Navigating legal issues in housing, both weighty and trivial

Closing Thoughts

By JIM YOUNG
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It is a common joke that the public holds the lawyering business in low regard. As the late night comedians might say, we perhaps rank somewhere between the feelings for door-to-door salesmen and the members of Congress.

That said, one New London law firm has been doing something remarkable over the past eight years that might cause some to reconsider these matters, at least as to the firm concerned.

The Reardon Law Firm brought a class action lawsuit—reportedly pro bono, or free of charge—on behalf of the residents of the Thames River Apartments. The suit was filed against the New London Housing Authority to compel it to make real and substantial changes to the reputedly awful conditions it has allowed to exist in the high rise apartment buildings that stand in the shadow of the Gold Star Bridge. The suit did not seek money damages, but rather asked the court to compel the Housing Authority to take all necessary steps to remediate the substandard conditions and provide safe and clean housing for the residents.

It is being reported that the suit settled recently on the eve of trial, under an unusual settlement agreement where the Housing Authority agreed to address the problems, develop new housing, and renovate the property over the next few years while a Superior Court judge retains jurisdiction over the matter.

I am not familiar with the details of the action, but it is certain that bringing this suit and prosecuting it during these years required many hundreds and I suspect thousands of hours of time from the Reardon Law firm, no doubt on top of the expenses to carry such an action.

To engage in such an effort of advocacy on behalf of those who could not possibly have sought such a remedy themselves, against such an entity, and to achieve such a result, at great personal sacrifice, answers to the highest calling of lawyers everywhere, and is deserving of real admiration and respect. Such an achievement, I think many lawyers would admit, is like a dream they had when they went to law school.

But if you say that surely the everyday work of the lawyers can't always be devoted to such weighty matters, with that I have to agree. Let's look at a case decided recently by the Connecticut Court of Appeals that considered a different kind of "weighty matter."

The defendants in the suit purchased a property under a deed which said, "any permanent structure erected on the property shall be located at least 100 feet distant from the westerly line of Winchester Road." Such a provision is referred to as a restrictive covenant, and is intended to restrict how a buyer can use his or her property.

Notwithstanding the restriction, the defendants constructed a stone wall within 20 feet of the road. It had an average height of three feet, although it was taller in some places and topped by a white fence about one-and-a-half feet high. A neighbor brought suit to enforce the restrictive covenant and compel the defendants to remove the stone wall where it was within 100 feet of the road.

The trial court, which heard the evidence, decided the stone wall was not a "permanent structure" and ruled against the plaintiffs. The Court of Appeals, in a ruling of many pages, reversed the decision and found the stone wall was in fact a permanent structure.

The court noted that while it was true that under the town's zoning regulations a stone wall is not considered a "structure" unless it is over six feet high, the town's regulations had no bearing on this dispute between property owners. In any event, the court said, the wall was very heavy and was "permanent" in light of the commonly understood meaning of that term under Connecticut case law.

Now it appears that the plaintiffs in the suit, together with the defendants, bought a

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Housing laws

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large tract of property as a group and divided it amongst themselves by deeding it out to themselves on separate deeds. So the buying parties came to litigation with each other. Why? Well, it appears that some of the plaintiffs in the suit, as well as the defendants, were attorneys. They did not hire counsel to represent their differing interests, and the defendants did not bother to closely examine the deed that conveyed the property to them, nor have any attorney examine it for them.

So as Paul Harvey used to say, "Now you know the rest of the story!"

And the moral? Read your deed and understand any restrictions before you buy your property, and in any event before you spend money building anything that might be within any area of restricted activity. And even if things seem clear to you, you might want to see an attorney if you are spending lots of money, or if for any reason you have concerns that what you want to do may not be allowed.

A number of new laws came into effect in Connecticut this year and the following might be of some interest to you.

Public Act No. 14-67 says that the owner of residential real property that benefits from an easement or right of way is responsible for the cost of maintaining the easement or right of way and the cost of repairing and restoring any damaged portion thereof. Further, that maintenance includes the removal of snow. Further, that if more than one property benefits from such easement or right of way, the cost of maintaining and repairing such easement shall be shared by the benefited property owners pursuant to the terms of any written agreement. But if there is no written agreement, the cost shall be shared by each in proportion to the benefit received by such property.

Public Act No. 14-424 modifies existing law by allowing towns to give property tax relief to the disabled or elderly concerning their principal residence, where the home is held in trust for and occupied by such resident. This law may provide a benefit to persons who deed to their houses into revocable living trusts or to children while retaining a life estate, as is increasingly commonplace in today's estate planning environment.

Public Act No. 14-84 creates an entirely new method of foreclosing a first mortgage on the principal dwelling of a borrower, being a "foreclosure by market sale," where the first mortgage debt is greater than the value of the property and the lender and borrower both agree to use this process. It will be interesting to see if lenders desire to use this process. It is unclear to me why a borrower would want to do so, but it may be that a borrower can use this law in an attempt to negotiate a waiver of the lender's rights to a deficiency. A borrower who agrees to this process forfeits the right to participate in the mediation program.

Public Act No. 14-151 makes numerous changes to the manner in which utility companies give notice before trimming trees and other vegetation on private property or in public rights of way, and rights of interested parties to object and appeal decisions made.

Public Act No. 14-33 amends "Act 490" programs, which allow assessment on current use rather than fair market value, by allowing a municipality to "exempt from property taxation horses or ponies of any value."

Public Act No. 14-219 modifies the law about smoke and carbon monoxide detectors in a way apparently intended to make sellers less nervous about signing the affidavits concerned. I suspect the change will not lessen the worries of sellers much, and that this law (no doubt well intended) will remain a $250 legislatively mandated gift from sellers to buyers in the crunch time just before a closing, when sellers often start to talk to their lawyers about these things.

Public Act No. 14-215 modifies existing law that applies to condo associations, including the new requirement of board minutes showing how each board member voted, the contents of resale certificates, and rules as to the election of directors and officers.

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