

Para 201- You & the Law

Chapter 5- Home Ownership

Monday: 9/21/09

I. Property Rights & Restrictions:

- A. Generally you can do what you want with your home—subject to federal & state laws, zoning ordinances, building codes, etc
- B. Zoning Limitations:
 - (1) Property could be zoned business/industrial or residential and could be further zoned to single-family residences
 - (2) Can apply for variance-permission to deviate from zoning laws: see steps to process on p. 4 (hearing, appearance before planning commission, approval by city council)
- C. Restrictive Covenants: private restrictions designed to maintain quality control over neighborhood
 - (1) could cover: lot size, square footage, design, fences, etc
 - (2) covenants: run with the land & binding on future owners BUT must comply with federal and state laws prohibiting discriminatory covenants (race, religion)
- D. Easements: giving a person or company the right to use your property for specific purpose
 - (1) power company easement; neighbors for access to road; utilities
 - (2) created by deed, will OR by prescriptive easement (use without objection)
 - (3) best way to find easements: title search
- E. Other Restrictions:
 - (1) National Register of Historic Places imposes some restrictions
 - (2) local ordinances may impose restrictions
 - (3) generally activities in your home are your private business except:
 - (a) illegal activities
 - (b) activities violating zoning codes
 - (c) activities which are nuisances- interfere with neighbors' enjoyment of their property i.e. local noise ordinances

**police need search warrant to enter your home

II. Safeguarding property Rights

- A. Good title= marketable title—you legally own your home and have authority to sell it --abstract, title opinion, title insurance
 - (1) title insurance : pay once & company will defend your title (lenders usually require)
 - (2) owner's policy –vs—mortgagee (lender) policy: owner's policy protects if defect in title; lender's policy protects lender's seniority in competing claims/interests
 - (3) see p. 9: what isn't covered by title insurance-just be aware there could be exclusions
- B. Ownership options:
 - (1) fee simple: most complete form of ownership
 - (2) life estate: right to use property during your life

- (3) sole ownership, JTWROS, tenants in common
 - for married persons, JTWROS is most common & convenient
 - tenancy in common : if you wants heirs other than spouse to succeed to property
- (4) various types of ownership- available in all states
- (5) community property: 10 states; has some tax advantages to basis of property
- Note: correct the amount on p. 13—you can bequeath up to \$3.5 million to heirs other than your spouse with no estate tax consequences in 2009**
- (6) titling home in one spouse's name to avoid judgments possible but 22 states have some protection for homesteads
- (7) simple to change ownership: draft deed, sign, & record
- (8) divorces: usually parent with custody of kids gets home but if sold, proceeds divided equitably

C. Property Constraints:

- (1) Liens: claims to property for satisfaction of debt (raise \$\$ by foreclosing on property and selling it
 - (a) mechanic's lien or construction lien: contractor or sub-contractor who has worked on home or delivered materials for it
 - (b) divorce lien: to make sure if property sold, proceeds of sale are split per decree
 - (c) child support liens: to ensure payment of accrued child support if property sold

** to remove liens, pay the debt but also get release-of-lien form signed & recorded

- (2) Adverse possession: trespasser using property for many years could become owner (usually rural settings)
 - possession must be open & hostile (without permission)
 - possession for minimum number of years: 10 to 20 years usually
 - to protect against: post your property & monitor unauthorized usage
- (3) Encroachment: when your neighbor's fixture stands partially on or hangs over your property:
 - roof, tree, fence (could be implied easement), swimming pool, garage, drive-way
 - demand that it be removed OR quiet title action OR sell neighbor an easement
- (4) Government rights to private property:
 - (a) eminent domain: gov't has the right to obtain private property for gov't purposes
 - must be due process (right to be heard) and just compensation
 - could be for highways, schools, parks
 - usually about 75 % of owners accept gov't offer
 - (b) seizure without payment: forfeiture of property used in crime, i.e. meth house
 - gov't has to show substantial connection between property and criminal activity

III. Liability Issues:

- A. Accident in home or on property: owner liable for negligence: icy sidewalks, swimming pools, etc
 - need homeowner's liability policy

- B. Liable for lawful visitors on property BUT in some states, that includes trespassers (ND's "shoot the burglar" law)
- C. See liability risks on p. 19
 - to be liable, must have knowledge of hazard and provide no warning
 - attractive nuisances: swimming pool with no gates/guards
- D. Defenses:
 - (1) contributory negligence or comparative negligence : guest is more responsible for accident than you are
 - (2) assumption of risk: neighbor cleaning out wasp nest example in materials
- E. Natural/Artificial Hazards:
 - (1) generally not liable for natural hazards (lakes, streams)
 - (2) more likely liable for artificially created hazard—see swing and rotted sewer trap cover example on p. 20
- F. Liability re: Children
 - owners liable for attractive nuisances even if child trespassing
 - swimming pools with no guard/gate; loaded guns in accessible place
- G. Recreational use statutes: where homeowners allow use of property for hunting, fishing, skiing: generally not liable if someone gets hurt if you have not charged a fee
- H. Liability for guest's actions:
 - generally liable if you provide alcohol and let guest drive away
 - get host liquor liability policy
- I. Liability for Pets:
 - (1) dog-bite statutes/ordinances: owners liable for pets' action
 - (2) vicious dog laws; require owner to confine dog securely or muzzle it , i.e. pit bulls
 - (3) some places ban wild animals as pets
 - (4) post signs
- J. Falling trees:
 - usually not liable if your tree falls on & damages your neighbor's property
 - current trend: ordinary negligence standard: duty to maintain your property in good condition
 - contouring your land in such a way as to change water path may result in liability
- K. Other liability areas:
 - (1) water-front areas
 - (2) pollution: oil tanks, dump sites, meth lab
 - (3) wetlands-protected
 - (4) utility lines: usually not liable for maintaining them but don't interfere with them

- L. Injuries on your Property:
 - don't admit guilt/negligence
 - contact insurer, attorney

**see checklist on p. 24

- M. Liability Insurance: liability portion on homeowner's policy to cover unintentional injuries on premises and unintentional damage to other's property
 - (1) have adequate coverage
 - (2) if you have workers on property, may be required to carry Worker's Comp insurance

**Umbrella policy: personal excess liability policy takes up where homeowner's policy leaves off
--the wealthier you are, the more you have to lose

**see materials on firetraps & precautions, p. 26

IV. Protecting Your Property

- A. Homeowner's insurance : replacement/repair; temporary living expenses; liability for injuries to third parties on your premises
 - (1) minimalist policy: to pay actual cash value of home & contents: may satisfy lenders but inadequate to re-build
 - (2) replacement value policy: better coverage (inflation guard clause)
 - (3) comprehensive, all-risk policy: best coverage
- B. may exclude flood/earthquake coverage so you may need "riders"
- C. Natural disasters
 - Flood: if community is flood-prone area get policy-Natl Flood Insurance Program
 - may be dollar limitations
 - Earthquake: California requires insurance carriers to offer to anyone with homeowner policy
 - Tornadoes/hurricanes: may have to buy special policy
 - Volcanoes: listed as covered in standard policies—wow!!
- D. Cost: varies greatly with age location, & replacement value of home
 - shop around
 - may opt for higher deductible
 - may qualify for discounts if you have taken certain safety precautions
 - see p. 29 regarding shopping for insurance
- E. Claims process:
 - easier if you have current inventory of possessions & their worth-see p. 39 for info
 - use computer program to keep track of major purchases; pictures; video-tape
 - remember to keep back-up files in safe place outside the home

F. Problems with insurance company:

- call company
- call Natl Insurance Consumer Helpline
- call your state's Insurance Dept or Insurance Commissioner
- independent adjuster for independent appraisal
- arbitration
- small claims court

G. Security Issues:

- (1) self –defense or defense of property: must use reasonable force
- (2) could be problem using deadly force
- (3) don't booby-trap your property (unlike the "Home Alone" movies)
- (4) see checklist on home security on p. 33—use common sense

H. Environmental hazards:

- in some states, sellers of homes have duty to warn of known hazards; in some states, no duty to disclose
- avoid scams—contact EPA-see web-site on p. 35

- (1) asbestos: widely used in flooring, walls, shingles, insulation
 - leave in place unless flaking/peeling
 - removal expensive so could use sealant
 - hire professionals: ask for documentation they have had special federal or state training
- (2) lead: especially dangerous to smaller children, pregnant women
 - lead-based solder banned in homes since 1988 but older homes may have
 - get chemical test
 - filters, distillation units, reverse-osmosis devices can help
- (3) Lead paint:
 - remove sample & test: contact local, county, state health or environmental dept
 - leave it alone or cover up with wallpaper, other material; replace wood-work
- (4) Radon: colorless, odorless, tasteless gas from natural decay of uranium in earth
 - comes in through: small cracks, floor drains, pores in hollow block walls usually at the lowest level (basement)
 - lab kits can test for radon
- (5) Toxic waste : more in rural areas but could have leaky heating-oil tank, oil, pesticides
 - homeowner may be liable for cleaning up toxic waste even if she didn't create it
 - gov't inspectors test and plan for clean-up
 - have attorney with experience in environmental matters
 - may be able to use "innocent landowner defense"-limits liability
 - check with local health authority to find out how to dispose of: motor oil, paint, antifreeze, etc.