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Legal Matters®

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Tips for selling a home in today's market

Selling a home in today's market can be tough. Here are a few suggestions that might help:

- **Get your own home inspection.** Potential buyers who are serious will hire a home inspector to discover any flaws in the property. Consider hiring your own inspector first. You might discover things you can do to enhance the value of the home, such as installing more energy-efficient windows. You'll also be prepared for any "surprise" problems that the buyer can use to back out of the deal or negotiate a lower price. Typically, the cost of fixing minor problems ahead of time yourself is a lot less than what a buyer will demand if the problems are discovered during an inspection.

- **Make major repairs.** If there is a major problem with your home, consider having it fixed before the sale, even if you have to increase the price as a result.

In a typical seller's market, a lot of people are looking for "fixer-uppers" that they



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can afford or that they can "flip" after making improvements. In today's much tougher market, though, where people are worried about job security and where fewer people are buying real estate as an investment, fixer-uppers are a harder sell.

Sellers who make major repairs typically come out ahead. Consider a home

that's worth \$250,000 but needs a \$20,000 roof repair. If the seller offers the home "as is," a buyer probably won't offer \$230,000 for it, because the buyer could simply pay \$250,000 for a comparable home with a good roof and avoid the hassle. Most likely, a buyer would offer

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In many communities, the current tax assessments are based on appraisals that were conducted at the height of the real estate boom, and may be too high.

Tenant couldn't be evicted just because guest had drugs

A landlord can't evict a tenant just because a guest of the tenant brought drugs onto the property, according to an appeals court in Tennessee.

The tenant, a single mother, had invited three friends over to watch videos and spend the night. During the night, police investigated a nearby burglary asked permission to enter and search the apartment. They discovered that one of the guests had placed a small amount of marijuana under a sofa cushion.

The tenant herself had no knowledge of the marijuana, and had specifically prohibited guests from bringing drugs into her apartment. Nevertheless, the landlord announced that it planned to evict her. She sued.

The apartment lease said that the landlord could

evict the tenant if there were a single instance of "drug-related criminal activity" in the apartment, even if it was committed by a guest. But the court said this simply wasn't fair, and the landlord couldn't evict the tenant unless the tenant at least knew about the drugs.

The lease also said that the tenant could be evicted if there were "a real and present danger to the health, safety or welfare of...other tenants or persons on the premises." But the court said that the presence of a small amount of marijuana wasn't "a real and present danger" to anyone's health or safety.

However, courts in other states have decided otherwise, and a great deal depends on the facts and on the specific terms of the lease.

Tips for selling a home in today's market

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\$200,000 or \$210,000. So by investing \$20,000 in a new roof, the seller could recoup \$40,000 or \$50,000.

- **Conserve energy.** Many people who are thinking of purchasing a home will ask for copies of recent utility bills, so they can see what their monthly costs will be. For this reason, it's a wise idea to turn down your heat or air conditioning, and turn off lights and appliances when not in use.

- **Go to open houses in your area** and look at similar homes. Seeing the "competition" will give you a much better sense of minor improvements you can make in your home to make it more attractive and saleable. Then drive by your own home and try to see it as if for the first time. What do you notice? Trimming the bushes, touching up the paint here and there, or cleaning the gutters can make a better first impression and a surprising difference in whether people decide to attend an open house.

- **Question your property taxes.** Property taxes are calculated as a percentage of the assessed value of your property. In many communities, the current assessments are based on appraisals that were conducted at the height of the real estate boom. If the value of your property has declined since then, your assessment – and thus your taxes – might be too high. You might be able to get a lower tax rate by appealing your assessment, which could help you sell

the property (and of course could help you even if you don't sell the property).

Challenging an assessment might involve getting an independent appraisal. An appraiser will value your property by comparing it to the price recently paid for comparable properties in your area. If you want a low valuation, it wouldn't hurt to point out to the appraiser the offering price on any foreclosure sales in the area, since foreclosed properties typically sell at a significant discount.

If your property has been on the market for a while at an offering price below the assessed value and it hasn't sold, that could also be evidence that your assessment is too high.

If you do get an independent appraisal, it could have other benefits. For instance, if a buyer offers to purchase your home and he or she needs a mortgage, the lender will typically hire its own appraiser to value your property. If the appraiser values the property at less than what the buyer is offering, then the lender might refuse to approve a mortgage unless the buyer comes up with a larger down payment. In today's economy, with banks being much more stringent about mortgages, a number of sales fall apart for this reason. Having an independent appraisal that backs up your figure could help the buyer. It could also help you set a "safe" selling price.

Condo board limited in dealing with owner's offensive behavior

A condominium owner might have behaved in an extremely offensive manner to his neighbors and to the condo manager, but the condo board can't sue him for creating a nuisance, according to a Massachusetts court.

Over a period of five years, the owner did almost everything he could to offend his neighbors and the building manager. He cursed at them and left them vulgar and derogatory voice-mails, posted offensive messages on signs in the laundry room, shouted profanities at condo meetings, wrote highly insulting messages on his condo fee checks, made obscene gestures when passing people in the hall, made obscene gestures when passing the building's security cameras, propped open fire doors, and twice left bags of dog feces outside a neighbor's door.

So what exactly can a condo board do in such a case?

The condo board is pretty much limited to enforcing the condo rules, the court said. So, for instance:

- The board could warn the owner not to prop open fire doors. (He complied once he was warned.)
- The board could warn the owner not to leave dog feces in the hall, since there was a condo rule against leaving objects in common areas. (The owner claimed he was retaliating against another owner who didn't pick up after his dog, and he stopped after a warning.)
- The board could warn the owner not to post signs if there was a rule against it.
- The board could warn the owner that it wouldn't deposit checks that contained offensive messages.
- The board could evict him from condo meetings if he was disruptive.

However, the owner had a First Amendment right to speak his mind, as long as he didn't directly provoke a fight. That meant he had a right to swear at neighbors, use profanities at board meetings, and make offensive gestures at the security cameras.

Handling disruptive condo owners can be extremely difficult from a legal point of view, and this is one reason why a board should consult with an attorney before problems get out of hand.

A condo owner had a legal right to swear at neighbors, use profanities at board meetings, and make offensive gestures at security cameras.

Is your hobby a 'business' subject to zoning rules?

Many cities and towns have zoning rules that limit people's ability to operate a business on their property. But sometimes it can be difficult to tell whether a homeowner's activity is a business or a hobby. If there's any doubt, you might want to talk with an attorney.

For instance, a New Jersey woman had a four-acre home on which she bred German Shepherd show dogs. She obtained a permit to build a storage building on her property. She used the building to house dogs, and she built dog runs outside it.

The woman bred 10 to 12 dogs a year. She kept some as show dogs, and she sold the rest.

The town cited her for violating a zoning ordinance that prohibited her from operating a commercial dog kennel.

The woman argued that she wasn't in business. She said she raised the dogs as a hobby, and while she sold a few dogs, she never made a profit. She noted that she had a separate full-time job, she raised the dogs entirely by herself and never hired anyone to help, and she didn't advertise the dogs for sale.

The case went to court, and the woman lost. The court said the woman may have thought of what she did as a hobby, but her dog-raising operation was more than just an incidental use of her property and was indistinguishable from a commercial kennel.

Although the woman never turned a profit, the court said this didn't matter because many businesses operate for years without turning a profit.

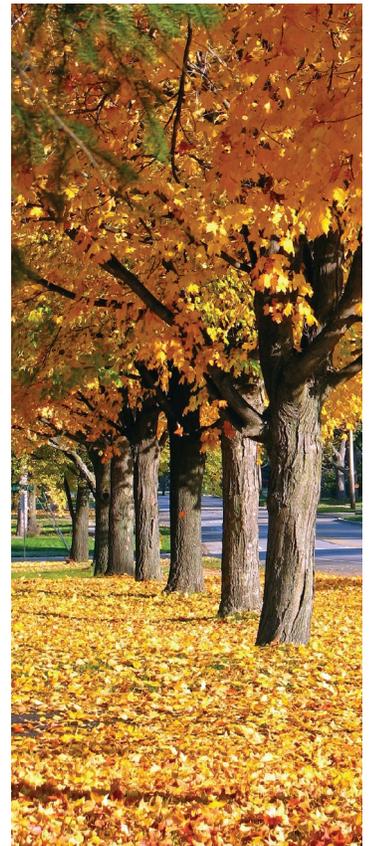
Property's boundary was the 'tree line' – despite the deed

A Minnesota man sold part of his property, then planted trees along what he thought was the boundary line. He and his neighbors treated the trees as the boundary line for 23 years, until a new neighbor looked up the deed and discovered that the actual property line was six feet over the "tree line" onto the man's side.

The two went to court, but the court sided with the man.

The fact that everyone had treated the tree line as the boundary for so many years meant that the new neighbor no longer had a right to contest it, the court said.

The law varies from state to state, but there have been a number of similar cases in which some practical marker has been treated as a boundary line for many years – such as a hedge, a rock wall, a stream, or plow lines between farm fields – and as a result, that has become the official legal boundary, despite what the deed actually said.



Homeowners must be allowed to rent to college students

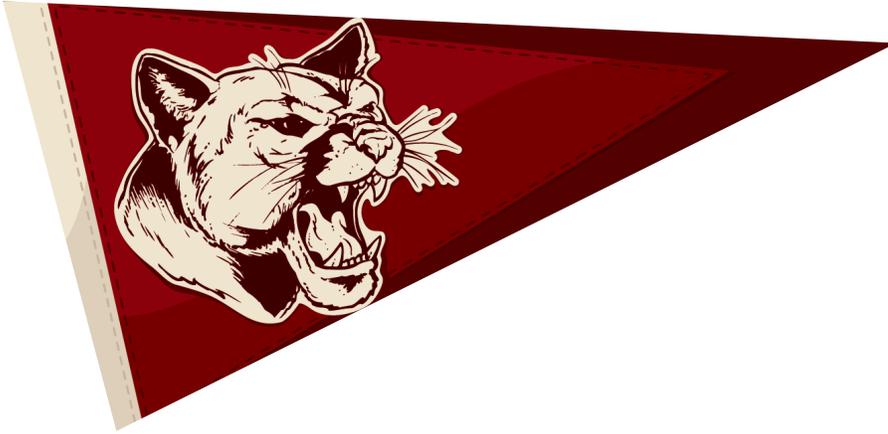
A New Jersey town might have been upset about rowdy college students in rental properties near the school, but it didn't have a right to deal with the problem by passing new zoning rules that limited rentals, says a New Jersey appeals court.

The town of Ewing, N.J. had tried to limit "Animal House"-type rentals by adopting rules for rental properties that required a minimum amount of space per renter and that required one parking

space for each renter who was a licensed driver. The idea was to limit the number of people who could rent a given house, thus discouraging "party houses."

A judge had earlier struck down the rules as excessive, saying that if the town were upset about the students' behavior, it could deal with the problem by enforcing existing laws against underage drinking, excessive noise, trash problems and public nuisances.

There was no need to change the zoning laws for the whole town just to deal with "classic college youth bent on partying, drinking, tomfoolery and general testosterone-infused excess," the judge wrote.



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