

Seven Things You Need to Know Before You Buy Rental Property — Thing Three: Your Municipality and its Rules

[On behalf of Dornish Law Offices, PC](#) | Dec 1, 2009 | [All, Real Estate Practice](#)

By Bradley S. Dornish, Esq.

Many inexperienced landlords find a great property at an unbelievable price in a nice neighborhood, and hurry to buy before the Seller realizes he or she has priced the property far below its value. Only after closing on a real steal does the buyer realize that the Seller has stolen money from the buyer, because the municipality makes the property worth far less than the Buyer eagerly paid.

How could there be such a swing in value, just because of a municipality? Zoning, parking, rental registration, occupancy and even building inspection rules can leave your great deal in the loser column immediately. Start by checking the zoning of the area where your potential acquisition is located. If it is a 4 unit building in an area zoned for not more than a duplex, you could be in trouble. You could price your offer, get an appraisal, and a loan based on the income from 4 units, only to find shortly after closing that two of your units were never legally zoned, and must be left vacant. Worse, you must remove two of the beautiful kitchens which were the thing that sold you on the property in the first place.

When you apply for a variance, so that you can get more rent and afford your mortgage payments, you learn that the area is too densely populated already, and without off street parking for two cars per unit, or an eight car parking lot, you can't get a variance. So, six months after you closed, you decide that the Seller must have known that she really had a two unit, and you want to sue her for your money back, even though she seemed like a sweet old widow. You contact a lawyer who explains that Pennsylvania law includes the "Doctrine of Merger". That means that any representation the Seller made to you about the property merged into the deed at the time of

closing, and was extinguished, unless your agreement of sale specifically provided that Seller's representations survived the closing.

In short, you can't sue her. If you do, you will lose. You will only get half the rent, nobody will pay what you did for the property as a two unit, and you still owe the mortgage company the whole monthly payment, which is more than you are collecting in rent. Maybe you can move into the property when your wife kicks you out, and use the vacant units as part of a legal unit.

The whole mess could have been avoided by going to the municipal zoning office and checking to make sure the zoning records matched the current use of the property before you even presented an offer on the property, let alone closed. Could the real estate agent, the title company, the appraiser or the lender have discovered this problem and let you know? Was someone negligent? Maybe you have claims which could turn into a lawsuit, and I make a living on lawsuits involving real estate, so I am hardly the one to complain about a good suit. But I'd rather see you have a building that cash flows and not have to spend time and money on a lawsuit to try to get the benefit of your bargain in court.

Even if you know the zoning of your building, and there is a valid pre-existing non-conforming use for four units in an area now zoned for not more than two units, you are not out of the zoning woods. Many non-conforming uses become illegal if they are not continuously occupied as such. So if your legal four unit in a single family district has a vacant unit for six months in some places, or a year in others, you may only be able to rent three units. A client of mine decided to renovate the vacant unit after she bought such a building, and after it was renovated, couldn't rent it unless she gave up another unit in the building. That was a rock and a hard place with no happy ending. Make sure a non-conforming use is rented when you buy it, and doesn't disappear at the stroke of midnight after you buy the property.

Even if your zoning is perfect, you still need to know more about the municipality where you are buying property. If you don't see enough off street parking for all of your tenants and their guests, check the local parking restrictions. Is on street parking allowed overnight? Does a street cleaner force weekly changes in parking patterns? Are permits required to park in the neighborhood?

Near Pittsburgh, on a busy urban street, an out of town client bought a five unit building with plaster walls, hardwood floors and recently updated kitchens for one hundred twenty thousand dollars, or only \$24,000.00 per

unit. The Buyer thought that the three vacant units would rent easily for \$600 each, and the two rented at \$350 each could be raised to \$600 as well. \$3,000.00 per month rent, with a \$900.00 mortgage looked like a great deal with strong cash flow, and no rehab work to be done!

Instead, one of the tenants at \$350 left, and the other beautiful units just wouldn't rent. It turned out that there was no on street parking on the street where the building was located, no overnight on street parking in the neighborhood, and the only municipal lot was over three blocks away. With cuts in bus service and the closing of the urban grocery store nearby when it had been replaced by a strip center only a mile away, prospective tenants with cars had nowhere to park overnight, and prospective tenants without cars couldn't get to the food store or downtown by bus without walking five blocks. We were able to reduce the assessment on the building, saving taxes. Some day, when my client finds a nearby building to tear down for parking, the building will be easier to rent. Until then, it loses money every month.

The seller made no representations about the parking, and had discounted the building based on difficulty in renting, so again there is no claim. A simple visit to the municipal offices would have disclosed the parking issues before the agreement of sale was ever signed.

Another issue that comes up after the purchase of rental property is the restrictive nature of rental registration, tenant conduct and student housing ordinances. Throughout Pennsylvania, we are fighting all of these types of ordinances and the burdens they place on landlords. However, the fees must be paid and the rules followed until we get them overturned.

Surprises to unwary purchasers include \$50 to \$100 per unit per year in rental registration fees in many areas, inspections with fees for the inspections and lists of work to be done at the new owner's expense. Even more serious can be student housing ordinances which restrict who can rent your units. Since the Pennsylvania Supreme Court has, at least for now, held that students are not a protected class, local governments can, and often do discriminate against students.

Clients of mine have purchased single family homes just a few blocks from colleges, with students lined up to rent, only to find out another house within 500 feet was rented to students, so their house could not be student housing. In another case, my clients bought and substantially renovated a six floor, twelve unit apartment building in a downtown business district near a college. If they refused to rent to students, they could rent the

property to other tenants as it stood. But if any tenants were taking at least 12 credits at a college, university or the local medical school, a sprinkler system was required by the municipality to be installed at a cost of over \$100,000.00, or the floors above the second floor had to be closed. To avoid closing the upper floors and devaluing their building while we fight the unreasonable ordinances and improper interpretation of the sprinkler requirement, my clients were forced to sell for less than their property was worth. Had they known of the student housing restrictions before they closed on the purchase, or before they spent lots of money renovating the building, they would have avoided a long and expensive legal battle. Finally, building codes and ordinances on property maintenance, and their aggressive interpretation against landlords in some communities can be very costly if you don't know what you are in for in advance. A new fire escape can cost \$10, \$20 thousand dollars or more. Each window facing the fire escape might have to be fire rated, raising the cost from \$200 for a regular replacement window to \$1,000 per fire rated window. Hard wired interconnected smoke detectors can also cost thousands to install in an existing building. Being involved in your local landlords' or property owners' association, and talking to other owners of rental property in the areas where you are ready to invest can be the difference between a successful investment and a nightmare. Unfortunately, title companies don't pull local ordinances, since they don't affect the title to the property. There is no rule requiring sellers or agents to disclose the local ordinances, so you are pretty much on your own. Assume the worst, talk to local officials and other local landlords, and get to know the ins and outs of the local rules, and the local inspectors, before you gamble the success of your real estate investing on what you don't know! (Created in December 2009)