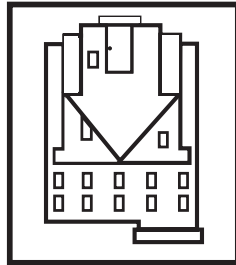


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## Notable Quotables

**You will never do anything in this world without courage.  
It is the greatest quality of the mind next to honor**

-Aristotle

**Once we accept our limits, we go beyond them.**

-Albert Einstein

**Sometimes you will never know the value of a  
moment until it becomes a memory**

-Dr. Seuss

**Continuous effort - not strength or intelligence - is the key  
to unlocking our potential.**

-Winston Churchill

**You don't make progress by standing on the sidelines, whimpering  
and complaining. You make progress by implementing ideas.**

-Shirley Chisholm

**True happiness is... to enjoy the present, without anxious  
dependence upon the future.**

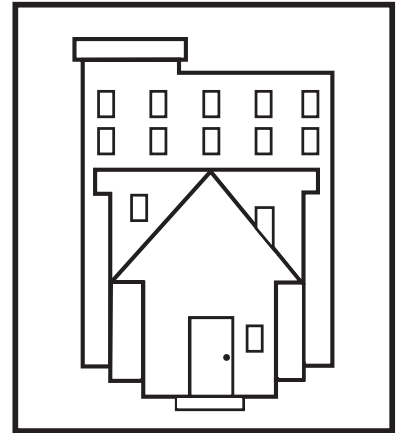
-Theodore Roosevelt

2nd Quarter 2018

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## HOME INSPECTIONS: A Valuable but Limited Tool

by Charley Hess, Attorney

Before committing to the purchase of a house, potential buyers should obtain a home inspection and make it a contingency of the real estate purchase contract along with other contingencies such as obtaining an appraisal and financing for the purchase. There are scads of home inspectors, and most of them have websites which you should visit before selecting one. You may also research the background of a home inspector by contacting the Better Business Bureau or visiting its website and by checking with the office of the Ohio Attorney General.

The fees charged by most home inspectors are modest, \$350.00 or so, but make sure that you get value for your money. Prior to hiring one, ask if she or he will actually go onto the roof. Don't fall for the answer that "I can see what I need to see from the ground." The inspector should check the flashings, diverters, vents, stacks, and the chimney as well as the caulking or sealant on each. Those examinations cannot be done from the ground.

Also ask if the inspector intends to go into the attic. A common practice is for the inspector to stick his or her head in the attic from a ladder and take pictures. The panoramic presentation may appear to be thorough, but you need to know about the insulation in all of the areas of the attic, some of which cannot be seen from standing on a ladder and whether the soffits are vented properly and not obstructed.

Usually, home inspectors will not move items to check walls, floors, etc., so do not count on an inspector to discover hidden problems. In order to protect yourself, you will need to be direct with the sellers as to what may be behind, for instance, pieces of furniture and other items being stored in the basement. Frequently, a seller will try to put on the "best face" possible in order to show the house, which is understandable, and in the process the seller

may conceal with an old dresser or night stand a large or serious crack in the block or in a poured basement wall. You absolutely should ask permission to move those items so that you can see the wall for yourself. Also, be aware of freshly painted basement walls which may camouflage evidence of water intrusion.

Basically, a home inspector gives you an opinion about everything that you can see yourself! So, you may ask, what good is an inspection? If you are handy in all aspects of construction, that is, electrical, plumbing, HVAC, carpentry, roofing, sewer, etc., then maybe you do not need a home inspection. You can evaluate the property on your own.

If, however, you are like most people who do not have extensive experience in all of those areas, then an inspector's report has value in two primary ways. First, it will identify areas which need attention. With that information, you and your realtor can determine whether to submit to the seller a "Request to Remedy". Because some of the repairs may be costly, you may want to shift that cost to the seller. If an inspector identifies a problem area and you do not address it, you will have waived any potential claims for that problem against the inspector and against the seller.

Second, the report provides you with a basis of reasonable reliance upon a professional inspector, who is usually insured (and you may also want to ask that question early), in the event that the inspector misses a critical aspect or condition of the house which, had you known about, may have prevented you from making the purchase. Remember, if the home inspection is a contingency of purchase contract, then you have an avenue of escape from the transaction if the written report reveals to you a condition which you do not want in a house.

Mold is a huge consideration when making the purchase of a house. Not all inspectors are knowledgeable about mold, and not all inspectors will offer an opinion about whether mold exists in a house. Either obtain a home inspector who is connected to a laboratory for testing or hire a separate mold inspector. Laboratory tests for mold are not expensive, and whether you use a home inspector or a mold inspector, you should spend the money for such testing if you are interested in purchasing the house.

A home inspector's contract may contain what is called a limitation of damages clause. Typically, the clause states that in the event that the inspector fails to report a faulty or suspect condition of the premises, you agree that the losses which you can recover against the inspector for negligence will not exceed the amount that you paid for the inspection. This type of provision is often found by the courts to be unconscionable and/or unenforceable. Still, it should be a consideration when hiring a home inspector.

Some buyers will enlist the services of an engineer either in lieu of or in addition to the services of a home inspector. The engineer's fee will be higher and the contract may have the same type of limitation of damages clause. The benefit of an engineer over a home inspector is that the former may be able to provide more detail regarding structural and foundation issues.

Whichever professional you choose to retain, make sure that your purchase contract is contingent upon a home inspection which is satisfactory to you.

*Charley Hess is a sole practitioner in Dublin, Ohio, and he is licensed to practice in Ohio and Colorado. He focuses on civil and criminal litigation including real estate litigation. He can be reached at 614.442.5800, or 614.582.2191, or through [www.charleyhess.com](http://www.charleyhess.com)*

## Managing the Construction Process

by Christine Serlin

**Open lines of communication** and collaborative partnerships early on and often are key to ensuring a smooth construction process.

Several experienced developers share their best practices for navigating this process from start to finish:

### BOOST YOUR COST ESTIMATES

Tapestry Development Group, a nonprofit based in Decatur, Ga., aims to add at least 15% on top of its construction cost estimates in its projects' construction-rehabilitation hard budgets. "We've experienced construction costs continuing to rise over the past few years, and, for those of us in the Southeast, we're anticipating by the second quarter of 2018 both labor and material cost increases due to the demand for reconstruction from the recent hurricanes," says principal Richelle "Shelly" Patton.

### REVIEW DOCUMENTS AT THE START

To get the best results during the construction phase, developer Dominium focuses on the fundamentals.

"Right before the plans go out to bid, we sit down with the architect and review documents together. This includes our construction supervisor, our architectural quality control person, the development associate, the architect, and their consultants, as necessary," says Scott Ewing, director of construction for the Plymouth, Minn.-based firm. "This enables us to answer contractor questions in advance and finely tune the scope of work."

Ewing adds that once the project is awarded and the contractor is about to begin the project, the team sits down again to walk through the documents with the general contractor's project manager and superintendent. "This ensures we point out critical details and products and ensure they understand the project scope."

### SELECT PRODUCTS FOR THE LONG TERM

Dominium looks carefully for durable products and makes sure to be consistent across its projects.

"Contractors always wonder why we're so specific on things like a towel bar," says Ewing. "First, it makes our life easier to inspect knowing the towel bar we install in Orlando, Fla., is the same in Iowa City, Iowa, and Greeley, Colo. Second, we want it to last 20 years or more."



### CREATE A CENTRALIZED PURCHASING TEAM

To maximize savings, Indianapolis-based Herman & Kittle Properties has a purchasing team that sends its plans out to bid for all projects.

"By centralizing purchasing, we're able to discern multiple state firms, vet groups uniformly, and create value by having a team focus on this critical stage of construction."

### HOLD MONTHLY ON-SITE MEETINGS

"For each construction project, we hold monthly meetings on-site that require the physical attendance of the developer of the project, project architect, and construction project manager," says Tom Capp, COO of Gorman & Co. in Oregon, Wis.

### REQUIRE WEEKLY LABOR REPORTS

Kittle says weekly manpower reports for all active construction projects are critical. "We've found that the number of subs on-site can help establish metrics that lead to being able to forecast monthly construction billings, and, by reporting weekly, managers can make changes and help remove obstacles [quickly] and proactively versus reactively."

### PLAN REVIEWS MID-CONSTRUCTION

For Herman & Kittle, Kittle says construction plans are reviewed by all involved at an in-person, four-hour meeting once the project is 50% complete, to ensure that it adheres to standards. The firm goes through a similar process at 90% complete for the prejurisdiction submission review.

### STAY UP TO SPEED WITH TECHNOLOGY

According to Kittle and Ewing, technology can help the construction and project management teams stay connected with one another.

"Our entire team utilizes project management software as a central repository for everything from land purchase agreements [to] punch lists," says Kittle. "This allows access for all stakeholders regardless if they are based in our home office, remote offices, or field offices via [tablet and smartphone]."

## Create a Business Plan

by Wendy Osborn, Vice President | Farm Credit Mid-America

It's easy to know you need a business plan, but it's harder to know exactly what to include.

Business plans tend to follow a standard format, and many online resources and templates online can be adapted for your operation. Make your plan as simple or as complex as you like. The main goal is to create a plan that is useful to you and meets your needs. Here's some advice:

**Operation overview.** This is the "elevator pitch" about your farm. Describe the basics of your operation related to your mission and objectives, crops you produce and acreage.

**Ownership summary.** Include information about ownership and company structure. With any type of business, different owners bring different expertise. It's always good to evaluate each owner's strengths.

**Strengths and weaknesses.** Identify ways to use your ownership team's strengths to your advantage and plan for ways to overcome any weaknesses in your operation.

**Sales and marketing strategy.** Once you have identified your operation's strengths, look for opportunities to leverage them to your competitive advantage as you create sales and marketing strategies.

**Financials.** This is the most important part of your business plan. Include a budget and a balance sheet that reflects your assets, liabilities and net worth.

**Goals.** Research has shown that the simple act of recording goals will increase the likelihood of achieving them. Write down both short- and long-term goals, such as purchasing a new combine or paying down debt. Your goals should be SMART (specific, measurable, achievable, realistic, and timebound). Remember to involve all owners in identifying and setting goals.

An accurate and updated business plan is a powerful tool that can open up many opportunities.

## Exercise for a Longer Life

by Valerie Mauger

You've heard the mantra of "30 minutes of exercise a day, five times a week," right?

But you might not have known that exercise can help to prevent some of the most prevalent medical conditions.

**Colon Cancer:** Those who exercise consistently are 24 percent less likely to develop colon cancer, according to the British Journal of Cancer. Researchers postulate that exercise may decrease the risk by promoting a healthy colon, thereby reducing the time cancer-causing materials spend within the body.

**Breast Cancer:** The National Cancer Institute states that active women are 12 percent less likely to develop breast cancer. Some researchers think this is due to the reduction of certain hormone levels.

**Depression:** Reports from Harvard Medical School indicate that regular exercise can increase endorphin activity and improve one's mood at the same level as pharmacological techniques.

**Cardiovascular Disease:** The World Heart Federation finds that weekly moderate exercise reduces one's risk of death by the disease by 50 percent, through lowering blood pressure and cholesterol levels.

**Type 2 Diabetes:** Per the Diabetes Prevention Program, moderate exercise, along with healthy eating, increases one's insulin sensitivity and also makes it easier for muscles to use glucose on their own.

### The world's most expensive pizza!

Laszlo Hanyecz, a Florida programmer, is credited with conducting the first real-world Bitcoin transaction. In 2010, he paid 10,000 Bitcoins to have two pizzas delivered from Papa John's. (He sent the Bitcoins to a volunteer in England, who then called in a credit card order.)

Mr. Hanyecz will also probably be remembered for making one of the worst deals in history. If he'd held on to them, the 10,000 Bitcoins he used to buy pizza would be worth about \$100 million today!



## Stephen Kim's Thoughts on Leverage, Land Value, and Loose Credit in the Recovery

Stephen Kim, Senior Managing Director, Evercore ISI

There's a sentiment that because the tight supply for labor and land constrains home builders from building as many houses as demand warrants, the economic downturn, when it comes, will be a mild one. Stephen Kim isn't one to say the sky is falling, but the senior managing director for Evercore ISI's Building and Builder Product Equity Research isn't so sanguine about the ride through the next recession being a soft one. He notes that publicly traded home builders are more land-leveraged than they were just before the Great Recession. Also, the notion that loan defaults during the next downturn wouldn't be as severe because credit is tighter this time could be a fallacy, considering that the percentage of homeowners who bought houses in affordable price ranges with less than a 5 percent down payment is greater now than in 2005. Kim has more observations about the current recovery cycle and the impact of tax reform on land value.

**Q** You noted that the top public builders haven't become asset-light compared with where they were regarding land ownership and options before the recession. What's your take on land spending as a percentage of revenue?

**A** Essentially, what we have observed is that builders have been talking a lot about becoming more land-light, but their actions speak louder than their words. A couple of things I would note are that if you look at the amount of land builders own today relative to prior periods, you would actually see that builders own more land than they did in prior cycles, not less. What's also interesting is that the amount they spend as a percentage of their revenue has actually been increasing. After falling from the unsustainable heights they reached in 2012 and 2013, those land-spend levels, as a percentage of revenue, came back last year to the industry average. But now they've actually started to nose back up again. My point is that if you're making a call that the builders are substantially more asset-light, you have two main problems: One is that they're not more land-light, they're more land-heavy than they were, and secondly, they're not spending less, they're spending more. It's like when you're on a diet; if you want to lose

weight, you have to eat less. Well, the builders here, if they want to get the ownership down, they have to buy less, and they're not doing that. That was the one-two punch that we were seeing on the land side.

**Q** Does it make a difference if builders control the land but they don't actually own it?

**A** It would if it led you to a different conclusion than what we arrived at. One of the things we'd heard was that builders were saying that they are optioning land. They were saying they're land-light. But they are actually land-heavy.

In particular, one of the things we've heard is, "Oh, the builders want to option 50 percent of their lots." We said, "All right. That's great. Let's take a look at history." What you find is that throughout almost the entirety of the mid-1990s to the mid-2000s—the latter half of the last cycle—optioning 50 percent of lots was totally the norm. There's nothing unusual about optioning half of your lots. You would absolutely not say that makes this industry different from what it was in the past. It doesn't.

The second thing we point out is that it doesn't really matter what percentage of your lots you option. What matters is how much land you own. So let's say you option 90 percent of your lots, but you own 10 years. Does the fact that you have a 90 percent option ratio make you less land-heavy? No, you own 10 years of land. It's the wrong metric to begin with. But even if you look at the metric, you would see that there's nothing special about it.

**Q** Would that lead you to say that the industry hasn't learned its lesson?

**A** I think it's worse. It's not that builders don't see the risk inherent in owning land. It's that they don't have a choice. One of the things builders will readily admit is that, unlike in the previous cycle, there isn't a large stable of land developers that have the ability to hold land for builders, like they did during the last cycle.

For the complete interview with Stephen Kim, see [probuilder.com/skim](http://probuilder.com/skim)