

LECTURE 15 – REAL ESTATE LAW IN THE AMERICAN LEGAL SYSTEM

You may find today's lecture more difficult to listen to than many and I may find it more difficult to talk about American real property law for two reasons: 1.) I taught for 6 years, full time, Real Property Law and it was a full one year course – 2 semesters, 2 terms, to first year beginning law students in the US. 2.) My area of law practice for 20 years has been real property law. I am a lawyer who represents buyers and sellers of real estate, people who buy houses, condominiums, apartment buildings, shopping malls, people who sell shopping malls, and I go to court to litigate real property disputes. If you look at Reading #18 in the Readings, you will see a lawsuit and 2 appeals that took me 6 years where I represented 180 elderly people in suing 1 landlord for overcharging them in rent for their apartments.

The mortgage is the most important business and legal document in American real estate. What is it and why is it important? A mortgage is a pledge of real property as security for a loan. If you do not pay back the loan, the lender can take the real property. In the US people do not use their own money to buy real estate or to build real estate. They borrow that money from mortgage institutions which are usually banks. If you want to buy one house or one condominium, as you will see in the #24 & #25 readings, especially #25, you can buy a nice condominium for \$177,000, have a bank that lends you \$167,000, for which your monthly payment is approximately \$1,200 per month and need only \$10,000 of your own money. This is the way people buy real estate in America. They do not have to have all the money and that's one of the secrets of the American real estate system. We have a credit system that allows people to borrow money to buy the essentials of life – automobiles, apartments, condominiums, houses. So the main Reading I have, #24 that is in the materials which I have on my website, is a Contract for the sale of a house. It's a blank form that any lawyer can pull out of his drawer when a client comes into his office and wants to buy or sell a house or condominium. He can fill it out with the buyer's and seller's names and various information on them, the price that the seller wants to receive, the price that the buyer has agreed to pay, and you can write a Contract that is an offer to purchase a piece of real estate with this blank form I have there. It's an actual form from my drawer that I use for clients to buy real estate. A buyer and seller who are ready to agree on the sale of a house usually need: 1.) a Deposit – an amount of money to put up. The buyer doesn't give it to the seller – he gives it to the lawyer or an escrow company to hold it in escrow, so that the seller doesn't get it until he complies with all the terms of the contract, 2.) Signatures of both parties. One of the things that happen in the interim between the 2 parties agreeing and signing a contract of sale for a house or condo is that the buyer goes out and finds a mortgage. If he is unable to obtain a mortgage then this form, that I've put on the website and that most lawyers use says, that the buyer gets his deposit money back and can back out of the contract and the contract is cancelled.

It's one of the ways that people buy real estate - They say "I will buy this house for \$200,000, but only if I am able to obtain a \$160 or \$175,000 mortgage." Of course like in all contracts, you need the signature of the buyer and the seller to make it valid. And also in the interim along with obtaining a mortgage, the buyer wants the house to be inspected to make sure that all the components of the house that are important - the plumbing the electrical, the roof, the wood floors and walls have no termites in them, that the house is stable and capable of being lived in, that it has running water, that it has electricity that works and won't catch it on fire, that it has a roof that doesn't leak, and that it's proper in all respects, 3.) After this is done, the contract usually calls for a Date for the buyer to give all the money, usually with a mortgage, and the seller to give the keys and to sign the Deed, the legal document that gives title or ownership of the house and real estate to the buyer. And that is a closing and if you'll look in Reading #25, you'll see a very long condominium sale in which the buyer is able to close if he obtains not just a first mortgage for \$144,000, but also a second mortgage for another \$26,000. If he gets both the mortgages then he will go ahead and close and buy the property. You also see there what's called a Closing Statement. Interestingly, our administrative law in the US accomplished a very important thing and that is, it has started and encouraged everyone in America to have a uniform Closing Statement that we call a HUD 1 Closing Statement. HUD means the Department of Housing and Urban Development. This is a US government drafted form for closing and is the same form for every closing in the US. One of the interesting ways administrative law is used in the US is that any time there is a federally related mortgage, which is the case in most sales and in most purchases, then this form called the HUD 1, must be used in the closing, by law. It has become so widespread for 25 years that it exists in almost every closing, even in non-government and non-federally related closings. People use them because all the lawyers and realtors understand them, everyone in real estate understands this Closing Statement, which is all the dollars and cents, the credits for taxes, termite inspections, pay off for former mortgages, everything that's involved in the settling of a closing where the seller has to pay off all his liens and problems and the buyer will give him the money, but only after he gets a free and clear title with no liens, problems, or anything on the property. Reading #25 gives you a long 20 page first mortgage in which the buyer obtains a mortgage for most of his purchase price of a \$177,000 condominium. The buyer also gives a second mortgage because the buyer has very little money of his own, maybe only \$10,000 to buy a \$177,000 apartment. So he borrows with a second mortgage loan, \$26,000 more so that he only has to come up with \$12,000 of his own instead of \$36,000 for the purchase. This is the closing statement for the closing that shows everything involved and gives you an idea of how an American sale of a condominium works.

Interestingly administrative law works together with the real property law system here to protect consumers. If a condominium developer has bought a large apartment building and is now going to sell the individual apartments as condominiums, how does the consumer know if he is being charged too much

money, if the roof is bad, the pipes, the electric or whether something is not right in the way this condominium is being sold? He really doesn't. So the state of Florida has state administrative laws that protect consumers and require that all the information about the developer and his prior history and record of condominium work be filed with the state, plus engineering inspection reports on the building.

This large black package I am holding up is a filing that my office did in which furnished all the information about the history of this building, inspection by a licensed engineer as to whether the electrical and plumbing and roof and everything worked in the building, a termite inspection to say there were no termites that would eat all the wood in it, and all the records of what the contract of sale would look like, and what the expenses would be to the buyers in the condominium. The state administrative agency even wants the developer, the seller, to certify that he's not charging the buyer extra for things like use of the swimming pool, use of the tennis court. This used to be a trick that sellers of condominiums would use to cheat and defraud buyers. They would sell what seemed like a cheap apartment condominium to someone for \$100,000 and then all of a sudden the buyer found he must pay an extra \$1,000 a month to be able to use the swimming pool and the tennis courts and the handball courts and maybe even the parking spaces. The administrative agency, in its consumer protection rule, protects the purchaser of condominiums and makes sure this kind of thing isn't being done and if it is being done it has to be disclosed fully before the seller can offer condominium apartments for sale to the public.

Anyone who is interested in how American administrative law or condominium law works would probably be very interested in reading what is the longest of any of my Readings, #25, which shows an entire real estate transaction for a major condominium seller of a very nice apartment building of 500 apartments in Tampa Florida with swimming pools, tennis courts, parking spaces. You can see the entire closing package of about 200 pages. This is a very experienced condominium seller, by the way. He has come to Moscow 6 times to investigate selling condominiums – buying an apartment building, then converting it into a condominium and selling individual condominium apartments in Moscow. He is a wealthy condo developer, and is very experienced. And he has learned that Moscow is one of the more expensive cities in the world, and that many people are going there to buy apartments in the form of condominiums.

I know I'm not teaching you how to draft contracts and to protect your clients who are buying, but that's one of the things I teach in the US to real property lawyers and to law students who are going to become real estate lawyers. One of the things I would teach them would be in my Reading #24. If you look at the one page contract I have there, it is a contract that has a very good clause that I call the million dollar clause to protect a purchaser of real property, someone who wants to buy real estate. As you see, I went to buy a house, it's my own name on the contract and it's a 1 page house contract, and I wrote in this \$225,000

purchase that I reserve the right to inspect the property for the next 30 days and if I found anything I didn't like I could back out and cancel the contract for any reason. This is called a free look period or a 30 day inspection period and it's one of the more common clauses that experienced developers and large property purchasers try to get when they buy property in American. It's something I've learned from my clients to put in whenever I buy real estate and that is to be able to inspect everything in 30 days to find out if I'm interested in buying, and to find out if there's anything wrong with the property. I hire roof inspectors, I hire termite inspectors, I hire contractors to go in and see if the wiring is ok, if the plumbing is ok, I also go to the bank to find out if I'll be able to get a mortgage loan large enough and at a favorable enough interest rate to be able to buy. If I can't get all these things – if they don't all work out within 30 days, on the 30th day I cancel the contract and get my deposit back. I've lost a lot of time, effort, and work, but I haven't lost any money and I haven't had to buy a house that's no good.

That's all I have to say in class about American Real Estate Law, but because it is my specialty, as both a law professor and lawyer, I am willing to discuss it with you privately or even do another lecture on it if enough students are interested.