Home Ownership

What are some typical restrictions imposed by law on owning real property?

- There are federal, state and local laws that can restrict what you can do with the real property that you own.
- Enforcement of these laws typically resides with various governmental agencies which are responsible for keeping you in compliance with these laws.
- The three most common restrictions imposed by government are:

    1. **Zoning** – restrictions on the use of the property as to residential, industrial, commercial purposes are very common.
    2. **Environmental hazards** – what materials can be stored on the real property as well as who is responsible for removing environmental hazards from real property is government regulated.
    3. **Public easement and right of way** – a portion of the real property may have to be left open for others to use. Easements and right of way are used to allow access to other property, to provide for roads and sidewalks, and to enable electric/gas/telephone/sewer lines to be installed.

- Violation of these legal restrictions can result in fines, penalties, injunctions, and even criminal prosecution leading to time in prison.

What are some of the risks in owning real property?

- There are many risks inherent in owning real property. They include:

    - Liability for violation of zoning ordinances.
    - Liability for environmental hazard clean-up.
    - Liability for others who are injured on the property.

- Liability for others who are injured by the property (such as an uphill landowner may be responsible when his land slides onto a downhill landowner's property).
- Liability to third parties pursuant to contract (such as the responsibility to make mortgage payments to lender).
- Liability to a purchaser when the property is sold (and there is a problem in transferring title, interest or possession).
- If you fail to maintain your property or knowingly create a condition on your property that causes injury to someone's property or person without taking steps to eliminate the hazard or provide a proper warning, you could be determined to be negligent and thus responsible for the harms or injuries that result of your negligence. To reduce your exposure to risk from owning real property, you have an affirmative obligation to maintain your property so as not to cause harm or injury to others.

What is eminent domain about?

- States, localities and the federal government have the right of eminent domain, which means they can condemn and force the sale of private property for public purposes. An individual's rights may be subordinate to the government.

- When private property is taken by the government, the owner is entitled to receive just compensation for his property.

There is a tree located in our back yard that is half on our property and half on our neighbor's. Can we cut it down?

- You can cut down only the part that is on your property. This includes any portion of the tree that extends over your property line, such as roots or branches.

- However, doing this may kill the tree and anger your neighbor. Accordingly, you might want to try to first get your neighbor's permission to cut down the tree to avoid a strained relationship.

- Also if the tree is mainly on your property, you could consider getting a survey which may show that the tree is entirely on your property. A survey will cost you a few hundred dollars.

Am I responsible for anyone who comes onto my property?

- Generally, a property owner is liable for dangerous conditions on the property. A property owner will generally be held liable for injuries that occur due to known hazardous conditions regardless of whether the injured person was invited or trespassing.

- For general injuries that occur to someone on your property, a distinction is made based on the reason the person is on your property - is the person there as an invited guest, is s/he there trying to sell you something, or is the person a trespasser? The duty owed to the person depends on the reason s/he is on your property. The highest degree of care is owed to invited guests while little or no duty of care is owed to the trespasser.

My landlord says he will sell me his house on a rent-to-own contract. What do I need to do to protect my rights?

- Make sure that you have a written contract. Read it, understand it, and agree with it before you sign it.
- If at all possible, have an attorney read it. The lawyer will make suggestions for you before you sign it.
- Once you have agreed on all the terms and have signed it, it should be filed in Circuit Court in the Deeds Room.

What should I know before I get a loan to buy a home?

- Be suspicious of anyone who contacts you first, or offers you a "bargain loan" or "consolidation loan", whether they send you an offer, call you on the phone, or come to your door.
- Shop around for a lender. You may qualify for a loan with lower rates and fees from a reputable bank or credit union. High cost lenders are counting on your belief that you cannot get credit on better terms elsewhere.
- Ask questions. Make certain that you completely understand the loan terms before signing. You have the right to receive paperwork before the day you sign, showing the total cost of the loan, the annual percentage rate, the monthly payments, how long you'll have to pay back the loan, and a list of the closing costs. Make sure all fees and points are explained. Ask if there will be a balloon payment at the end of the loan term.
- Don't sign anything you don't fully understand. Ask a lawyer, trusted friend or family member to go with you to the closing. Never sign a document with blank spaces. Make sure the dates on the papers are correct.
- You can back out of the loan at any time **before** you sign. If the loan terms change or something else surprises you, or you don't understand what you are signing, you can stop or delay signing.
- If you've already signed a contract to borrow money that uses your home as security, and the money is not for the purchase of a home, the law allows you to change your mind within three business days of signing the contract. This means you can cancel the loan, even though you've already signed, and get a refund of your closing costs.
- Be especially wary of:

    - **Loan Flipping** – when a lender refinances a loan over and over again, charging you interest and fees which are included in the amount refinanced, so you are paying interest on the loan and the fees. The lender may tell you that you can refinance if you are unhappy with the loan, or that your monthly payment may go down. These statements are usually false and just another way to get more fees from you.

    - **Unaffordable Loans** – a lender may sell you a loan you can't afford, charging high fees until you can no longer make the monthly payments.

- **Mortgage Brokers** – most abusive loans involve a broker. Even if your broker is not abusive, the loan will always cost more as long as it is through a broker. Sometimes a broker will sell you a loan that costs more than is necessary to receive a kickback form the lender.

- **Hidden Loan Terms** – the lender may include a “balloon” payment that must be paid at the end of the loan term. Most people need to take out a new loan just to pay off the balloon. The lender may also include expensive prepayment penalties which could prevent you from paying off your loan early with a cheaper loan from another lender. Another trick is to sell an “adjustable rate” loan that causes your monthly payment to constantly increase.

- **Door to Door and Home Improvement Scams** – someone shows up at your door, or calls you on the phone with a great offer to do some work on your home. The contractor begins work and then the lender appears with papers to sign. The lender may rush you into signing the documents or the contractor may threaten to stop working until the papers are signed. If you sign, you may receive a more expensive loan than you were expecting. The contractor may not be interested in finishing the job, since he has already been paid by the lender. Often, the contractor’s work is poorly done and not worth the price you paid.

I am a Senior Citizen and could use some extra income. Should I look into getting a Reverse Mortgage?

With a Reverse Mortgage, you borrow money on your house but do NOT have to pay it back for so long as you live in the house. The loan must be repaid when you die, sell your home, or no longer use it as your principal residence. You must be at least 62 years of age. Generally, what this mortgage means is that your heirs will not inherit your home, because it will be sold to pay back the lender. There are 3 types of Reverse Mortgages:

- 1) a single-purpose reverse mortgage, which is only offered by a local or state government agency or NON-profit organization;
- 2) a "federally insured" reverse mortgage; and,
- 3) a "proprietary" or private loan.

These mortgages are all highly regulated by the U.S. government for good reason: to keep us from being defrauded of our homes when we get to be senior citizens. Shop around to compare your options and the terms available. Then, meet with a counselor to discuss your plans. Frequently, your Area Agency on Aging has counselors who will assist you.

See http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea13.pdf for an excellent brochure about Reverse Mortgages.

***THIS INFORMATION IS NOT LEGAL ADVICE**. Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.*

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