



## Section VIII

# property law

*“To those who are engaged in commercial dealings, justice is indispensable for the conduct of business.”*

– Cicero

The word “property” has many meanings. In a strict legal sense, it signifies ownership. As a practical matter, it refers to objects that can be owned. The two main classifications of property are *real property* and *personal property*. Real property law deals with land, fixtures on land, and rights and other intangible interests relating to land that are capable of ownership. It may include land, a single-family house, a condominium, or a vacation home. Personal property is anything that is not related or attached to real estate; it may be tangible or intangible. Personal property might include cars, clothes, furniture, refrigerators, tools and cash as well as various rights or interests such as stocks or bonds.

*(Different aspects of personal property law are dealt with in this section, Section VI, “Contracts,” and Section VII, “Business Transactions and Organizations.”)*

### Real Property

The terms *real property*, *real estate* and *realty* refer to land, buildings and other fixtures on land. They also refer to different kinds of interests in land and to various rights that go along with land or some interest in it.

### Personal Property

Personal property is anything that is not real estate or affixed to real estate. Personal property can be tangible or intangible.

Tangible personal property can be transported, seen and touched. Examples of tangible personal property include cars, clothes, furniture, refrigerators, tools and cash.

Intangible personal property includes various rights or interests that cannot be seen or touched. Examples include ownership of stocks

and bonds, ownership of a debt and the right to bring a legal action.

## Types of Real Property Ownership

When an individual is said to own real estate, it usually means that he or she is the full owner of a particular piece of property. Full ownership is only one of the ways to own real property. Or, someone with a lesser degree of ownership might have an interest in a property for a lifetime (*life estate*), or for a period of years, months or even weeks. Ownership also may be shared in various ways.

### Fee Simple

Full ownership of real property is called *fee simple ownership*, *fee simple title*, or, sometimes, *ownership in fee*. The distinguishing characteristic of a fee simple title from lesser grades of ownership is the right to pass full ownership to someone else, whether during the original owner’s lifetime or upon his or her death.

### Life Estate and Remainder Interest

A fee simple property owner can grant ownership of the property to another person for the duration of the other person’s life. This type of ownership is called a *life estate*. The person who holds the life estate is called a *life tenant*. (The term *tenant* may be confusing. In this context, *tenant* does not refer to a participant in a rental arrangement, but to a kind of ownership in real property.) With certain important exceptions, a life tenant can treat the property in much the same way that a fee simple owner can treat the property.

When a life estate is created, a *remainder interest* is also created. The person who holds the remainder interest (called the *remainderman*) automatically acquires the fee simple title to the property when the life tenant dies. The terms of the original grant determine whether the fee simple title stays with the remainderman. If no remainderman is named, fee simple ownership reverts to the original owner or to the owner's heirs upon the death of the life tenant.

## Types of Joint or Common Ownership

In Ohio, there are two different forms of ownership of real property where two or more own the property: *tenancy in common* and *survivorship tenancy*.

In a tenancy in common, each owner has an undivided, fractional share of the property. Depending on how the tenancy in common is created and the transactions that subsequently take place, the shares may be equal or unequal. Regardless of the size of an individual's share, each tenant in common enjoys full ownership of his or her share, and can sell, mortgage, use, or dispose of it as a full owner. On his or her death, the tenancy passes to heirs or to those named in the tenant-in-common's will.

In Ohio, a *survivorship tenancy* is a form of ownership created by statute. A survivorship tenancy is similar to tenancy in common, except that joint tenants have a right of survivorship. That is, when one joint tenant dies still owning his or her share, the share passes automatically to the surviving tenant(s). Thus, a survivorship tenancy cannot be transferred by will, as the nature of this form of ownership is that it automatically passes to the survivor(s).

The right of survivorship also may be ended where, for example, all joint tenants transfer or convey their interest. In Ohio, unlike most other states, the right of survivorship must be specifically described in the document that creates it.

*Condominium* ownership is a hybrid of individual and group ownership. An individual condominium owner normally owns a portion of the property (such as one apartment) outright,

and a portion (common areas) as a tenant in common.

## Leasehold Estate

A property owner may give temporary possession and use of a particular property to another individual in return for the payment of rent or something else of value. If the owner does this by means of a written agreement called a *lease*, the party taking possession of the property acquires a *leasehold interest* or *leasehold estate*. In such a case, the landowner is called the *lessor* or landlord and the person to whom the property is rented is called the *lessee* or tenant. The term of the lease may be weeks, months, or years. Many residential property leases are for one year, whereas business property leases are often for five, 10, or 20 years or longer. A lease may provide one or more renewal options.

## Liens and Mortgages

A *lien* is a claim against property to secure the payment of a debt or the performance of some act. The most common form of lien is created when an individual mortgages his or her property to another person to ensure repayment of a loan.

That is really what a mortgage is about: a bank loans a large amount of money to a real estate buyer, but nobody is likely to loan a buyer \$100,000 without some protection. That protection is the signed mortgage that gives the bank a special kind of lien on the property. Because of the mortgage, the real estate owner cannot convey (sell) a fee-simple interest in the property to someone else without first paying off the bank loan. And if the real estate owner fails to pay this loan, the bank can foreclose its mortgage lien, sell the property, and pay off the loan from the proceeds of the sale.

Property is frequently subject to many liens. In such cases, it is desirable to avoid a series of foreclosures and forced sales. Accordingly, when one lienholder sues to foreclose, all lienholders are notified and their claims dealt within the same suit. This process is called *marshaling of liens*.

## Easements and Licenses

Sometimes a landowner will give someone permission to use part of his or her property for a specific purpose. Such permission may be either an *easement* or a *license*.

An *easement* is formal permission, granted in writing by deed or similar document, to use another's property. A *license* is informal permission to use another's property. It may be in writing, but is more often oral and may be implied from the conduct of the parties.

Because an easement is a genuine interest in property while a license is not, a land dispute may arise about what kind of permission was given. If the court decides that an easement was granted, the permission is an enforceable property right, whereas if the court decides that only a license was granted, then no property right is involved.

## Mineral Rights and Similar Interests

Rights to search for and develop minerals and harvest timber are among important real property interests that may be owned separately. Typically, these activities require a lot of money, so landowners often lease mineral or lumber rights to professionals.

# How Real Property Ownership Is Transferred

Property is a commodity, or product, meaning it often changes hands from one individual to another. An individual can acquire an interest in real property through:

- a written document, such as a deed, lease, mortgage, or other conveyance;
- inheritance;
- the operation of law (such as a property transfer following abandonment by the owner
- or a transfer ordered by a court following a lawsuit); or

- adverse possession or prescription, that is, through "squatter's rights."

## Deeds, Leases, Mortgages and other Conveyances

Fee-simple interest in land is generally granted through a deed. A leasehold estate is granted by means of a lease. A mortgage is an interest in land where the land is pledged to secure or guarantee payment; it is created by a document called a *mortgage deed*, or, more simply, a mortgage. A *conveyance* is any transfer of an interest in real property, whether done by deed, lease, or mortgage. Deeds, leases and mortgages are not only conveyances (transfers) of real property interest, but they also may be contracts or contained in contracts, meaning that other rights and obligations may be spelled out, which must be honored by the parties.

## Transfer by Inheritance

When someone dies owning or holding some interest in real property, that individual's interest must be transferred to another person or entity. That other individual may be a beneficiary named by the original owner's will, or the person entitled by law to the property when there is no will. This other individual also may acquire the property of the deceased because he or she owns the remainder interest after a life estate, or because of a right of survivorship. Ohio also recognizes *transfer-on-death* (TOD) deeds. Such deeds transfer ownership to an individual named in the deed upon the death of the property owner. Transfer-on-death deeds differ from right of survivorship deeds in that survivorship property is owned jointly by the two people during the life of both of them, whereas ownership of TOD property goes to the second individual in the deed only upon the death of the title owner.

## Transfer by Operation of Law

Ownership in real property may be transferred without a formal procedure. Such a transfer may occur as the result of a judgment in a

lawsuit. For example, a divorce decree, or the court order in dissolution of marriage that approves a separation agreement, may award the family home to the wife (or husband), and the decree, or order, may have an effect similar to a deed. Another method for transferring ownership of land is *accretion*, where, for example, the natural flow of a stream erodes soil from one individual's land and deposits it on another's property. In this case, the amount of one owner's land is reduced, while the other's is increased.

### **Transfer By Adverse Possession or Prescription**

Sometimes the title to real property or an interest in real property is transferred because the original owner neglects his or her rights. For example, an individual may acquire title to another person's real property by *adverse possession* (which, in lay terms, is something like "squatter's rights"). Adverse possession is simply occupying property without permission continuously for 21 years, provided that the occupation is perfectly obvious and that the landowner does nothing significant to assert his or her rights as owner.

Similarly, rights to use real property, notably easements, may be acquired by *prescription*, or by actual use coupled with the landowner's failure to prevent the use.

## **Land Records**

Ownership of real property is recorded in a government office for the owner's protection. Under the law, if an individual's ownership interest is not made a matter of public record, he or she may not be able to assert title—especially against those who innocently purchased the property from a former owner. Every state maintains public records of land and transactions and events affecting land ownership. In Ohio, the county recorder of each of the state's 88 counties maintains ownership records for the land within its geographical borders. A careful search of these records will reveal the status of

the record title or ownership of any given parcel of land.

### **Necessity for Land Records**

Just because someone lives in a house on a certain property does not mean that person is the property owner. The actual owner may or may not live on the land. Further, the actual owner of the land may be an international corporation with headquarters outside of the country. Consequently, some system of land records is necessary to keep track of land titles and interests. The primary value of land records is to give notice to anyone examining these records of the existence and nature of interests in, and claims on, real property.

An individual with an interest in real property is responsible for filing documents to prove he or she has a right to that property. Failure to file does not, in itself, destroy the individual's interest in the property, but it may prevent the individual from taking action against anyone who might challenge that interest.

### **Types of Land Records**

In Ohio, the county recorder's office has records of mechanic's liens, property bonds posted for bail, deeds, mortgages and indexes for these records. The most numerous are the records of deeds and mortgages. Mortgages and deeds to be filed with the recorder's office are copied in detail and bound. This information is also maintained on computer databases. When a deed or mortgage is recorded and placed in its proper book, the volume and page where it appears is noted in a general index. The simplest form of index is arranged alphabetically according to *grantors* (sellers), with a reverse index of *grantees* (buyers). In many counties, indexes and copies of records are in electronic files or on microfilm, and books are no longer used for new filings.

A land registry is another important set of land records kept in some counties, and is part of an entirely different and separate system of recording. Land registration requires a court proceeding (a *land registration suit*) to establish

the status of the title. Once the status of the title is determined, a certificate of registration is filed and all mortgages, liens, subsequent transactions and other claims are noted on the certificate. The system is called the “Torrens” system, and registered land is often described as “Torrenized” land. Such certificates are used in only a few Ohio counties today. Although the original goal of land registration was to compile all records relating to a parcel on a single certificate, and thus to simplify record-keeping, in actual practice it has turned out to be more complex. Therefore, registration has become unpopular.

The county recorder’s office is the repository for plats and surveys. A *plat* is a map of subdivided land, showing the various lots, the portions of the land dedicated for roads or other public uses, and the easements for utilities and other features. *Surveys* are exact descriptions of land parcels using “compass calls” and precise measurements that come from actual observation and measurement by means of instruments such as a compass, transit, theodolite, or surveyor’s chain.

Other county officials also keep important land records. For example, the county auditor and county treasurer are responsible for keeping track of property taxes. (Taxes are mentioned here because they act as liens, or charges, on real property.) The auditor’s tax maps can be used to identify property and are often the starting point for a title search. Also, records kept by the clerk of common pleas courts must be searched because lawsuits and judgments can affect the title to property. Similarly, probate court records are extremely important in determining the status of property ownership. The county sheriff also keeps a record of “foreign” judgments filed in the county (a foreign judgment being one rendered in a court in another county). Thus, if a judgment is issued in a lawsuit in Montana against someone who owns property in Ohio, the foreign judgment can be recorded in Ohio and thereby becomes a lien on the Ohio property.

## Purchase and Sale of Real Estate

The most common real estate transaction is the purchase or sale of a home. This section outlines some of the matters to be considered in purchasing or selling a home, including a contract of sale, financing, title examination and closing.

### Contract of Sale

Real estate brokers use one of several standard form contracts (developed by their legal departments) for the purchase and sale of residential property. The contract contains an offer by the prospective buyer, with a space for acceptance by the seller. Frequently, offers are limited in time; that is, the offer is automatically withdrawn if it is not accepted by a specified time.

Both parties are bound by the contract when the seller accepts it. If the buyer defaults, the seller may hold the buyer liable for the difference between the contract price and the price at which the seller is eventually able to sell the property (assuming it is lower than the original contract price). If the seller defaults, the buyer may compel the seller to specifically perform the contract, or may sue for damages. In either case, liability can have serious consequences.

In Ohio, certain transferors of real estate, including home-sellers, must provide a disclosure form around the time the contract is signed. On this form, sellers must summarize what they know about any problems with the water supply, the sewage system, the walls and the foundation, the presence of hazardous substances, such as lead-based paint, asbestos, and radon gas and any other material defects. In certain situations, when undisclosed defects are discovered before the closing, the buyer may rescind the contract without any liability.

## Financing the Purchase

Most people borrow money to buy a house. The usual ways for financing are a conventional mortgage, an FHA or VA mortgage, a mortgage assumption, or a land contract.

Usually, a purchase on an FHA or VA mortgage will require a smaller down payment than purchase on a conventional mortgage, although the total purchase price in an FHA or VA transaction may be higher because of the increased risk involved in a *high-ratio loan* (a loan where the amount of the loan is high in relation to the value of the property).

Sometimes, when mortgage money is especially hard to find or interest rates are very high, a seller may sell a home on the condition that the buyer assumes and agrees to pay the seller's existing mortgage. This arrangement is called a *mortgage assumption*. The buyer who assumes a mortgage takes over the seller's mortgage and the interest rate of that mortgage. If the mortgage's interest rate is lower than the current market rate, it would be an advantage to the buyer, although the loan assumption may require a higher down payment than a conventional loan.

## Title Examination and Evidence of Title

If a home purchase is to be financed through a bank or other financial institution, the lender will require a title examination. If the lender does not require it, or if there is no institutional lender, the buyer should contact an attorney to have the title examined. The seller's promise to furnish a good title is not a guarantee that the seller actually can, or will, furnish such a title.

In Ohio, purchase contracts require that evidence of title be furnished by the seller. Many buyers purchase *title insurance* for protection against claims arising from title problems that may not be uncovered by a title search.

## Environmental Concerns

Identifying certain potential environmental risks or concerns before purchasing property can alleviate future stress and expense. Home-buyers may be concerned about lead-based paints,

asbestos, radon gas and gases emanating from fuel storage tanks, or the home's water supply and septic system, for example. A property inspection can reveal environmental concerns. Some of these matters may be regulated by either the federal Environmental Protection Agency (EPA) or the Ohio Environmental Protection Agency (OEPA) or both.

## Closing

A contract of sale is closed when:

- a title has been examined and all necessary documents are signed;
- closing costs and the purchase price are paid (either entirely by the buyer, or partially via the mortgage lender);
- the property is transferred to the buyer by the seller's delivery of the deed; and
- the seller's mortgage and any other liens are paid from the purchase price, to clear the buyer's title.

There are two kinds of closings: *round table* and *escrow*. A round table closing is an actual meeting where the buyer, seller, lender and their representatives meet, make payments and adjustments and actually sign and exchange the various documents. The deed is recorded shortly after a round table closing. An escrow closing is not an actual meeting. All the necessary documents, payments and adjustments are delivered to a neutral third party, and on the scheduled day, the escrow agent delivers the deed and money, with neither buyer nor seller present. The purpose of both types of closings is similar, although which one is used depends on local custom and the needs of the individual transaction.

## Landlord and Tenant

The first time many people encounter aspects of real property law is when they rent their first apartment or house. Laws addressing real property transactions as well as certain aspects of the rights, obligations and remedies of landlords and tenants can be found in Chapter 5321 of the *Ohio Revised Code*.

## What is a Rental Agreement?

A *rental agreement* or *lease* is a written or oral contract between a *lessee* (tenant) and *lessor* (landlord). A properly written agreement will eliminate most of the misunderstandings and problems that commonly arise between a landlord and a tenant.

A rental agreement benefits and protects both parties and is an efficient way of handling a business transaction. A written agreement may create a tenancy from week to week, month to month, or year to year. To protect the landlord and the tenant, it is wise to specify the exact manner in which the rental agreement may be terminated. If there is no written lease or rental agreement, the landlord or the tenant may end a week-to-week tenancy by giving the other party at least seven days notice prior to termination. Either party may end a month-to-month oral tenancy by giving the other party at least 30 days' notice before the end of the current monthly term.

A landlord may not use a contract clause to limit or escape certain types of responsibility that are mandated by law. If such a clause is included in a signed rental agreement, it cannot legally be used against the tenant.

## Obligations of the Landlord

A landlord must keep the rented or leased property (premises) decently habitable and may not unreasonably interfere with the tenant's privacy.

The landlord must ensure that common areas (parking lots, stairs, halls, sidewalks, etc.) are clean and safe, and that the structure complies with building and housing codes. Specifically, electrical, plumbing, heating and ventilating equipment must be maintained. The landlord also must provide water and heat, unless these utilities are under the tenant's control. If the building contains four or more dwelling units, the landlord must provide trash containers and trash removal. The landlord cannot insist on having unreasonable access to the rental premises and must give reasonable advance notice of the intention to enter the tenant's suite, apartment or area. Finally, the landlord may not

attempt to evict a tenant by changing the lock, terminating utility service or removing the tenant's belongings without a court order.

## Obligations of the Tenant

Tenants have a variety of obligations beyond paying rent or lease payments on time. Specifically, a tenant must:

- keep the premises clean and safe;
- properly dispose of trash;
- keep plumbing fixtures as clean as their condition permits;
- properly use electrical and plumbing equipment;
- maintain appliances furnished as part of the lease;
- cause no disturbance and forbid family, friends and guests to disturb other tenants;
- see that controlled substances (such as certain drugs) are not illegally used on the property;
- comply with housing, health and safety codes; and
- allow the landlord reasonable access to the premises (upon 24 hours' notice) to inspect, make repairs, deliver large parcels, or show the property to prospective buyers or tenants.

The tenant cannot change any of these legal duties. However, the landlord may agree to assume responsibility for fulfilling any of these tenant duties.

## Security Deposits

A landlord often will require a new tenant to post a *security deposit* (commonly equal to one month's rent). The purpose of the deposit is to cover any damage to the rental property caused by the tenant, and, in some instances, unpaid rent. If the deposit is more than \$50, or one month's rent (whichever is greater), and the tenant is in possession of the property for six months or more, the landlord must credit the deposit with five percent interest. Within 30 days after a tenancy ends, the landlord must itemize every deduction from the security deposit and give the tenant a copy. If the tenant has furnished the landlord with a forwarding

address, the landlord must refund the deposit plus interest and minus any valid deductions. If the landlord fails to provide a refund and/or explanation of any deductions, it could cost the landlord double the amount due, plus reasonable attorney fees should the tenant pursue legal action.

## Rent Withholding

A tenant living in a building with four or more dwelling units may place the rent in escrow, if the tenant reasonably believes the landlord has failed to live up to his or her obligations, or if the landlord is found to be in violation of any law or regulation affecting health or safety. However, if the tenant does not do this properly, the tenant may face eviction for non-payment. To withhold rent properly, the tenant must be current in rent payments and give the landlord 30 days' notice of the health or safety problem. The 30-day period gives the landlord an opportunity to remedy the problem. If the problem is not fixed, the tenant may deposit the rent payment by the due date with the clerk of the local municipal or county court instead of paying it to the landlord. At the direction of the court, the withheld rent may be applied to correct the problem, or the court may order the monthly rent reduced until the problem is remedied.

## Retaliatory Eviction

A landlord cannot raise the rent, withhold services, or attempt to evict a tenant when a tenant rightfully withholds rent. Acts of the landlord are *not* considered retaliatory if:

- the tenant created the problem that is the basis for withholding rent payments;
- the tenant owes back rent;
- the tenant has failed to leave at the end of the rental term;
- correction of the problem would require demolition or remodeling of such major proportions that the tenant would lose the use of the premises; or
- the rent increase is to cover improvements or increased costs.

If a landlord takes retaliatory action, the tenant can recover possession of the premises (if evicted), terminate the rental agreement, or use the retaliatory action as a legal defense when protesting an eviction. The tenant also may recover damages and reasonable attorney fees.

## Eviction

The technical name for an eviction action in Ohio is *forcible entry and detainer*. Eviction actions allow landlords to recover rented or leased premises, provided their tenants' rights are not violated.

Before bringing an eviction action, the landlord must give the tenant at least three days' written notice to leave in a specified form. The notice must include a recommendation that the tenant seek legal advice.

After the eviction suit is filed, the summons issued by the court to the tenant must state that the tenant:

- cannot be evicted unless the tenant's right to possession has terminated (a tenant's right to remain on the premises is terminated when, for example, the term of the lease or agreement is over, or the tenant has breached the agreement);
- cannot be evicted in retaliation for an assertion of rights covered by the law;
- should continue depositing rent with the court if already doing so;
- has a right to jury trial in the eviction action; and
- has a right to legal assistance.

In an eviction case, the court determines who has the right to possession of the rented or leased property. It may also determine all rights and liabilities of the landlord and the tenant.

# Other Real Property Issues

## Zoning

*Zoning* is the process by which political subdivisions (cities, villages, townships and counties) regulate land use. These political

subdivisions are further divided into districts or zones. Subdivision officials enact regulations to control the types of buildings and uses within each of these districts. The primary purpose for zoning is to facilitate planning and land development on a community-wide basis. Zoning legislation may regulate uses of land. It also may regulate such things as the size of lots and buildings; minimum front, back and side yard requirements; or the minimum number of parking spaces required for certain types of buildings, depending on the use.

Planning commissions, appointed by the local legislatures of political subdivisions, review land use within the community and propose a comprehensive *land use plan*. This plan serves as a guide for dividing the political subdivision into districts or zones. The most common types of districts are residential, commercial and industrial. These districts may be further divided. For example, a residential district may be restricted for only single-family homes, or an area may allow multi-family buildings.

A comprehensive plan may be adopted only if the proposed zoning regulations are reasonable. The local legislature, whether a city or village council, board of township trustees or board of county commissioners, is responsible for enacting the plan and the zoning regulations that define each zone. Because comprehensive plans and zoning regulations provide a blueprint for future growth and development, they should be periodically updated to reflect changes in the community.

Violation of a zoning regulation (for example, establishing a commercial business in an area zoned for residential use only) is a civil rather than a criminal matter. Zoning inspectors may issue orders to stop a violation. That might be followed by a court action resulting in a penalty, which might continue as long as the violation remains uncorrected.

Because properties have different sizes, shapes and topographies, applying a zoning regulation to a specific property may be unreasonable for either the property owner or the city or both. For example, a residential lot in the inner city might not be large enough, under

current zoning regulations, for a house to be built. Such a problem may be resolved by the granting of a *variance*, or a “special case” change in zoning regulations. A board of zoning appeals, appointed by the legislative body, hears and acts upon requests for variances from the zoning regulations. If a board agrees that applying a zoning regulation to a specific property is unreasonable, it will grant a variance. Generally, a board of zoning appeals will try to grant the minimum variance necessary to resolve the conflict.

The two types of variances are an *area variance* and a *use variance*. An area variance may permit a property owner to develop a property with narrower yard setbacks, smaller lot size, larger building size, or fewer parking spaces than those otherwise permitted in the zoning district where the property is located. A use variance may allow a property to be used in a way that is not permitted in a specific district (for example, a home-operated beauty parlor operating in a residential district). Use variances tend to be more difficult to obtain because they are often perceived as property re-zoning. In order to grant either type of variance, the board of zoning appeals must apply standards that are incorporated into the zoning regulations.

## **Planned Unit Development**

A *planned unit development* (or PUD) is a technique to provide flexibility for new construction in a community. Instead of rigidly dividing land into exclusively residential, commercial and industrial zones, PUDs mix these and other uses. Planners generally agree that a mix of residential and commercial development along with public spaces such as parks can provide a very appealing environment.

Planned unit developments are often part of a zoning code. If they are not, many communities allow them by variance or with a conditional use permit. However, courts can view PUDs as re-zonings, so local government officials must be careful about using the variance or conditional use procedure to allow PUDs to be implemented. It is better for local governments to enact zoning provisions if they want to allow for

PUDs, so that standards are uniform throughout the community.

The process for getting a PUD approved is usually very complicated and extensive. The approval process is likely to include a detailed review of the site plan by a local government's planning staff, planning commission, zoning board and often the local legislative body as well as input from the public. In some communities, public input may include a ballot vote to approve or disapprove the development in question. Additionally, some sites are large and must be developed in phases. Thus, the approval process can be ongoing.

### **Covenants, Conditions and Restrictions**

In addition to government land use restrictions, private party agreements and other restrictions also may control how owners use their property. For example, certain restrictions in a private purchase contract may dictate how a home in a subdivision or a condominium may be built, designed or used. These restrictions are typically referred to as *covenants, conditions and restrictions* (CC&Rs); they set forth conditions on lot size, architectural design, setbacks from the street, fence design or vehicle parking. If the terms of a private party agreement are violated, a suit may be brought against the violator. The violator may have to pay money damages or may be ordered to remove the violation (such as a fence that was prohibited by the terms of the private party agreement). The

court injunction to remove the violation also would prohibit future violations.

## **Covering Property Law**

Because property law is often extraordinarily detailed and also more locally driven than other aspects of the law, journalists are advised to make time to understand state laws and guidelines and make comparisons to how local property operatives and local governments work within those laws and guidelines. Many local businesses and officials work hard to abide by state laws and state officials work diligently to regulate all these transactions, but occasionally journalists are the first to expose and report important abuses and problems in the system. Knowing what the state requires of these parties is an important first step in exposing abuses.

Many rookie journalists also report finding themselves covering a planning commission meeting on local property development, about which they know very little. Or they find themselves covering a major dispute between a landlord tenant. In such situations, it is often easy for tempers to flare and the law may be lost in the dispute. Journalists are cautioned to spend the time researching Ohio guidelines on these issues to present viewers and readers with what the law requires of the parties in property discussions and disputes. Resources are provided under "Web Links" at the end of this chapter.

## Web Links:

### **From the OSBA's LawFacts pamphlet series:**

<http://www.ohiobar.org/pub/lawfacts/> (search by title)

"Tenant/Landlord Rights and Obligations"

### **From OSBA's "Law You Can Use" articles:**

(go to <http://www.ohiobar.org/pub/lycu> and search for article by title or topic)

"After Foreclosure: What You Should Know"

"Agricultural Easements Help Protect Farmland"

"Agricultural Districts Protect Farms and Farmers"

"Ask Questions When Using Title Insurance Agencies"

"Be Careful When Using Home Equity Loans"

"Brownfields Development on the Rise—But There's Good Reason for Caution"

"Circumstances Determine When Tenants Can Terminate Lease Agreements"

"Eminent Domain: What Every Property Owner Should Know"

"Home-Buyers Should Determine Asbestos and Lead Paint Risks"

"Home-Buyers Should Determine Environmental Risks"

"Home-Buyers Should Investigate Water and Septic Systems"

"Homeowners' Insurance Covers Wide Range of Goods and Services"

"Joint Economic Development Districts Aid Local Development"

"Joint Ownership of Property: Common Sense Advice for Older Persons"

"Know about Eviction Procedures in Ohio"

"Know about Evictions of Month-to-Month Tenants in Ohio"

"Know Basics of Condominium Law"

"Landowner or Tenant Could Be Responsible for Harm to Trespassing Children"

"Mold: An Old Contaminant Creates New Concerns for Homeowners"

"New Condominium Laws: Your Questions Answered"

"New Environmental Insurance Policies Are Worth a Look"

"Ohio EPA Now Controls Isolated Wetlands Permits"

"Planned Unit Developments Provide Flexibility for New Construction"

"Property Owners Must Share Fence Costs"

"Quitclaim Deed Transfers Property Without Ownership Guarantee"

"Realtors May Act as Agents for Both Buyers and Sellers"

"Sorting Out Housing Options for Seniors"

"State Law Regulates Most Ohio Cemeteries"

"Tenants Have Security Deposit Rights"

"Tenants Should Look Out for Intent-To-Vacate Clauses"

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## Web Links *continued*

“Title Insurance Protects Owners and Lenders”

“To Lease or Buy? Know the Differences Before You Decide”

“Transfer-on-Death Deed Avoids Probate”

“What You Should Know Before Using ‘Free’ Gas”

“When the Rains Come...What You Should Know about Surface Water Laws”

“Worried About Foreclosure? What You Should Know”

“Zoning Laws Aid Community Planning”

**From the Ohio Department of Commerce Real Estate and Professional Licensing Division:**

<http://www.com.state.oh.us/real/> (click on “Laws, Rules and Guidelines”)

**From Ohio Legal Services / Ohio Law Library:**

[http://www.ohiolegalservices.org/OSLSA/PublicWeb/Library/index\\_html/](http://www.ohiolegalservices.org/OSLSA/PublicWeb/Library/index_html/) (click on “housing”)

**From the Ohio Association of Realtors:**

<http://www.ohiorealtors.org/> (click on “legal” and go to “Library FAQs”)

**From Cornell Law School Legal Information Institute:**

[http://www.law.cornell.edu/wex/index.php/Real\\_property](http://www.law.cornell.edu/wex/index.php/Real_property)