that it becomes a neighborhood eyesore, such as a yard overgrown with weeds or filled with trash, or a safety hazard, such as a dangerous structure.

If deterioration is a matter of the offenders' financial problems, perhaps you and other neighbors could pitch in for a "cleanup" day. If it's simply a matter of sloth, ask the offenders to clean up or repair what is broken. If they refuse your request that they clean up their property to a reasonable standard, you may be able to get the city to do it for you, provided it has an ordinance declaring blighted property to be a nuisance. If so requested by a resident—or if a city official observes the nuisance—the city may issue repeated notices to the offenders. In about 95 percent of the cases, homeowners clean up their property after the first notice. About one percent of the cases are actually prosecuted in court.

And if you are the one at fault, you may want to clean up your act. A California man was jailed twice after the city prosecuted him on misdemeanor charges over the piles of trash and junk cars on his property. While he was in jail, the city undertook the cleanup of his property—then placed a \$15,000 lien on his home to recover the cleanup costs.

Q. What can I do if my neighbor is engaging in illegal activities?

A. First, if the problem is with tenants, contact the property owner, who may or may not know that the tenants are doing something illegal, such as selling illegal drugs. Some cities require that such tenants be evicted or fine landlords who allow such a nuisance to

continue. In some cases, state and federal laws provide for the government to seize property that is being used for illegal financial gain. The threat of forfeiting the house to the government is likely to persuade the homeowner to evict the undesirable tenants. Another approach is for you and your neighbors to pursue a private lawsuit against a neighborhood nuisance. Neighbors can be a powerful, unifying force against a common "enemy."

Pets

Q. What can I do if my neighbor's animals are creating a problem?

A. Some neighbors get along like cats and dogs—and in some cases, the problem is real cats and dogs. Consider the situation of two southern California neighbors whose yards were separated by a thick concrete wall. On one side was a litter of normally well-behaved Chinese chow dogs; on the other, two mellow cats. No problem—until the cats learned how to climb the wall, perch atop it, and glare down at the dogs. The dogs took to barking and yapping whenever anything stirred on the other side of the wall.

The entire neighborhood was unhappy. The cat owner blamed the dogs for the noise; the dog owner blamed the cats for teasing the dogs. Even more infuriated was a third neighbor, who worked nights and was trying to sleep when the "dog alarm clock" went off every morning. The trouble escalated when the dog owner started hurling shoes, balls, and other objects at the cats to chase them off the wall. One unidentified flying object sailing over the wall smacked the cat owner's child on the head. By that point, everyone was threatening to sue everyone else. The solution? The cat owner suggested a truce: the cats would go out in the mornings and the dogs in the afternoons. By late afternoon, all the animals could go out because the third neighbor would already be at work. The dog owner agreed to stop pitching objects at the cats; the cat owner agreed to pluck the cats off the wall whenever she found them tormenting the dogs. The animal war ended as quickly as it had begun.

If you have a problem with a neighbor's pet, knowing your local laws can add clout to your efforts to resolve it. Your town probably has one or more applicable ordinances indexed under "Dogs" or "Animal Control" that can be enforced in court. Such laws often limit the number of animals per household, the length of time a dog may bark, or the frequency of barking allowed. Leash laws require that dogs not run at large, and "pooper scooper" laws require owners to clean up after their pets. If polite requests to your neighbor don't work, call your local animal control service, which is likely to be more receptive to your problem than the police or other city officials. Unless the animal control authorities consider your complaint unreasonable, they will probably call the offending animal's owner with a warning, followed by a citation if the problem persists.

A citation resembles a ticket; it requires the offender either to pay a fine or to challenge the citation in court. After being punished in the pocketbook, many people will change their animals' behavior to conform with the law. If they continue to allow their animal to annoy you, they can be fined repeatedly if you continue to complain.

If the problem persists, you may need to bring a civil lawsuit for "nuisance" to get a court order. The offender is likely to obey, because one who disobeys a court order may find himself in contempt of court, which can mean time in jail or at the bank, withdrawing hefty sums to pay a fine.

For animal problems, call the police only as a last resort. Police are generally not very interested in problem dogs, as they have more serious matters to worry about. Bringing the police into the equation also may sever any further relations with your neighbor.

Sidebar:

Creature Court

When the fur flies between pet owners and their neighbors in Ventura County, California, the confrontation can end up in "animal court," a voluntary program and an alternative to formal court proceedings. There, the county's "poundmaster" presides over about one-hundred cases each year, which have included a cat that bit a woman, a rooster that rudely awakened the neighborhood, and a variety of disputes over dogs that bit, barked, or intimidated children.

Trees

Q. What's the law regarding trees?

A. Trees can cause as much contention between neighbors as yapping dogs, whether they block people's view, crack their foundation, or drop debris on their driveway. The ground rules state that a tree whose trunk stands entirely on the land of one person belongs to that person; if the trunk stands partly on the land of two or more people, it usually belongs to all the property owners. Someone who cuts down, removes, or harms a tree without permission owes the tree's owner money for compensation for that harm done.

Q. Is there any way I can be prevented from cutting down the trees on my own property?

A. In most cases, the answer would be no, but trees are not strictly private property like barbecue grills. In some instances, neither the tree owner nor the neighbor has unlimited control over the fate of a tree. One subdivision overlooking scenic Farmington Valley in Simsbury, Connecticut, has a restrictive covenant in its deeds bearing homage to trees: homeowners cannot cut them down, even on their own land. They can, however, trim diseased limbs or branches that block their view of the valley below.

Subdivision rules such as this are designed to restrict the use of each lot in a tract for the benefit of all who reside there. One lot owner can enforce the restriction against another. If you are considering buying property in a subdivision, ask about any such restrictions in the general building plan.

Q. Can I trim the overhanging limbs of my neighbor's tree?

A. You may trim the branches of a neighbor's tree that hang over your property, with certain restrictions:

- you may trim up to the boundary line only;
- you need permission to enter the tree-owner's property (unless the tree poses "imminent and grave harm" to you or your property);
- you may not cut down the entire tree;
- you may not destroy the tree by trimming it.

It's always best to notify the tree owner before starting any trimming, pruning, or cutting. If the owner objects to the trimming, offer reassurance that the job will be done professionally and responsibly, within the mutual rights of both parties involved.

Q. Am I liable for the encroachment of my trees or shrubbery on a neighbor's property?

A. The law varies from state to state, but generally it depends largely on the extent of damage done. It's best to avoid a confrontation—legal or otherwise. Tree roots are a more serious (and potentially costly) problem. You will save money in the long run by hiring a landscaper or "tree surgeon" to take whatever steps are necessary to prevent root damage to your neighbor's home or wall.

The Fruits of Your Neighbor's Labor

Fruit-bearing trees that overhang a neighbor's property pose a tasty dilemma when apples drop onto the neighbor's property, is the fruit considered manna from heaven? According to a long-standing common law doctrine, no. The fruit belongs to the owner of the tree—and so it has been since the 1800s, when a man named Hale scooped up twenty bushels of pears from the orchard trees of his neighbor. A court ordered Mr. Hale to return his booty to the orchard owner, even though Hale had been standing on his own land when he plucked the fruit.

What if your neighbor's fruit is a problem for you? If rotting fruit habitually falls from a neighbor's tree into your yard, notify him. Ask him to clean the fruit from your yard and to trim the tree to avoid such droppings in the future. If he ignores your request or refuses to comply, your neighbor may be liable for any damages the errant fruit causes to your grass or garden. (The same thing goes for the fruit of a neighboring tree that may cause physical injury to you, such as a coconut that falls from a high tree and smacks you on the head.)

Views

Q. What are my rights regarding the view from my property?

A. Generally there is no absolute right to a view, air, or light, unless granted in writing by a law or subdivision rule. Such provisions are more common in coastal areas or other scenic-view locations. If view is important to you or to the value of the property you are considering buying, be sure to investigate your legal rights to protect that view before closing the deal.

Q. Can my neighbor legally block my view?

A. What can you do if you wake up one morning and find a new fence on your neighbor's land blocking your view of Big Sur? That depends in part on where you live. The best way to protect a view is to purchase an easement from your neighbor, guaranteeing that no obstruction of your view will be built on the land described in the easement. (See the section on easements earlier in this chapter.) You may cringe at the thought of paying for a view that is already there, but in the long run it is likely to be less costly—and more scenic—to buy an easement now than to bring a lawsuit in the future.

For example, a Los Angeles Superior Court judge ordered the rock star Madonna to trim her driveway hedges to eight feet in height and to trim a pine tree down to her roof level—and to pay the legal fees of the neighbor who brought the lawsuit against her. The neighbor contended that the untrimmed foliage blocked his Hollywood Hills view of the city lights below and reduced the value of his property. He was able to prevail because he had a longstanding written agreement with her regarding his view, so he simply went to court to enforce that contract.

Unless you live in a community that has a view ordinance, you are unlikely to get relief in the courts without such a contract. But even given a view ordinance, the mayor won't necessarily jump in and order your neighbor to tear down the obstruction. If the city

does not feel your complaint has merit, you will have to initiate a lawsuit and wait until your day in court to request an order requiring your neighbor to restore your view. Depending upon the backlog in your local courts, that wait could be months. And of course your neighbor might appeal the decision, causing another lengthy delay. In the interests of time and sanity, it may be advisable to forego the legal wrangling and negotiate with your neighbor.

If your city does not have a view ordinance, you can still ask a court to have the offending fence or trees removed if you can show that by erecting or planting it, your neighbor was "deliberately and maliciously" trying to block your view. This would fall under the category of "spite fences" (see below).

Fences

Q. What constitutes a fence?

A. The word "fence" is not limited to a picket or stockade-type barrier. Fence ordinances generally cover anything that serves as an enclosure or partition, including trees or hedges. Many zoning regulations restrict the height of fences, whether they are made of cut timber or living trees.

Q. Who owns a boundary fence?

A. A fence that sits directly on the property line of two neighbors is known as a "boundary fence." The legal rights and responsibilities depend on a number of factors, including who "uses" the fence. Generally, boundary fences are somewhat like trees that straddle a property line—they belong to both property owners, both are responsible for the upkeep of the fence, and neither may remove or alter the fence without the other's permission. Of course, the owners are free to agree otherwise. One may wish to "buy" the fence from the other and have it recorded in his deed for posterity. Or one neighbor may be willing to give up his "share" of the fence if the other agrees to pay for the maintenance.

Q. What can you do about a "spite" fence?

A. A spite fence is one that is excessively high, has no reasonable use to your neighbor, and was clearly constructed to annoy you. For example, suppose you live atop a canyon view and you've been feuding with your neighbors, who live further down the slope. The neighbors suddenly erect a 20-foot-high stockade fence near the property line. Unless your neighbors can demonstrate a reasonable need for such a high fence, such as extra privacy concerns, you can sue them under the doctrine of private nuisance. The case may be difficult to win, however, because most fences or other structures have some arguable utility to the owner.

Your remedies, depending on the law of the state where you reside, may include an injunction to have the fence removed (or at least lowered to a less offensive height) or compensatory damages (a financial payment to you). Factors the court will consider in determining the appropriate amount of compensation include the diminished value of your property and any annoyance caused by the erection and maintenance of the fence; however, you cannot recover for "hurt feelings" or embarrassment due to the fence.

Most spite fences spring from a history of bad feelings in the neighborhood, which deteriorate into anger and spite. That's why it pays to be neighborly in the first place.

Sidebar:

Hog-Tied by a Fence Law

If you live in a historic part of the country, beware of obscure fence laws that may still be on the books. In Maryland, a Howard County landowner was subjected to an anachronistic

county law that not only required him to share the cost of a fence on the property line with his neighbor but required the fence to be "hog-tight"—low enough so that a hog could not squeeze under it. And no, neither of the neighbors had any hogs on his property. (At last report, county officials were working to repeal the law.)

Sidebar:

Mediation

Mediators are trained to listen to both sides in a dispute, identify problems, and suggest compromises and equitable solutions. They provide an impartial and unbiased forum for neighbors to talk. The key to mediation, unlike a lawsuit, is that it is not an adversary process. No judge makes a decision for either party. The outcome of the dispute is in the hands of both parties. Until both agree, there is no resolution. The parties are more likely to comply with the agreement, since both have agreed to it. You may be able to find dispute resolution services through the yellow pages (look under "mediation services" or "arbitration services"). And many bar associations offer nonprofit programs. Many states' Departments of Consumer Affairs have dispute resolution offices also. Consult the "State Government" listings in your telephone directory.

Home Improvements and Repairs

Legal Protections

Q. Which federal laws are applicable to remodeling projects?

A. Federal Trade Commission (FTC) rules address the problem of false advertising. It is illegal for a vendor to advertise any product or service for less than it really costs or to engage in the old bait-and-switch tactic. This happens when you are "baited" by an ad for a product or service, then told that one isn't available and "switched" to another, more expensive version. The law requires vendors to offer a rain check whenever demand for an advertised bargain exceeds supply, unless the limited supply is clearly stated in the ad.

The federal Truth in Lending law protects consumers who obtain outside financing for their projects. A lender must prominently state the annual percentage rate (APR) of interest you will be charged. So whether you finance your home improvement through a bank, a credit union, or the contractor himself, at least you will know what the interest rate is. Note that even if the terms appear reasonable, it is a bad idea to have the contractor secure financing for your project and in some areas it may also be illegal. Even though he may approve you as a credit risk when a bank won't, he has good reason: his guarantee that you will pay him back is ultimately your house. It is probably worth a lot more than whatever you are doing to improve it. So if you cannot pay for work right now, try to postpone it until you can.

These laws help keep most contractors honest, but they can't keep the bad apples off the streets. Even if you report violations to the Federal Trade Commission in Washington or one of its ten regional offices, the FTC is not likely to prosecute a small contractor. Federal enforcement tends to concentrate on major violations or patterns.

Q. What protection do I have once I sign a contract?

A. Given the number of scam artists working the streets, your best federal protection may be the cooling-off period mandated by the Truth in Lending Act. Called a "right to rescission," the law gives you three business days to cancel any contract that was signed in

your home (or any location other than the seller's place of business) that implies any kind of financial claim to your home. This occurs, for example, when the contract gives the contractor the right to file a lien against your home to enforce payment. This law also applies to any contract that involves the borrower making four or more payments, such as when the contractor finances a project by using your home as collateral for a second mortgage.

Contractors pay attention to this law because if they don't comply, you have the right to rescind for three years from the date on the contractor—or until you transfer interest or sell the property.

If circumstances entitle you to a cooling-off period, the contractor must give you two copies of the Notice of Right of Rescission at the time you sign the contract. It must be separate from the contract—not buried in fine print—and a copy given to each owner, because any one owner may cancel. The notice must identify the transaction, disclose the security interest, inform you of your right to rescind, tell you how to exercise that right, and give you the date the rescission period expires.

Q. What kind of state and local laws apply to contractors?

A. State laws often are modeled after federal laws, and states and local agencies are much more apt to pursue a small contractor who may have violated them. If you suspect that a contractor is breaking the law, get in touch with your state attorney general's office or local department of consumer affairs.

Some state laws specifically target dishonest contractors. For example, Illinois' Home Repair/Fraud Act, strengthened in July, 1992, makes it a crime to misrepresent the terms of a home repair contract, deceive people into signing one, damage someone's property to drum up home repair business, or charge an unconscionable fee for home repair services. A contractor who preys on disabled people or those older than sixty may be committing aggravated home repair fraud, a felony punishable by three to seven years in jail and a fine of up to \$10,000.

Localities also can impose tough laws against unscrupulous contractors. A local law in Putnam County, New York, provides such punishments as suspension or revocation of the contractor's license, both criminal and civil penalties, and punitive damages against the contractor.

For information about legal protections and enforcement options in your state, contact your state or local consumer protection agency, or the consumer fraud division of the local prosecutor's office.

Q. What's the best way to guard against swindlers?

A. Despite all the statutes, if you have to rely on the law to get your money back from a shoddy contractor, you will have to wait a long time. Take matters into your own hands by carefully checking the reputation of any contractor ahead of time. Be wary of contractors who:

- Claim to work for a government agency. Check it out.
- Offer free gifts. Ask the following questions: What exactly are the gifts? When will you receive them? Can you get a price reduction instead?
- Engage in door-to-door sales or try to get your business by telephone solicitations. Be especially wary if the sales pitch demands an immediate decision to take advantage of prices that won't be available tomorrow. Most reputable contractors don't engage in such tactics.

- Offer an unsolicited free inspection of your furnace or basement. Rip-off artists use this ruse to get into a home and either fake a problem or damage a sound furnace and good pipes.
- Claim your house is dangerous and needs immediate repair unless you already know it does. Have a company name, address, and telephone number and other credentials that can't be verified. Fly-by-night operators often use a mail drop and an answering service while hunting for victims.
- Promise a lower price for allowing your home to be used as a model or to advertise their work. (Has the price really been lowered? What does the "use of your home" entail?)
- Engage in bait-and-switch tactics. After luring you with an ad that offers an unbeatable deal on a job, these contractors tell you the materials aren't available for that job but they can give you a bargain on another, more expensive, job.
- Leave delivery and installation costs out of their estimates.
- Offer to give you a rebate or referral fee if any of your friends use the same contractor.
- Insist on starting work before you sign a contract.

Hiring a Contractor

Q. How do I find a reputable contractor?

A. After thinking through what you want and what you can afford, ask for recommendations from people who have had similar work done and talk to building inspectors, bankers, and trade association representatives—people who should know firsthand the work and reputation of contractors in your community.

For a large job, interview and solicit bids from two or three contractors from your list, but make sure they are bidding on exactly the same job to allow comparisons. The lowest bid is not necessarily the best, because a contractor with a reputation for excellent workmanship and for standing behind the work might be worth more. Even if the job is small enough to warrant only one bid, take time to check out your contractor's reputation and credentials.

Make sure a contractor's references had similar work done. For a kitchen remodeling, for example, ask for former clients who have had kitchens done by the contractor. Chances are any such references provided by the contractor will be happy clients, so try to go a step or so beyond "He's a great guy" and "No problems at all." Ask exactly what the contractor did, and how this person found out about him. Jot down any more names that are mentioned, with addresses and telephone numbers. Was the client comfortable with the way things were left at the end of a day as well as at the end of the project? What does the client wish he had done differently to make the job go even more smoothly? What did the client's spouse (or roommate, neighbors, or children) think about the work and the construction process? What is the next project this person wants to hire the contractor to do?

Q. What kinds of certification should the contractor provide?

A. If you are satisfied with a contractor's reputation, check his credentials before signing the contract. Ask if he is licensed and bonded. Although not all states require licensing for home contractors, those that do have at least a record of each contractor's name and address, compliance with insurance laws, and agreement to operate within the law. If the company is a corporation, the state has a record of the individual responsible. While some states only require contractors to register their names and addresses, quite a few require them to have some experience and pass an exam.

A state license doesn't ensure that the contractor will do a good job, but it is an indication that he has made an effort to comply with the law. Check with the state Contractors Licensing Board to see if the license is current. Some states will also tell you if there have been complaints against a given contractor and whether they proved to be valid; otherwise you can get that information from the local Better Business Bureau or Office of Consumer Affairs.

Being bonded provides important protections for you, but be aware that the word has two meanings. "Fully insured and bonded" generally means the contractor's insurance coverage protects against his employees' theft, vandalism, or negligence. If you have valuables to consider, ask to see a certificate or letter certifying such a policy.

A performance bond is an insurance company's assurance that the contractor can finish the job as stated in the contract. If he defaults, the insurance company will pay another contractor to complete the work. Contractors must take out a separate bond for each job, so bonds are usually limited to jobs of \$25,000 or more, and contractors pass on the cost to the owner. It is an expensive proposition, up to 10 percent of the contract price for a residential swimming pool; but a contractor who has been approved by a bonding company is a very good risk. You're the one who decides whether to require (and pay for) a bond.

Make sure that the contractor carries workers' compensation insurance, to cover injuries he and his workers might sustain on the job. If he doesn't carry it, you could be responsible for some hefty bills. Ask if he belongs to a trade association. Many associations require a contractor to have been in business a certain length of time, to have passed a credit check, and to meet all legal requirements of their state. It wouldn't hurt to call the association to make sure the contractor's membership is current and inquire about complaints.

Also ask if there is a warranty on his work and materials and the time limit on the warranty. Make sure any warranty is included in the contract. (Even if there is no specific warranty, most jurisdictions recognize an implied warranty of good workmanship that gives you some protection.) For an additional fee, some contractors offer an extended warranty such as the five-year policies available through the Home Owners Warranty Corporation.

To check whether any civil judgments or lawsuits are pending against the contractor, call the local clerk of court. If someone sued the contractor over something like poor workmanship, consider it a warning. Likewise, you might want to check with the nearest federal bankruptcy court to see whether this contractor has ever filed bankruptcy—a strong indication of financial instability.

Sidebar:

The Importance of a Written Contract

Don't allow any work to begin until there is a signed contract one that protects you. (Some people might take a chance on very small jobs under \$1,500, but it is a chance.) Oral agreements can be enforced in court, but it is difficult to prove who said what if you don't get it on paper. Ask to see an insurance certificate to make sure the contractor is covered in case one of his subcontractors is injured on your property. If the contractor gives you a standard contract to sign, take it home and study it carefully at your leisure. Strike out clauses you think are unreasonable and have both parties initial the change. If you are uncertain about the meaning of provisions and/or if it is a major, expensive job, make sure your attorney checks the contract.

Q. What should the contract include?

A. A complement home improvement contract should address the following:

Preamble An introduction that states names, addresses, phone numbers, and the date the contract is executed. It should specify whether the contractor's business is a sole proprietorship, partnership, or corporation. (If it is a partnership or corporation, make sure the person who signs is an authorized representative.) The preamble should also state that the remodeler is an independent contractor, not your employee. Otherwise, you might be responsible if the builder injures someone. For another layer of financial accountability, add the contractor's social security number. The contract price should state the total dollar amount, including sales tax, to be paid by the homeowner for services agreed to in the contract.

Starting and completion dates. No contractor is likely to begin until after your right to rescission has safely passed. Specify an end-date, stating exceptions such as weather, strikes, etc. You may want to add a bonus-penalty clause if the date is critical. Specify a daily starting time if that matters to you. Consider interim completion dates for key phases of big jobs.

Scope of work. Contractors may shy away from a clause as broad as "all labor, materials, and services necessary to complete the project." But don't allow them to be so specific in the work listed that anything else becomes an "extra" or a "change order," which may be billed separately.

Description of materials. See that complete descriptions of agreed-to products including brand names and order numbers are listed. Plans, bids, estimates, and all other documents relating to the project are part of the scope of work. Make sure that copies of these are attached to all copies of the contract before you sign it.

Permits, licenses, and zoning. Specify that the remodeler will obtain all necessary licenses and permits and satisfy all zoning regulations and building codes, and indemnify the homeowner in case he fails to do so.

Cleanup policy. Will the contractor clean up daily? After each project? Only at the end? Where is refuse to be placed?

Storage Specify where materials and equipment will be kept. You are probably liable for damage to materials and equipment from fire or accidents, so be sure to check your homeowner's policy and make sure these are covered.

Parking. If it is a problem, arrange for the contractor's vehicle as well as subcontractors'.

Noise. Some is inevitable and may even provide a safety valve for workers, but place limits on time and volume, according to local laws and neighborhood needs.

Theft. Building materials are often stolen. The contract can make either the contractor or

the owner responsible.

Damage. What if the retaining wall collapses when they're digging for the new swimming pool? You'll want the contract to state that the contractor is responsible for damage to your property.

Change orders. Very few jobs go exactly as planned, which requires that the contract have a provision that enables it to be amended simply and easily. The contract should provide that change orders can be written up, signed by both parties, and attached to the contract as plans change or delays occur. See the sample for specific wording of this contract clause.

Warranties. The contract should assure that the materials are new, and that you will receive all warranties from manufacturers for appliances and other materials used on the job.

Progress payments. Contractors don't expect to be paid entirely in advance, but they also don't expect to wait until all work has been done. It is customary to pay one-third upon signing a contract to allow the contractor to buy supplies and get started. In smaller projects, two payments may suffice. In larger ones, plan to make payments after completion and approval of major phases of the work. In all cases, make your final payment as large as possible, usually at least 10 percent. **DO NOT MAKE FINAL PAYMENT** until all work is completed, inspected, and approved; subcontractors are paid and any liens canceled; and warranties are in the proper hands.

Financing contingency. If your ability to proceed with the project depends on securing outside financing, include a contingency clause stating that the contract is not binding if you are unable to secure the needed funds on acceptable terms.

Suppliers and subcontractors. Ask for a list of subcontractors and suppliers and attach it to the contract with their addresses, telephone numbers, and social security numbers. Although you are not their boss, they probably have a right to place a lien on your home if the contractor does not pay them in full. It's only fair that you know who they are, should legal action become necessary. If you prefer, arrange to pay suppliers and subcontractors directly.

Troubleshooting the Project

Q. Who should obtain building permits and when should they do it.

A. To find out whether you will need building permits, contact your local building department. Some municipalities require permits for just about anything; others require permits for only major remodeling projects. The person who takes out the permit is considered liable for the work, so follow the usual custom of having the architect or contractor obtain it. As a homeowner, you don't want to be responsible if the work doesn't conform to standards or codes, but you need to know which permits are required and make sure they are obtained.

Q. What's the point of getting a permit, besides giving the town money?

A. First of all, the point is to abide by the law. Second, the inspector who checks your house can assure you that the work you are paying for is safe. Plumbing and electrical inspectors, for example, assure that the work is done according to code. Additionally, if you have followed proper procedures, your house will be free of encumbrances when you want to sell it. In New York, for example, real estate inspectors can stop property sales when they find disparities between original and remodeled plans of a property. Altered fire-escape routes, often caused by a door or doorway altered without permit and inspection, can be dangerous. Such noncompliance puts the homeowner—and buyer—in an expensive bind.

If you live in a condominium or cooperative apartment, or other common-interest property, your rights to renovate and remodel differ from those of single-family homeowners. Check your condominium declaration—or check with your board—to see if your renovation will be permitted.

Q. What should I watch out for when the job begins?

A. Be sure to keep a handle on the documents that can help you avoid problems later. In consultation with your contractor, draw up a schedule of what will be done when, and make sure this is followed. If you don't have the wiring inspected before the drywall goes up, for example, the inspector may require you to tear out the drywall.

Contractors report that their biggest problems with homeowners arise because owners request additional work along the way, then object when they see the bill. The best way to avoid misunderstanding is with a specific change order. This document, signed by

both parties and added to the original contract, specifies the additional work to be done, the materials, and any change in the schedule. For a large project, type up and duplicate blank change-order forms to fill out as you need them.

Q. What happens if someone is hurt on the job?

A. If you are dealing with an independent contractor, his insurance should cover expenses; but if you hired someone down the street to paint your house, someone who doesn't maintain a separate business and who relied on you for tools and supervision, that person is your employee and any injuries are your responsibility. If someone gets hurt later because, for example, the new basement steps were not nailed down, your insurance company may pay the injured party but then go after the contractor responsible.

Q. What can I do if the contractor violates the contract?

A. If you believe there has been a contract violation, first bring the matter to the attention of the contractor with a telephone call or conversation. For example, if you came home from work one day and found that the new picture window was in the wrong place, call the contractor immediately. To protect yourself, make a note of the conversation, summarizing your concerns and any agreements, and send it to him. Keep a copy yourself. Next, ask your lawyer to write a letter stating your concerns and asking for the correction.

If that doesn't work, check to see if your contract specifies alternative dispute resolution (ADR)—that is, mediation or arbitration. That means you and the contractor will have agreed to call in a mutually acceptable third party to resolve the dispute without going to court. If your contract does not specify ADR, your initial letter and the lawyer's letter will provide you with a base for further action with a consumer-protection agency or a lawsuit, possibly in small claims court.

Either way, your options are to push for "specific performance" of the contract, which means forcing the remodeler to do the work as agreed, or for the remodeler to pay any extra costs you incur by having someone else do it.

Q. What is a construction lien?

A. Construction liens (also called mechanic's liens) are subordinate to any prior mortgage on your house, so it is a difficult route to payment. In some states, contractors and subcontractors must notify a homeowner if they intend to take out a lien. In others, you only learn about it after it is filed at the local recording office. If you find out someone has filed a lien, call your lawyer immediately

Q. How can I prevent a construction lien from being filed?

A. It is possible to add a clause to the contract stating that the contractor agrees to give up his lien rights, but the contractor may not agree to it. And, even with a contractor's waiver, any subcontractor or supplier who is not paid for his work or materials by your contractor can file a lien against your home. Unless your job is covered by a performance bond, or your state has some sort of fund to protect homeowners from paying twice when the contractor doesn't pay sub-contractors or laborers, your chief protection against a lien is holding back final payment until all work has been completed to your satisfaction and your contractor supplies proof in writing that he has paid everyone who worked for him on your job. A release-of-lien form is useful, because it provides places for all the subcontractors to sign. (This is one reason to have all subcontractors and suppliers named up front in your contract, so you can make sure everyone has signed off on the release-of-lien form.)

Sidebar:

Change/Order Clause

The following wording can be used to provide for a change/order clause:

Without invalidating this contract, the owner may order changes in the work, including additions, modifications, or deletions. Price and time will be adjusted accordingly. All such changes in the work shall be in writing, and signed by the contractor and owner and attached to this document.

Shared Ownership

Cooperative Living Arrangements

Q. What is a common interest community?

A. Thanks to creative developers, common interest communities exist in various configurations with a confusing array of names and forms of ownership. Still, certain characteristics are shared—they are designed specifically for a certain type of community living by a single developer (or in the case of existing buildings, a single converter). They are created by a specific set of documents, usually drawn up by the developer and subject to change by the membership. And when the developer or converter departs, the community's affairs are governed by an association of all unit owners through its elected board. The board has the authority to enforce the restrictions and collect assessments to pay for maintenance and improvements.

Because these ownership forms are governed by the laws of so many different states, the terminology can be confusing. Whatever the general term, there are three distinct types of common interest communities with three distinct types of ownership: the cooperative, the condominium, and the planned community or planned unit development (PUD). You can't tell which is which by looking at the architectural form of the buildings. For example, in some states, "site condominiums" look just like single-family detached homes but the land—not the home—is part of the condominium. However, the form of ownership has significant legal implications. Be sure you know what type yours is the form of ownership is specified in the community's declaration, which is essentially its constitution.

Sidebar:

By Any Other Name

"Common interest community" is the term preferred by the National Conference of Commissioners on Uniform State Laws, a group devoted to drafting model laws for adoption by state legislatures. But the Community Association Institute (CAI), a national trade group for anyone connected with this type of development, prefers the term "community association." Other terms in use are "common interest realty association," "common interest development," "residential community association," "common property subdivision" and "interdependent covenanted subdivision." Depending on who is talking, the association might be a "community association," a "homeowners' association," or a "property owners association." If you're talking about these developments with someone from another area, make sure you're talking about the same thing.

Q What's the difference between a cooperative and a condominium?

A. In cooperatives, found primarily in New York and Chicago, the members are stockholders in a corporation that owns the entire building, including the residential units and all common elements such as corridors, elevators, and tennis courts. Stockholders don't actually own any real estate; the corporation owns it all. Instead, stockholders are entitled to lease their individual units from the corporation. Each stockholder pays a monthly "maintenance charge," which is a proportionate share of the corporation's cash requirements for mortgage payments, operation, maintenance, repair, taxes, and reserves. The corporation, governed by an elected board of directors, may veto a proposed transfer of stock, so it has considerable control over potential buyers.

Condominium ownership provides exclusive title to the "airspace" within your own unit, and ownership of the common elements is shared among all unit owners as tenants in common. Within limitations, you are free to mortgage your unit or sell it. As in a cooperative, all unit owners must pay their share of the assessment for operation, maintenance, repair, and reserves. The association is responsible for enforcing the rules and managing the common elements, but it doesn't actually own anything.

Q. How does a planned community work?

A. A planned community, also called a "homeowner association," is a hybrid subdivision combining certain aspects of cooperatives and condominiums. In these developments, each owner holds title to a unit—in many cases, a single-family, detached house. But all common areas, such as parks and playgrounds, belong to the incorporated association, which all owners are required to join. The association is responsible for maintaining common areas and, in some cases, house exteriors. Homeowners pay a periodic assessment for common area expenses and reserves.

Some planned communities include sections organized as condominiums or cooperatives. Others include commercial or even industrial areas, designed to allow people to live within walking distance of stores and work. Some of these developments are huge—such as Reston, Virginia, a planned community of 19,000 units. Further, several adjoining community associations may belong to a master association, also known as an "umbrella association," a "master planned community," or a "mixed-use association," which charges an additional assessment to pay for certain community-wide services.

Q. What kind of restrictions can be imposed in common-interest communities?

A. The extent of restrictions imposed on owners varies. In a planned community of free-standing houses, rules may be limited to preserving the quality and cohesiveness of the development by requiring approval of any architectural or other exterior changes. Condominiums and cooperatives tend to have much more extensive rules and regulations, because generally people are living much closer together and often in the same building.

Mid-rise and high-rise condominiums rely on the concept of the "airspace block". The title to a single-family house or townhouse often includes the land underneath it and the air above it, but if you own a high-rise apartment there are other owners above and below. So you hold title, in effect, to a block of air—within four walls, a ceiling, and a floor.

Within that airspace block, you may alter or remove non-supporting walls, replace the light fixtures, change the carpet however you wish, and make other changes that don't infringe on your neighbors' property rights. On the other hand, you are responsible for the maintenance and repair of paint, wallpaper, fixtures, and appliances, except for wires and pipes running through your walls that serve other units. Sometimes people accustomed to rental apartments are surprised to learn that their condo building manager isn't responsible for fixing their hot water heater.

Legal Rights and Restrictions

Q. What federal laws apply to common interest communities?

A. Few federal laws directly affect the organization and operation of common interest communities, but two consumer-oriented federal laws apply directly. Under the Fair Housing Amendments Act, effective since March, 1989, developments may no longer discriminate against families with children unless the development meets the act's strict qualifications for senior citizen developments. Otherwise, it is no longer legal to advertise a development as being for adults only or to steer would-be buyers elsewhere because their children wouldn't be welcome. It is still legal to prohibit occupancy by, for example, people forty years old or younger, but even then a forty-five-year-old with legal custody of a child under 18 couldn't be denied access to housing.

The Fair Housing Amendments Act also prohibits discrimination against disabled persons. Developments must permit construction of facilities for disabled residents, although the disabled resident may be required to remove the construction upon leaving. Further, all new multi-family buildings must provide access for the disabled in every unit on the ground floor or accessibility by elevator. Under HUD regulations, this includes wide doors, free passage for wheelchairs through units, bathroom walls strong enough for grab bars, and access to at least a representative portion of the amenities.

Q. How do state laws apply to common interest communities?

A. Most of the substantive law—and confusion—lies in an ever-changing patchwork of state statutes. The governance of cooperatives falls under state statutes governing corporations and non-profit corporations, because residents of a cooperative own stock in the corporation that owns their building. The same statutes apply to the associations governing planned communities, which likewise own the common areas.

Condominiums, however, do not have a corporation responsible for liabilities, taxes, and governance. That is why each state has a special set of laws detailing how condominiums must be organized and operated. These laws require each condominium to file a declaration and bylaws, with specific requirements regarding the rights and duties of the association. Planned communities require no specific statute, but some states include them in an act governing all common interest communities.

Condominium statutes vary considerably, from state to state, and many lack protections for consumers. While some states provide only the barest framework for creating a condominium, others are incredibly complex and detailed. For example, Florida, where nearly three million people live in condominiums, understandably has the most complex, extensive regulation of all the states.

Sidebar:

Uniform Condominium Act

In hopes of bringing some uniformity to the law, the National Conference of Commissioners on Uniform State Laws has proposed model laws in the area, which twenty-three states have adopted or adapted, and numerous others are considering. The Uniform Condominium Act (UCA) allows flexibility for developers while offering protection to consumers, such as requiring extensive disclosure before sale. It covers such matters as insurance, tort, and contract liability. The Uniform Common Interest Ownership Act (UCIOA) extends the same provisions to cooperatives and planned communities. So far, only a handful of states have adopted UCIOA.

Q. What else governs a common interest community?

A. Along with federal and state laws, each individual community is governed by its own declaration and articles, a set of bylaws, and various regulations and decisions promulgated by the association board. Finally, given the extensive litigation over the authority of particular associations, various courts have interpreted statutes, rules, and regulations, often based on common law (nonstatutory) principles.

A community association gains its authority from the legal documents that created it: the declaration, articles, and bylaws. State statutes often back up that authority, whether in the statutes governing non-profit corporations, the specific condominium or common-interest community act, or both. Broadly speaking, a community association may hold property, sue and be sued, receive gifts and bequests, make charitable contributions, make contracts, borrow or invest money, and assess unit owners for their share of the expense of maintaining and operating the community. Some state statutes grant even more far-reaching powers.

By law, each common interest community must file a set of master regulations, plus subsidiary documents called articles, plus a set of bylaws. For planned communities, the master regulations are called the covenants, conditions, and restrictions. The same document for a condo is called a declaration or a "master deed."

A condominium declaration describes the land, building, and other improvements; the location of each unit; the common elements; and the intended use of each unit. Basically, the declaration involves the physical arrangement, including a floor plan with tax lot numbers for the various units. But under the laws of many states, it need not contain much in the way of operational detail.

The articles of incorporation, called articles of association in non-incorporated associations, involve the legal establishment of the association, including the name, address, and purpose of the association; the aggregate number of shares permitted; whether cumulative voting is permitted; and, in general, the power of the board to make, alter, and repeal reasonable bylaws.

Q. What do the bylaws regulate?

A. Bylaws dictate how the managing board will be elected and define their duties and powers. Bylaws cover such matters as whether the board will manage the property or engage a management firm; rules critical to settling disputes that might arise; how assessments and reserves are to be determined; what restrictions apply to the lease and sale of units; and to what extent board decisions bind unit owners.

Although bylaws in most corporations may be altered freely by the board or by a simple majority of the members, many condominium statutes require a two-thirds or even three-quarters majority to change them. States that have adopted the Uniform Condominium Act allow a bit more flexibility, to reduce the chance that a subdivision will be unable to adapt to changing conditions. Wherever you live, though, get used to your development's bylaws because they are rarely changed.

Sidebar:

Challenging Association Rules

In the course of operating the association, boards periodically enact other rules and regulations regarding the details of community life, such as how parking spaces are allocated. These are subject to judicial review if a unit owner believes that the board overstepped its authority in a given regulation. In reviewing regulations, courts tend to consider four questions:

- Is the rule consistent with the declaration and other superior documents?

- Was the rule adopted in a good faith effort to serve a purpose of the subdivision?
- Are the means adopted to serve the purpose reasonable?
- Is the rule consistent with public policy?

If a court rules that the answer to one of these questions is no, it might throw out the rule in question.

The Board of Directors

Q. How is the board established?

A. The board of directors is elected by the membership to carry out day-to-day operations and oversee enforcement of the rules. A typical board has five to seven members who are elected on a rotating basis. The board in turn elects officers, such as a chairman or president, secretary, and treasurer.

Q. What is the role of the board of directors in managing a multi-unit dwelling? A.

Typically, the board has broad powers under state law. The board may raise or lower assessments and impose special assessments to cover specific repairs or improvements. It also may insist that unit owners obey the policies of the association. Major restrictions on the purchaser's right to lease, finance, or resell his or her unit may exist.

Many multi-unit associations grant the board of directors a right of first refusal to buy a unit. The way this generally works in practice is that the owner must offer to sell the unit to the board before offering it for sale to any other person.

Q. How does the board enforce the association's rules?

A. When a unit owner ignores the rules, the board usually levies fines against the owner. If the fines pile up and the owner refuses to pay, the board may file a lien against the property and, if necessary, foreclose on it to get the money. Another approach is for the association to sue the violator, seeking an injunctive order to stop the practice in question. A violator who refuses to follow the court order could be in contempt of court.

In theory, any unit owner may sign a complaint against a neighbor to initiate a process that could lead to fines. In practice, though, most unit owners are hesitant to sign formal complaints against people next door, even though they voice their concerns loudly to the board. If the community hires a management company—standard practice in larger communities—the company's routine maintenance inspections include checking for violations of the rules. The employee who discovers the infraction then serves as a complaining witness to the board, which more than likely will start by sending someone to talk to the violator. Most board members try to be even-handed in their enforcement, as they don't want to be criticized for punishing one violator and showing leniency towards another.

If the board decides to resort to the courts, it must do so promptly or risk losing the authority to enforce the rule. If the rules say you cannot build a tool shed and you do it anyway, board members cannot walk past it every day for a year and then sue to have you remove it.

Q. How does the board handle assessments?

A. One of the most onerous tasks of an association board is raising the monthly assessment that pays for maintenance and various services, from trash collection to snow removal. Some state statutes mandate certain levels of reserves to guard the community's financial stability and prepare for inevitable capital expenditures. Even without a mandate,

a board is wise to build up a substantial reserve to avoid having to require a massive special assessment when the furnace needs to be replaced.

In some states, associations may not raise the assessment higher than a set amount without membership approval. In Illinois, for example, condominium boards must hold a referendum of unit owners if the budget increase rises above 15 percent. Many condominium declarations adopted ten or fifteen years ago set similar dollar caps on assessments without owner approval.

When unit owners are doing well, they may grouse about the assessment but chances are they will pay it. But what if a unit owner is in serious financial trouble, with several thousand dollars worth of assessments unpaid? If the owner goes bankrupt, the creditors line up for their share of what is left—and the community association is normally far down the line, well behind the bank that holds the mortgage. If the association cannot obtain the bankrupt owner's assessment, all the other property owners in the community will have to cover it.

One provision of the Uniform Common Interest Ownership Act, in effect in Connecticut, Alaska, and several other states, gives community associations a "super-priority lien," putting them first in line for the bankrupt unit owner's share of the past six-month's assessments. Numerous states are considering this provision, although it is opposed by the banking lobby.

Q. What can I do if the board isn't doing its job?

A. Most problems arise if a board neglects the enforcement of rules or misuses the funds entrusted to them. If you suspect financial problems, you are entitled to review the association's financial documents, including its budget, financial report, bank loan documents, and record of reserves. Together with other concerned unit owners, you may hire an independent accountant for an audit even if the board refuses to do so.

If you believe the board has become autocratic and tyrannical, review the minutes of the board meetings to see whether decisions were made in accordance with the association's bylaws, rules, and regulations. Was there proper notice of meetings? Were all procedures proper? If not, some of the board's actions may be void.

When the board has seriously mismanaged its responsibilities, you have two basic options. One is to file a lawsuit against the board for breaching its duties. Be aware, though, that the board has a right to assess the unit owners to pay for its own defense, so you will be paying for both sides. Arbitration or mediation may be a less costly approach, if your bylaws permit them. The other option is to run for a position on the board yourself and convince some well-qualified neighbors to do the same. In the long run, that's probably the best solution.

Handling Problems

Q. Can an owner obtain a variance from the association rules?

A. Under the rules of most community associations, you cannot make changes to the exterior of your home without the consent of the board. Normally the board delegates the review of plans to an architectural control committee, which sets standards and uses them to rule on whether you can add a skylight or put on a screen door. As a homeowner, you submit your plans to the committee and cross your fingers. Be aware, though, that courts have found that covenant committees do not have the authority to approve major violations of the restrictive covenants.

If the board denies your request, you will either have to change your plans or steel yourself for a major battle. One New Jersey homeowner sued his association in 1982 after

its board denied him permission to build a deck. The case was in and out of court for years, with neither side willing to budge.

Q What can I do if my neighbor is a problem?

A. The first step is to check the bylaws and regulations governing the association to see whether the practice in question is a violation. Then talk about it, first to the neighbor posing the problem and then to one of the members of the board, which often acts as a mediator to help unit owners informally work things out. If one party is clearly violating the rules, the board may ask you to sign a formal complaint to begin a proceeding that could lead to fines against your neighbor or even a court injunction to stop the behavior. If the problem isn't addressed in the documents and a polite request doesn't help, one option is to try alternative dispute resolution. Again, it is important to act promptly if a neighbor's behavior makes life unpleasant for you. If you have put up with it without comment for ten years, you may have trouble proving your point.

Q. What can you do if the community has too many rental tenants?

A. Owner-occupants often object to renters, who are perceived as not caring about the property enough to maintain it properly. Likewise, absentee owners generally want to keep up the rental value but don't want to pay for extras. And although restrictions apply to tenants as well as to owner-occupants, they are more difficult to enforce. But if the board slaps a lien on a unit owner because of the tenant's behavior, the owner may well terminate the tenant. If a majority of the unit owners believe the number of renters is a problem, they may be able to band together and convince the board to call for a vote on a change to the bylaws that would restrict leases.

Q. What can be done if the converter of a cooperative defaults?

A. Although cooperative ownership is rare in most parts of the country, it is the primary form of home ownership in New York City. Over the past few years, a glut of cooperative conversions in New York and some changes in the laws governing them have put some conversion sponsors in deep financial trouble.

When the owner of an apartment building decides to convert it to a cooperative, the building's residents have a legal right to remain as rent-controlled tenants for as long as they wish, unless 50 percent of them decide to buy. The result is that a typical building being converted has a large number of rental apartments owned by the sponsor, who is responsible for paying more in monthly maintenance fees than he receives in rent. Many sponsors have defaulted, whether for not paying maintenance on unsold shares, not paying the mortgage, or both. The entire corporation then faces foreclosure or bankruptcy.

If that happens to your cooperative, there are several ways to avoid disaster. If the sponsor has financed the unsold shares, the sponsor's lender would do well to begin paying maintenance on those apartments as quickly as possible to protect the value of the collateral, then try to sell the shares to the tenants or pay them to move and resell the units. If not, the shareholders need to take control of the board of directors, terminate the sponsor's proprietary lease, and cancel the sponsor's stock. Then the rent goes to the corporation. Quick action is critical to keep the building from deteriorating in the meantime.

Q. What can I do if I have a problem with the developer?

A. In an increasing number of cases, condominium associations have sued their developers over shoddy construction, breach of contract, negligence, or fraud. These lawsuits are complex, time-consuming, and expensive, often involving hundreds of people

and millions of dollars. But the law expects a developer who cuts corners on construction or breaks promises to the unit owners to make up for the damage.

If only your unit is involved in the problem, it is up to you to engage an attorney and try to settle the matter out of court, if possible. But if the problem involves common areas or common funds, the association may assess all unit owners to pay its legal fees in pursuing the developer. In some cases the developer may agree to arbitration to save the time and expense of a lawsuit. The important thing, though, is to act quickly because the longer you wait, the harder it is to find witnesses or collect a judgment.

Sidebar:

Is Your Association Adequately Insured?

Condominium associations typically carry several insurance policies to cover damage to building exteriors and common elements, as well as liability for injuries on the premises.

In a common-interest community containing attached dwellings or dwellings within a single building, most lenders and enabling statutes require a single policy of property insurance covering the entire building or all of the buildings in the project. This policy should not name the unit owners as insureds, but name the association or a trustee as insured for the benefit of unit owners and their mortgage lenders. In such a community you would only have to purchase property insurance covering your unit's contents, including paint, wall paper, furniture and possibly appliances, carpeting and the customized built-in portions of the unit. Your unit owner's insurance should also include a small amount, from \$1,000 to \$2,500, covering uninsured losses to the overall community. This coverage would pick up your share of large deductibles in the community association insurance or it may cover losses which are not covered by the association's insurance.

In an attached-unit project, liability insurance should be maintained by the association to cover the entire project. Once again, this liability insurance should not name each unit owner individually as insured, but should name the association as the insured for the benefit of the unit owners. The association policy will cover the unit owner's liability for association activities on the common areas and within the community and other association activities that occur outside of the community for which the unit owner might be liable.

The unit owner's individual policy should cover the unit owner's individual liability for actions such as those which would occur outside the community or negligently undertaken by the unit owner that were not the responsibility of the association.

In a common-interest community that consists of detached dwellings on their own lot, often the insurance only covers the common areas or those areas which are the responsibility of the association. In these kinds of communities, the insurance on the dwelling is the normal home owner's insurance that would be carried on any single family detached dwelling. However, the association insurance should cover the liability of the homeowners for the association's activities as well as the property at the association.

In addition, associations usually carry liability policies on directors and officers in case the board members are sued over their decisions, and an umbrella liability policy to cover catastrophic judgments. Unit owners pay the premiums on all their association insurance as part of their regular assessments.

You have a right to see the association's master policy, which the association generally must supply within thirty days of your request. For a quicker response, ask the insurance company directly for a copy of the building policy. With that and a copy of the association's declaration in hand, your insurance agent can help you determine how much homeowner's insurance you need.

While you are looking at the master insurance policy, ask your agent if the association is adequately insured. Full replacement cost is important, as the victims of

Hurricane Andrew learned. And if someone is seriously injured on the property and the association's liability policy doesn't cover the judgment, each unit owner could be assessed for a portion of the cost. Your own homeowner's policy, if broad enough, should protect you against these and other emergency assessments resulting from a casualty or liability loss. Without your own coverage, however, you could be subject to a catastrophic assessment.

Where to Get More Information

Nearly every state has federal information centers where information on federal services, programs, and regulations is available to consumers. Check the government pages of your local telephone directory for the office nearest to you.

The local library can also be a good source of helpful, free information.

Various nonprofit agencies, such as the Better Business Bureau (BBB) can help you get more information on your legal rights and obligations in owning property. Look in your local telephone directory for the BBB office nearest to you, or access www.bbb.org

The federal government publishes a listing of many free or low-cost pamphlets on home ownership and home buying. This listing can be obtained by writing Consumer Information Catalog Pueblo, Colorado 81009; telephone 1 (888) 878-3256, website: <http://www.pueblo.gsa.gov/> -or more specifically for the home buying aspect, <http://www.pueblo.gsa.gov/housing.htm>

In addition, the Federal Trade Commission has free publication on homes and real estate. Write to Public Reference, Room 130, Federal Trade Commission, Sixth and Pennsylvania, Washington, DC 20580, telephone (202) 326-2222, for a list of currently available publications, or access their web site, www.ftc.gov. Publications they offer having to do with homes and real estate: <http://www.ftc.gov/bcp/menu-home.htm>

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