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Legal Matters®

Supreme Court helps landowners to develop their property

A new decision from the U.S. Supreme Court will strengthen the hands of many landowners who are battling with local authorities over development of their property.

The decision makes it harder for municipalities to demand financial concessions from owners in return for land-use approvals.

The case involved Coy Koontz, who owned 15 acres of land near Orlando, Florida. Much of the property was wetlands, and as a result, in order to develop it, Coontz had to negotiate with the local water management district.

Coontz proposed what seemed like a reasonable deal: He would develop 3.7 acres along the northern edge of the property, and in return he would agree never to develop the remainder. He offered to give the district an "easement" allowing it to prevent any future development on the remaining acreage.

But the district wasn't satisfied. In addition to limiting Coontz to the 3.7 acres, it also wanted him to pay to make improvements to ditches and culverts on 50 acres of other, unrelated wetlands that the district owned several miles away.

Instead of giving in, Coontz took the case to court. And the Supreme Court sided with Coontz, saying the district's demand that he pay for the ditches and culverts was illegal if it's wasn't reasonably related to the effects of Coontz's own project.



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Eminent domain

The U.S. Constitution says that the government has a right of "eminent domain," which means that it can take people's property for public use, such as a new highway. However, it has to pay for it; it can't simply grab it for free.

What's not so clear is what happens if the government demands property in return for granting a license or permit, such as a building permit. Can the government do that without paying for it?

Yes and no. The government definitely has the right to regulate

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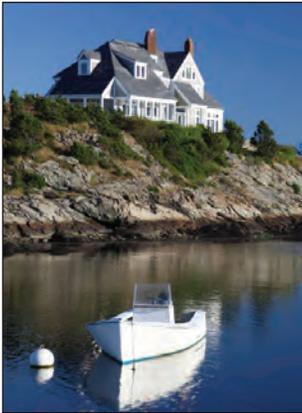
**WINEGRAD, HESS,
FRIEDMAN & LEVITT, LLC**

400 Redland Court, Suite 212, Owings Mills, MD 21117

(410) 581-0600

www.whfl-law.com

Before you buy a vacation home, do your homework



If you buy a vacation home with friends or family, you'll want a written agreement on how rental income is divided, who's responsible for what, and what happens if the property is sold or if one owner later wants to sell and another doesn't.

More and more people are buying vacation homes. In fact, vacation homes accounted for 11% of all residential real estate sales last year.

And most of these buyers plan to supplement their income by renting the home for part of the year. In a recent survey by the National Association of Realtors, 92% of vacation home buyers said they planned to rent the home within a year, and 76% said their purchase was motivated at least in part by the potential for rental income.

That's great – as long as you do your homework and know what you're getting into. Here are some things to keep in mind before you take the leap into becoming a part-time landlord:

- If you plan to rent the home, you'll need to tell your bank because the mortgage rules are different. You might have to put up a slightly larger down payment and/or pay a slightly higher interest rate.
- Generally, you can't count your anticipated future rental income as "income" for purposes of obtaining a mortgage.
- Insurance policies may be more costly for vacation homes, because you'll need added liability cover-

age if you're renting. (This will likely be required by your lender.) Also, if the home is near a beach or lake, you might need flood insurance.

- If your vacation home is part of a homeowner association, make sure there are no association rules against short-term rentals.
- If you're counting on rental income, try to objectively evaluate the location from a renter's perspective. A house on the beach will be much easier to rent than one that's several blocks away. And while you might like seclusion and not mind that the home isn't close to local boutiques, stores or restaurants, potential renters might feel differently.
- If you're buying a home with friends or family members, you'll want to work with a lawyer on an agreement that makes clear how the rental income will be divided up, who's responsible for what, what happens if the property is eventually sold, and what happens if one owner later wants to sell and another doesn't.
- Be sure to figure all the potential rental costs into your budget, including advertising, maintenance, maid service, management fees, additional utility use, and taxes.

Can homeowner associations restrict medical marijuana?

A large number of states now permit medical marijuana, while other states have decriminalized the drug and two have voted to legalize it. But while medical marijuana might be helpful to the seriously ill, many condominiums and homeowner associations are worried about the effects of allowing pot-smoking on their property.

Apart from the fact that marijuana is still illegal under federal law, some residents are also concerned about an increased risk of crime (as the users' "stash" might be a tempting target), the effects of second-hand smoke inhalation, and the exposure of small children to the drug.

But can the board of an association restrict the right to light up?

This is a brand-new question, and the law is largely unclear.

A number of boards have voted to prohibit tobacco use, which is easier in some ways to justify because tobacco is unquestionably a health hazard. With medical marijuana, though, smokers can argue that the drug is in fact a health benefit. Plus, a federal law called the

Fair Housing Act says that disabled residents must be given a reasonable accommodation, and medical pot smokers can argue that their health condition is a disability and the drug is necessary to accommodate them.

Board members who are facing a dispute between pot smokers and other residents – and who want to avoid a lawsuit – might do well to try to find some accommodation that will satisfy everyone. For instance:

- Can the smoker provide a doctor's note verifying the need for marijuana, and any alternative medications that might have the same benefits?
- Can the smoker ingest the drug in some other form (such as brownies)?
- Can vents and filters be installed to prevent the smoke from entering other units?
- Can smoking be limited to designated outdoor areas?

Even if this issue hasn't arisen yet, board members might want to review or amend the community's bylaws to address the issue and head off possible disputes.

Supreme Court helps landowners to develop their property

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people's land, and to limit the use of the land for purposes such as zoning, public safety, or environmental protection. The government also has the right make a building permit depend on the landowner's being willing to accept responsibility for the effects of the building. For instance, if someone is creating a housing development, he or she might have to dedicate some land for municipal services that will be required by the development.

On the other hand, a government can't hold a landowner hostage, and use a request for a building permit as an excuse to extort property simply to satisfy its own greed.

In the past, the Supreme Court has said that if the government wants a landowner to give up property as a condition of getting a building permit, it has to show that its request is related in some way to the development and is proportional to the development's actual effects. Anything more than that constitutes a "land grab," which the government can't do unless it uses the eminent domain process and pays for the property.

For instance, back in 1987, a California family wanted to tear down their beachfront bungalow and build a larger home. The local government said they couldn't do so unless they began allowing the public to have access to their private beach. But the Supreme

Court sided with the family, saying that forcing them to allow the public onto their land simply wasn't "proportional" to the effects of replacing an old home with a newer and larger one.

Several years later, the Supreme Court sided with the owners of an electrical supply store in Oregon that wanted to expand the store and pave its parking lot. The local government said the owners could do so, but only if they gave up some of their land and built a public bike path. But the Supreme Court said that building a bike path was out of all proportion to the minor improvements the store owners had proposed to make.

What had never been clear, though, was to what extent a local government could demand money – not just real estate – in return for a permit. In *Coontz's* case, the government wasn't asking for any more land than *Coontz* had proposed giving up, but it was demanding additional money to finance another project nearby. Did it have a right to do that?

According to the new Supreme Court decision, demands for money and property have to be treated the same. Even though the water district wanted money, it still had to obey the Constitution and it could only ask for funds that were related to *Coontz's* proposed development and proportional to the effect of that development. If the district's request went too far, then it was illegal.



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U.S. eliminates the most popular type of reverse mortgage

The most popular type of reverse mortgage for senior citizens has been done away with by the Federal Housing Administration.

In a traditional mortgage, you borrow money against your house and pay it back in monthly installments over time. With a reverse mortgage, you borrow money against your house, but you don't have to pay it back until you die, sell the house, or move – which means you don't owe anything as long as you stay in your home.

In most cases, to qualify you must be at least 62 years old.

In the past, borrowers could choose to receive a lump sum, monthly payments at an adjustable interest rate, or a line of credit. But the FHA has now eliminated the lump-sum option.

Seniors who prefer a lump sum can still apply for

one through the "Saver" reverse mortgage plan. But the amount you can borrow with this plan is less than with the standard plan – typically about 10% to 18% less (although the fees may be lower as well).

The government says it is doing away with the standard lump-sum option because a large number of seniors were defaulting. While a reverse mortgage doesn't involve monthly payments, homeowners must still pay taxes and insurance, and many people were failing to do so – suggesting that they were taking out the loans as a last resort rather than as part of a careful financial plan.

Proceeds from a reverse mortgage are not subject to income tax and generally won't affect your ability to receive Social Security or Medicare. However, it's possible that they could affect your eligibility for certain government programs such as Medicaid.

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If you're buying a fixer-upper, consider a special FHA loan

If you're purchasing a "fixer-upper" or are otherwise planning to make major renovations to a home you're buying, you might want to consider a special type of loan called a "203k" loan from the Federal Housing Administration.

These loans are specifically designed for homes that need major repairs, and they allow you to roll the cost of the repairs into the amount of your mortgage. They're especially helpful for people who can't afford an expensive home and are willing to buy a starter home that needs a lot of work. However, they can be used by anyone who wants to invest in a property that needs an upgrade.

The big advantages of 203k loans are that they usually allow a low down payment and they're often available to people who don't have great credit.

The disadvantages are that they often have a high interest rate and involve a lot of paperwork, includ-

ing detailed proposals outlining the cost of each repair and the likely appraised value of the property after the improvements.

Also, they typically require that all improvements be made within six months of the sale.

Properties that need upgrades but not structural repairs may be eligible for a "streamlined" 203k loan, which can make the process somewhat easier.

The FHA has specific rules for what sorts of improvements qualify. In addition to structural repairs, these may include heating, ventilation and air conditioning work; new plumbing, roofing and flooring; kitchen and bathroom remodeling; new appliances; room additions; decks and patios; new siding; finishing an attic or basement; site grading; and improvements for disability access and energy conservation.

