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**IN THE NEWS:
YOUR HOME IS YOUR
RESPONSIBILITY ALL THE
WAY TO THE CURB!**

If someone slips and falls on the sidewalk in front of your home, who's responsible? You or the city? Until last month, that strip of concrete between the curb and the front of most commercial and multifamily residential buildings in New York City was considered the



city's property, *and* the city's responsibility. Not anymore. On September 15th, three amendments to the New York City Administrative Code took effect that now make property owners responsible for not only keeping the sidewalks that abut their properties "in a reasonably safe condition," but also require them to carry insurance to cover injuries sustained on those sidewalks and make them legally liable for monetary damages that arise from such injuries.

TO OUR READERS:

It's been over two years since the tragedy of September 11th and since then, the City has implemented many changes in an effort to make New York a safer place to live, work...and now build. Mayor Bloomberg and the Buildings Commissioner have proposed legislation to improve building safety based upon recommendations by the World Trade Center Building Code Task Force. In "The Lessons of 9/11," we'll take a look at those recommendations.

So someone slips and falls on the sidewalk in front of a home, who's responsible? The city or the building owner? We take a look at recent changes to those rules in "In The News."

In this issue, for our "Living in New York" department, we welcome our first contributing editor, Stanley Turkel, a New York-based hotel consultant specializing in litigation support, franchising issues and asset management. He asks the question "When Do Rebates Become Kickbacks?"

Falling in love can be wonderful but not when it comes to buying a house. In "Inspector's Diary," Al, Larry and Matthew caution if you're househunting, it's best to use your head and not your heart.

Have you ever considered the benefits of a photo-voltaic panel? To find out what it is and how it can help you, check out "Did You Know?" That's where you'll also see other tips on how to stretch your energy dollar, some fascinating historical facts and a few recipes for home repair.

Finally, we'd like to thank you for the positive feedback and suggestions about our first issue of The Gotham City Inspector. We look forward to your responses this month too.

Sincerely,
Emily Hoffman,
Editor



ALVIN & LARRY UBELL - The Gurus of How-To can be heard on **The Leonard Lopate Show**. Tune to WNYC-Radio the second Wednesday of every month @ 12:00noon. Radio AM 820 - 93.9 FM - <http://www.WNYC.org>.

THE LESSONS OF 9/11: BUILDING A SAFER NEW YORK

The tragedy of 9/11 was a shocking moment for the city, and since then, much has been done to try to make New York a safer place. The most recent move was legislation proposed by the Bloomberg administration to improve building safety, based upon the recommendations of the World Trade Center Building Code Task Force. Thirteen proposals intended to prevent the kind of structural failures that contributed to the World Trade Center's collapse, and to make it easier for people to evacuate tall buildings in case of emergency. They are:

Full Sprinkler Protection for Office Buildings. Owners of all existing office buildings 100 feet or greater in height which are not already fully equipped with sprinklers will be required to do so on or before January 1, 2019.

Improved Markings, Exit Signage, and Back-up Power to Exit Signs. Exit stairs and doors in new or existing high-rise office buildings will be required to have glow-in-the-dark markings.

Restrict the Use of Open Web Steel Joists. Their failure under extreme heat and fire are prime suspects in the WTC collapse. This recommendation will prohibit their use in all new, non-residential high-rise buildings until appropriate fireproofing standards are developed.

Inspection of Sprayed-on Fireproofing. Spray-on fireproofing is only effective when it remains on the steel structure to which it was applied. Controlled inspections will be performed to assess its integrity during building alterations where it is exposed.

Impact-Resistant Stair and Elevator Enclosures. In many accounts of the WTC tragedy, the drywall encasing the stairwells in the impact area disintegrated, blocking egress for some. The use of more impact-resistant stair and elevator enclosures in high-rise office buildings constructed or altered after January 1, 2006 would be required.

Restricted Use of Scissor Stairs. "Scissor" stairs are two intertwining sets of staircases separated by a common wall and floors. Scissor stair assemblies will be prohibited in new high-rise office buildings with relatively large floor plates.

Other proposals include: Full Building Evacuation Planning, Smoke Stop Elevator Vestibules, Controlled Inspections of Fire Dampers, Raising Air Intake Locations, Prohibition of Oversized Fuel Oil Transfer Piping, Excluding Certain Floor Drains from Normal Fixture Counts, Setting Standards for Fuel Oil Transfer Piping.

Many of these proposed rules are already being implemented by developers. The only controversial measure is the requirement of existing commercial buildings 100 feet or higher to retro-fit for sprinklers, because it will be very expensive to do. Landlords can apply for waivers if they have structural issues that prevent them from complying before the deadline...although, when Buildings Commissioner Patricia Lancaster was asked whether they'll get the waivers, she said, "Probably not."

INSPECTOR'S DIARY: FOR LOVE OR MONEY: BUYING A HOME WITH YOUR HEAD, NOT YOUR HEART!

Falling in love can be a wonderful thing...but not when you're buying a house. Al and Larry say that the worst thing you can say in front of an owner or broker when you first see the property is "I love it!" For one thing, that tips the scales in favor of the seller in negotiating the price, but it also means you've lost sight of a very important point: When you're house hunting, a home is not a home—it's a house.



Buying a house is a business transaction. If you remember that, then you'll be able to observe more clearly what conflicts of interest can take place. Is the real estate broker truly your friend? What position does a lawyer take? A broker? A bank? The insurance company? Who is your friend and who is your adversary?

All of these people are treating it like a business. And you should too. And if you buy a place and a problem comes up, you can correct it. And, if you decide a month after you buy a house that you don't like it, you can put it up for sale. You'll find a buyer...and you may make money. It's much less traumatic to get rid of a bad house than a bad spouse.

DID YOU KNOW?

- That a leaky faucet is more than just a nuisance—it's a waste of one of our most precious resources: One drip per second wastes 8.5 gallons of water per day 60 gallons per week 260 gallons per month and 3,120 gallons per year!
- That on September 2, 1666, the "Great Fire of London England" is generally credited with inspiring our system of fire insurance. The fire started in the wooden house of a baker named Farryner, who lived on London's Pudding Lane, near the Tower of London. During the ensuing three days, more than 13,000 houses were destroyed, though it is believed that only six lives were lost.
- That retrofitting your whole house with double-glazed windows can save you as much as 25% of your heating costs and, in the summer months, it means you will save as much as 15% on air conditioning too!
- And speaking of saving energy, think about this:

What if owners of homes, apartment buildings, office buildings, and other commercial buildings installed photovoltaic panels?

You're asking "What's that?" It's a panel that takes light and heat from the sun ("photo") and turns it into energy ("voltaic"). They can't supply all the power to all

of our homes and businesses, but they can make a difference. Sometime in the future, imagine if every 1, 2, 3 and 4 family house in our country would install an array of just 48 solar panels that would only take up only 503.53 square feet of roof space on each house. Those solar array panels, collectively would generate over 925 billion kilowatt hours of electricity a year at only 5 hours of sunlight a day. That's as much electricity per year as we now get from 343 million tons of coal or one billion three hundred million barrels of crude oil!



LIVING IN NEW YORK: WHEN DO REBATES BECOME KICKBACKS?

—By Stanley Turkel,
MHS, ISHC

I recently completed a consulting assignment for an investment firm which owned a hotel managed by a well-known hotel company. In the course of an operational audit, I stumbled upon an issue that is one of the hotel industry's most vexing problems.

The issue is how management companies purchase on behalf of owners. In the hotel I investigated, the management company purchased everything: FF&E (Furniture, Fixtures & Equipment) food & beverages, operating supplies, etc and, as was spelled out in the management agreement, would receive a "4% fee for such purchasing services."

I discovered that this led to a self-serving, or even fraudulent purchasing pattern on the part of the management company: it seems they negotiated contracts with hundreds of manufacturers and suppliers which produced millions of dollars of rebates paid directly to the management company, and then kept the rebates as a profit center. They also had equity investments in some of these vendors and owned others outright, and they did not disclose the rebate program or its ownership interests to the hotel owner.

A management company serves as an agent for the hotel owner. The agent/principal contract says that the operator is only entitled to receive basic fees and incentive fees that are all clearly spelled out in the contract. When the management company failed to inform the hotel owners about these rebates, they were no longer rebates. They became kickbacks.

The management company tried to justify its actions by pointing to so-called "common industry practice." There is no such thing. Operators engage in a wide variety of purchasing practices.

I recommend hotel owners take the following actions:

1. For existing management contracts, read your purchasing clause carefully. If the management company collects a purchasing fee and fails to disclose its rebate policy, the owner should receive the benefit of all discounts and rebates received in connection with purchasing. Additionally, general fiduciary duties require disclosure of dealings with operator affiliates. Armed with this information, you should be able to negotiate a new purchasing agreement. The savings could be substantial over the life of a management contract.

2. For new management contracts, you should negotiate clauses with the following language:

"Operator shall purchase such Consumable Supplies and other expendable items as are necessary to operate the Hotel and shall pay for such supplies out of the General Account. When taking bids or issuing purchasing orders, Operator shall be under a duty to use its reasonable best efforts to secure for and credit to Owner all discounts, commissions or rebates obtainable as a result of such purchases. Operator shall obtain competitive prices and shall receive a XX% fee for such purchasing services. "Operator shall promptly remit to Owner all discounts, rebates, commissions or other emoluments received by Operator or by any "Affiliate."

This observation also applies to any type of management or agency relationship that has control over the principal's purchasing, under the undisclosed agency or principal rule.



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If you, or anyone you know is interested, please call the Sierra Club Group or Don Carlson, at 212-206-3782.

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