

The Economics of Real Estate Principles

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Several previous ILLINOIS REAL ESTATE LETTER issues have presented articles written primarily for those who are real estate instructors or students. The favorable reader response to material of this type has encouraged us to offer additional readings relating to the fundamentals of real estate market analysis. In the pages that follow, we offer a detailed, economics-based discussion of concepts that are essential to the understanding of real estate markets, but that are generally discussed only in descriptive terms.

Technically, real estate is not defined by such physical components as land and buildings. Rather, real estate is synonymous with real property, the rights associated with land and the fixtures permanently attached to the land.

What is *real estate*? The answer to this question may conflict with the reader's own experience, with the common usage, and even with some textbook treatments. Technically, real estate is *not* defined by such physical components as land and buildings. Rather, real estate is nearly synonymous with *real property*, the rights associated with land and with the *fixtures*, such as roads and buildings, that are permanently attached to the land.

The term *real* harks back to English common law, under which a special legal action, called a *real action*, could remedy a civil wrong other than simply through the payment of money damages by the offending party. For example, a wrongfully displaced owner could regain possession of his land by an *action in ejectment*, one of these real actions.

The term *estate* means a collection, or bundle, of rights that must include the right of possession, and that might be divided in various ways. A *complete estate* is an undivided bundle of rights. Thus both *real estate* and *real property* refer to abstract rights, which are held by owners, or sometimes by such parties as tenants, rather than to physical things.

The Nature of Land and Fixtures

What is *land*? The fields of land economics and land use law reveal that land is characterized as *original, immobile, and indestructible*. If land is original, then it must be something that people did not create. For example, the deposit of fill materials into a waterway does not create land. If land is immobile, then soil that can be moved from one place to another is not correctly viewed as land. And if land is indestructible, then soil that can be poisoned or exhausted of its fertility is not to be thought of as land. Land is most

correctly viewed as *position in space, or location*, a definition consistent with the view of land as original, immobile, and indestructible. In this sense, land consists of a wedge beginning at the center of the earth and fanning outward through the surface of the earth and into the air space.

What is a *fixture*? It is said that a fixture is something that is intended to be permanently attached to the land. Yet nothing but land, defined as position in space, is truly permanent. In the context of defining fixtures, we therefore must assign a practical definition to the word *permanent*. We do so by distinguishing fixtures from items of personal property, or *personalty*, based on the specific purpose for which the improvement in question has been attached to the land.

For example, a sale of real estate requires that both buyer and seller have a sense of what physical items are expected to pass to the buyer in the course of the sale. In this case, the term "permanent" denotes a period of time lasting only until a closing is held (indeed, the buyer might plan to sell some of the cabinets, or a chandelier, immediately after the closing). Borrowers and lenders, on the

other hand, adopt a somewhat longer time frame in forming a notion of what is "permanent." When real estate is pledged as security for a loan, both the buyer and the lender must identify the physical items that underlie the pledge. (Problems can arise when the borrower and lender disagree over what these items are; consider the chandelier sold by the buyer after the purchase, and the resulting impairment of the lender's security interest.) While the time period is different, the word "permanent" again relates to the term of a contract.

Similarly, landlords and tenants must have a sense of which physical items installed by the tenant (such as shelving mounted securely to a wall) will be retained by the tenant, and which among such items must be left behind, when the tenant vacates the premises. As before, the word "permanent" relates to the life of a contract. In general, an item is treated as being permanently attached, or a fixture, if the parties to the contract intend for it to be treated as a fixture.

Why Real Estate Is Different

What makes real estate so peculiar that its analysis has evolved as a special area of study? Why should anyone study a concept as specific as real estate; why are fields of study not simply structured according to the disciplines involved? Answers to these questions focus on the fact that real estate's peculiarities generate special problems for analysts in such disciplines as economics, finance, and law. (These problems give rise to subdisciplines, such as the economics of real estate.) The distinguishing features of real estate are described below.

Uniqueness

Each parcel of land is unique. It is true that some parcels are not much different from others in terms of their access, amenities, and disamenities; nevertheless, all parcels are sufficiently differentiated, in terms of location, that each can be identified unambiguously in space. While this uniqueness of location in space may not always lead to differences in the

values, or in the usefulness, of otherwise similar parcels, it does result in there being no truly perfect substitute for a particular tract of land. It follows that the analysis of the land market must, at least in some respects, proceed in a manner different from that employed in analyzing some other markets.

For example, someone wishing to buy 100 shares of Apple Computer stock is indifferent as to which 100 currently outstanding shares he acquires, since all such shares confer identical rights. Because all bonds or ownership shares issued by the same entity (and within the same class) are identical, smoothly operating markets have developed for investors to sell to, or buy from, parties

to practitioners of such applied sub-disciplines as real estate appraisal.

Specialized Rights

Because of the unique or unusual features of real estate, the legal rules and institutions that have developed for use with real estate are not always consistent with those that relate to other commodities. For example, every state in the US has a law called a *Statute of Frauds* that requires real estate contracts to be in writing. Furthermore, *specific performance* is a special rule that relates only to unique assets; a seller who breaches his contract may be forced to complete the sale rather than simply to pay damages, because a buyer who has lost access to an

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whose identities they will never know. Real estate analysts, however, are restricted to examining specific properties or else generalizing about trends in broad segments of the real estate market; and financing can proceed only with the assurances provided by property-specific appraisals and complex arrangements for protecting collateral. The uniqueness of each parcel may cause the analysis of land markets to be more like that of other heterogeneous commodities, such as objects of art, than like the analysis of homogeneous commodities.

Uniqueness also causes the use, along with the value, of each parcel of land to be influenced by the uses of proximate parcels, an effect obviously not present even in the case of movable art works. Access to specific nearby parcels for trade is one such influence. Other influences take the form of technological externalities, "goods" or "bads" that flow outside the market (examples would be aesthetic benefits, air or water pollution, and noise). Spatial analysis, including the study of access and externalities, is a centerpiece of urban economics. Aspects of spatial analysis have become important

item for which no perfect substitute exists cannot be made whole with money alone. The remedy of specific performance thus is one that can be imposed in connection with real estate transactions. In addition, the importance of real estate in human affairs, particularly (but not limited to) the use of improved land as a homestead, has led to the creation of unique protections, both in transactions and in matters of divorce or inheritance, for a spouse's claim on the bundle of rights that constitutes the essence of real estate.

Possession

What is in this bundle of rights? There are three broad classes of rights relating to real estate: *possession*, *use*, and *disposition*. The most important aspect of possession is the right to exclude others. This right is essential if we are to avoid the costs of congestion and overuse that would be present if there were no right to exclude. In the absence of a right to exclude others, no one would buy or develop land, or take responsibility for care and improvements; everyone would be a *free rider*, attempting to benefit from expenses incurred by others.

The ability to exclude unwanted parties is so important that the law, in some instances, permits discrimination of a type that would be prohibited in typical commercial or consumer transactions. For example, residents of cooperative apartment buildings, whose lives and finances become closely intertwined with those of their neighbors, are given considerable leeway in rejecting financially qualified applicants from membership. A seller of cars or computers, on the other hand, could not refuse to sell at an advertised price simply because of the potential buyer's lifestyle or notoriety. In a country that substantially limits the ability to exclude others (such as Sweden, where the Allmen's Right might be an artifact of a herd-following society's need to cross land en route to grazing areas), there must be strict rules governing trespasser actions. Absent such rules, land use would descend into chaos.

Use

Another critical component of the bundle is the right to determine the use of land, and to benefit from the proceeds of that use, without facing interference from others. It is important that the party who determines the use also be the party who benefits from the use. Otherwise, the incentive to use land fully, and in its most productive application for the good of society, is lost. To the extent possible, we should create a system in which the *residual* claimant (the owner), and not a government planning authority, determines the use of land. We should not attempt to hinder new development, but rather should permit development, of any type, if the proposed project is of an appropriate scale and if it properly addresses *boundary effects*.

When land is put to a use that differs from the uses of nearby parcels, there can be unpleasant (or sometimes pleasant) *externality* effects that cross the boundary shared by the differing uses. Instead of prohibiting externality-generating uses, we should require *any* proposed project to be of appropriate size, and to create sufficient buffers to protect existing nearby uses from adverse external influences. A proposed residential development near existing homes would tend to generate little concern over

externalities, whereas a proposed heavy industrial use near a quiet residential area should raise questions regarding external influences that will cross the boundary.

Consider the case of a firm planning to build a manufacturing facility near a developed residential area. Society, particularly the nearby residents, would gain certain benefits from the factory (for example, job opportunities at a location that limits the need to consume fuel in commuting). There would, of course, be some potential detriments as well (unabated noise and traffic problems might be examples).

Do the benefits outweigh the detriments; is it in society's interest for the private developer to construct the factory on the land in question? If the developer takes into consideration both the net costs of operating the plant (including the savings through lower wages accepted by people who incur low commuting outlays) and the costs of not imposing externalities on the surrounding area (large earthen berms to restrict noise and light transmission, road improvements to relieve traffic congestion), and if the developer still bids the highest price among the site's potential buyers, then the factory is the use that is in society's best interests. A lower bidder is not able to generate sufficient benefits to society, reflected in expected profits, to allow him to make the winning offer.

This argument may seem counterintuitive, in that each of us has seen industrial uses that have wrought havoc on nearby residential areas. The problem in such a case, however, typically is either that the developer has not been required to *internalize*, or absorb the costs of correcting, externalities before breaking ground, or else that the range of potential externalities has not been correctly identified. Government's proper role, rather than restricting development, should be to create rules that identify potential externalities, and to impose legal sanctions for breaches of agreed-upon actions.

Disposition

Finally, the right of disposition is the key to providing for proper stewardship of land. Indeed, the claim on the residual value (actual or imputed inflows net of expenses; sale proceeds net of outstand-

ing loan balances or other liens) is the distinguishing feature of ownership, in that other important rights, notably possession, are frequently assigned to tenants through leases or other arrangements. It is because of the right to the residual, part of which is realized in cash at the time of disposition, that an owner effectively has an infinite time horizon. That is, when contemplating the use of his property, an owner will consider the impact on the future selling price. An owner who is careless with his land, allocating it to the wrong use or permitting erosion and pollution to occur, suffers a direct economic loss because of reduced residuals, including the lower price that a rational buyer ultimately

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would pay. The buyer would offer a low price because of the cost of correcting the problems, or the low price that a later buyer would offer. Losses that poor stewards realize through lower residuals provide an incentive for owners to care properly for important resources.

Rights Not in the Bundle

At the same time, there are some rights that are absent from the bundle. For example, a common law limitation on private rights called the law of *nuisance* illustrates the type of court-enforced restriction that a land owner can face. This limitation has atrophied in recent decades because of the combination of high costs of enforcing nuisance laws (resulting from the diffuse nature of nuisance victims), crowding-out by statutes that address specific potential nuisances, and possibly some contrary court decisions. Still, courts do sometimes recognize the economic roles both of nuisance creators and of those who suffer from nuisances; a party that moves onto land impacted by an adverse use is said to be *coming to the nuisance*, and is typically not entitled to compensation.

In addition, some rights relating to real estate are expressly denied to private owners because they are reserved for the government. Governmental rights in real estate can be traced to the earliest days of English law. A feudal system was imposed on England in 1066 by William the Conqueror. This system, like all feudal plans, was based on the king's owning of all land, but with rights to use and possess the land distributed to a hierarchy of noblemen who, in return, promised to provide services for the king.

This provision of services in return for land use is a form of barter, and the strains attendant to such a barter economy quickly began to break the English feudal system down. The best

knight, for example, is not necessarily the best land manager; turning land over to someone whose skill is on the battlefield, rather than in the wheat field, is bound to be a misapplication of important resources. The signing of the *Magna Carta* in 1215 addressed this problem by establishing the private right to own land. In 1290, a statute called *Quia Emptores* went a step farther by recognizing the right of a tenant to sell his tenancy. Yet despite the recognition of private ownership and private rights, the government retained for itself four important rights over land: *taxation*, *police power*, *eminent domain*, and *escheat*.

Taxation

Taxation arose directly from the disintegration of the feudal system; kings still needed the means to pay for the functions of the state, but were no longer able to barter for needed services through the assignment of rights to use land. Taxation is potentially more efficient than the feudal system in that, with cash payments, the government can obtain services from the most capable providers while obtaining the cash through taxes

levied on, presumably, the most capable stewards of land or other taxable assets.

Real estate is potentially subject to taxation in ways that other commodities are not. The fact that land is original makes it an especially easy target for taxation, because it can be argued that if man does not produce land, then a tax on land should not distort incentives or the allocation of resources. Noted 19th century economist Henry George advocated the taxation of land values alone, and Georgist thinkers today continue the effort toward a tax system based solely on land (and not improvement) values.

Yet even aside from these Georgist concepts, real estate displays peculiarities that subject it to more tax scrutiny than is faced by other assets. Land is absolutely immobile, for example, and long-lived improvements tend to be impractical to move, either because of cost considerations or because of damage that would be caused to the property moved or to the property remaining. (These problems are recognized under common law, in fact, as tests of whether an item is intended by the parties to be a fixture.) The immobility of land and relative immobility of fixtures recommend them for taxation, because these physical features, and their values, cannot easily be hidden. Thus, a unit of government can achieve compliance with a real estate tax at a relatively low enforcement cost. On the other hand, when personal property taxes have been applied to assets that can be hidden (or easily moved outside the taxing jurisdiction), the results typically have been unfavorable, both in terms of revenue generation and in terms of fairness.

It is, therefore, unfortunate that the exercise of the state's right to tax can distort the actions of real estate owners. For example, a capital gains tax limits the owner's right of disposition. Residents of high-priced areas who have substantial capital gains in their homes are reluctant to move to areas with lower home prices because of the federal income taxes that they would have to pay if they did not purchase equally costly residences in their new settings. As a result of the high tax on disposition, there are fewer transactions. As a result of fewer transactions, rights in real estate are prevented from moving to those who value them most.

CAPITAL GAIN TAXES ON HOME SALES ARE DIFFERENT NOW

Consider a young family that wishes to move from Chicago to California. The fifty year old owner of a modest Los Angeles home might, at the same time, wish to move to St. Louis. The young family would be willing to pay \$200,000 for the modest LA house, and the current owner would happily accept \$200,000 if she would not have to either pay a high capital gains tax (she bought the house for \$30,000 twenty-five years ago) or else buy much more house than she wants in St. Louis (a much lower priced housing area than LA). If the Chicago resident possesses skills needed on the west coast, and if the current California dweller has abilities that St. Louis firms are seeking, then the tax on disposition also interferes

equally-valued homes in order to move to new jobs. The administration of the property tax, as with the capital gains tax in our earlier example, can interfere with the labor markets.

In fact, most forms of taxation create distortions that interfere with directing resources to their most appropriate uses. For example, a tax on income generated by real estate is a disincentive to use land and buildings fully, since higher returns resulting from a more intensive use of the property must be shared with the government. A tax on building value also is a disincentive to develop land fully; the owner of a commercial site might decline to complete an expansion that would help to meet consumer needs if, as a result,

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with the country's labor markets by impeding the flow of human capital to its most appropriate location. In place of a right to dispose based solely on market considerations, the LA owner faces a limited set of choices: overinvest, pay a high tax, or choose not to move. (Even a \$125,000 exemption for those aged 55 or older leaves many long-term residents in high priced areas exposed to substantial capital gains tax liabilities if they sell.)

Property tax effects can also serve to restrict the right of disposition. California's Proposition 13, billed initially as property tax reform, serves largely to provide differential tax treatment for new residents. Someone who lived in his home prior to Proposition 13's enactment enjoys strict limits on property tax increases; a new owner's tax bill would be much higher. A long-term resident who thought about selling would ask a very high price, to compensate for the home's features and the tax benefits lost, yet potential buyers, knowing that their taxes would soar, would bid relatively low offering prices. Even two individuals living in different parts of the state would find it financially difficult to "trade"

his local real estate tax bill would rise appreciably. In fact, an annual tax of 3% on the value of a building has a disincentive effect equivalent to that of a one-time excise tax of 75% of the cost of construction (assuming a real discount rate of 4%), clearly a significant drag on development. These points may provide support for Georgist beliefs that taxing land value alone prevents the creation of such distortions on resource usage.

The Police Power

The police power emanates from the constitutional right of the government to regulate in order to promote and protect the health, welfare, and morals of the citizenry. The police powers most obvious in the real estate arena are zoning, building codes, housing codes, and subdivision regulations.

For regulation to be justified, there should be evidence that an unregulated market would fail to function properly. For example, there might be concerns that a major participant could exert monopoly power if not prevented by government action. It is, therefore, ironic that the most significant monopolies we

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observe exist precisely *because* of government intervention (telephone, power, and cable TV services are examples).

Externalities constitute another potential category of market failure, although Nobel Prize-winning economist Ronald Coase illustrated that efficient outcomes would result if the affected parties could negotiate without incurring great cost.

Zoning is the most useful concept for illustrating the economics of the police power. The rationale for zoning is the need for assembling rights over contiguous land in achieving some of society's desired ends; a particular owner could use his locational monopoly in preventing such ends. For example, one identifiable land user's creation of externalities could adversely affect another identifiable land use. It would have to be the case, however, that the externality producer would be willing to pay a premium to locate in the midst of the affected land use; otherwise, the two uses would never encounter each other. For example, we would have little need for zoning to prevent a fancy restaurant from locating near a smelly stockyard. We might, however, wish to restrict the stockyard from locating in an area of low-intensity retail activity, particularly if location or infrastructure features would potentially be attractive to the stockyard operator. But our use of zoning or other regulatory controls, even when justified, should be as sparing as possible, because every restriction on use takes away some of the owner's rights.

The "rules of the game" should facilitate the resolution of externality problems rather than to impose restrictions on land use; we should welcome activity that reduces the amount of boundary area between higher and lower uses. As a community grows, for example, a typical zoning arrangement seems to be the restriction of commercial/industrial uses to lengthy "strips" along a main street; residential use is observed in equally long stretches on the parallel side streets starting one block from the main street in either direction. This strip zoning arrangement exposes huge areas of residential neighborhood to adverse boundary effects. Any movement toward centralizing the more intensive uses, in the fashion of a downtown or an industrial park, would reduce the total amount

of residential use along the boundary, and therefore should be viewed positively.

In a similar manner, a request for rezoning, or for a variance from existing zoning regulations, should be granted as a matter of policy if the developer agrees to conditions that protect nearby sites from cross boundary externality effects. A proper remedy requires the developer to pay a per-acre "impact fee" equal to the difference between the value per acre for "interior" parcels (those unaffected by the proposed activity) and the value for parcels along the boundary created by the proposed project. Forcing the developer to absorb this cost produces equal interior prices across zones (rather than the equal boundary prices that traditional zoning's

who comes to the nuisance. Indeed, if such a party is not fully compensated for offensive nearby sounds or smells in the form of a lower purchase price for the land than he would have paid in an unaffected location, then his proposed use is not optimal for the site in question.

The zoning mechanism, as frequently applied, limits the affected community's access to certain economic activities, and can serve to confer wealth on a few land owners at the expense of others. Consider the case in which a large, flat tract of undeveloped land is annexed to a city in which local officials confer most of the land with a residential zoning classification, while endowing only a small portion with commercial zoning. Based on the

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incentives tend to produce) and creates no incentive for land uses to be changed further. Imposing a greater cost on the developer prevents developable land from being put to its optimal use, while a lesser cost causes sites already developed to be inefficiently maintained. Permitting development with the payment of impact fees is, in effect, the sale of zoning.

While there are no jurisdictions that permit zoning rights to be sold, the idea is not new to urban economists (see, for example, David E. Mills, "The Price of Zoning," *ORER Letter*, Summer 1991).

It is also essential that the benefits from the impact fees accrue to affected parties rather than to the government. Consider the recent *Dolan* case, in which Tigard, Oregon officials tried (ultimately unsuccessfully) to require a firm wishing to expand its facility not to internalize any externalities created, but rather to donate land for a park. We should also note that a developer who locates in a remote location should not later be forced to mitigate cross-boundary effects when higher uses (such as residential) move onto nearby parcels. Efficient land use is not promoted by a payment to someone

typically observed outcome, it would not be unexpected for the commercial land to sell for a per-acre price considerably higher than that paid for the residential land. Why should physically similar parcels have very dissimilar values; why does the private owner of land that has been given commercial status receive a windfall (possibly paid for by rent-seeking waste, in the form of lobbying for preferential treatment)?

The answer is that, rather than merely restricting land *uses* to compatible types in order to control externalities, zoning too often restricts the *quantity* of land that can be put to more-intensive uses. Two parcels equal in size and similar in terms of their topography and location should have similar values regardless of their permissible uses; if they do not, then zoning has brought about misallocation by artificially restricting the amount of land that can be put to more-intensive uses. Note that the hardware store sells a particular hammer for \$14.99; the clerk does not ask whether the purchaser is a carpenter (planning to put the hammer to commercial use) or a do-it-yourselfer (planning to use the tool for residential

purposes) before quoting a price. In a similar manner, the use to which land will be put should not affect its value.

Another criticism of zoning is that it has been subverted to exclude the poor, and thus to create tax havens, in some jurisdictions. A latter-day tool for dealing with this issue has been *inclusionary zoning*, the requirement that any new development specifically provide for low-income housing. While inclusionary zoning is well intentioned, it can result in slum creation through its attempt to violate the *law of one price*, an economic principle stating that, as in our hammer example, similar goods should sell for similar prices. If a developer of \$350,000 homes must include some low-income housing, he is likely to spend more in building low-income units, to preserve a quality initial neighborhood image, than the government will allow him to charge low-income buyers. If government also restricts what the buyer of such a builder-subsidized unit can ask upon resale, then the occupant is unlikely to adequately

maintain the property, there being no residual benefit in doing so. Eventually, owners of all properties in the area would see that their residuals would not be enhanced through proper maintenance outlays, and a slum would, in time, result.

Eminent Domain

Use of the police power can in some cases be extreme, with few if any economically viable uses permitted. The term *regulatory taking* has been used to describe the situation in which an owner is prevented from developing his land as intensively as are similarly situated parcels. The line between regulations and outright takings has been redrawn through recent court cases, such as *Dolan*, with owners' rights apparently strengthened for the time being, but there are notable exceptions, and the pendulum could again swing in the other direction.

Excessive regulation is particularly troubling in light of the fact that, if the government wishes to control the use of specified land, it can simply acquire the

land by paying just compensation to the current owner. (We must note the irony, however, of the courts' enforcing specific performance in recognition of a buyer's unique view of a parcel, while other governmental units take unique property and compensate only at a "market value" that ignores the property's uniqueness to its owner.) *Eminent domain* is the right of the state to take property for public use. As with zoning, the economic rationale for eminent domain is that contiguous parcels create a holdout problem if a particular owner cannot be compelled to join in an assembly effort. The compensation requirement is a device that may moderate the state's enthusiasm for takings, and also moderate voters' enthusiasm for political change. (Note that government could achieve zoning-like restrictions by purchasing easements over specified parcels, whereas zoning, under current legal views, does not require compensation. An innocent reading of the 5th Amendment's just compensation provision would suggest that compensation is warranted. This issue is likely to receive considerable attention in the legal and political arenas in the coming years.)

Escheat

Escheat is another remnant of feudalism. When a baron was barren, or had no male heirs, his lands would *escheat*, or revert, to the crown at the time of his death, because the king would need to allocate the land to someone who could provide military service in return. Today, land escheats to the state if an owner dies *intestate* (without a will) and without heirs. The owner must provide for the succession of land, or else the state will simply take it. While this provision of the law may seem harsh, in modern times it serves to assure that some party holds responsibility for all real estate.

Closing Remarks

An introductory treatment of real estate principles typically offers legal definitions and a descriptive discussion of the rights held by property owners. In this introduction, we have sketched some of the economics principles that govern the ever-evolving system of property rights. Other aspects of the economics of real estate will be discussed in future issues. ■

The "Property Owned by Aliens" Act

Ward F. McDonald

Concerns regarding foreign ownership of American real estate seem to have disappeared from the national debate. The observation that parties from overseas have reduced their investment in US property evidently has abated the fears that America would soon be "owned" by individuals from other countries. Yet such an outcome is one that need not have been of great concern to Illinois citizens; it is inconceivable that our state could have become "owned" by foreign individuals, because any movement toward such an end could have been thwarted by greater enforcement of the "Property Owned by Aliens Act," which was enacted in 1897.

Under this law, any adult citizen of a foreign country, who acquires real estate within Illinois must, within six years from the date of acquisition, sell the property to a *bona fide* purchaser for value or, in the alternative, become a US citizen. If the foreign owner fails to comply with one of the law's provisions, then the State's Attorney in the county where the land is located, acting on behalf of the people of Illinois, can compel a sale. After any liens are settled, the unpaid balance, minus a 20% finder's fee, shall be paid and delivered to the State Treasurer (with nothing paid to the dispossessed seller), who shall hold that money as state property. The alien seller of such land must deliver possession to the buyer within ten days of the time when the buyer presents the seller with a copy of the deed (signed by the public official facilitating the sale), together with a written demand for possession signed by the buyer or by the buyer's attorney or other agent.

The enforcement of this seemingly harsh law is, in fact, less hostile to the foreign owner today than was true half a century ago. (Indeed, the Act's intent was to promote citizenship, not to confiscate land; a corporate entity owned by citizens of other countries, in fact, could perhaps have thwarted the law's confiscatory effects.) Prior to the 1945 decision in the case of *Kunstman v. Shinsaku Nagano*, any citizen of Illinois could enforce the law if the State's Attorney failed to do so. The private citizen's right to sue, and to collect the 20% finder's fee, was overruled in *Kunstman*, so now the State's Attorney carries the sole power to enforce compliance with the Act.

Those of us who support property rights should be troubled by a law that would arbitrarily deny such rights to any domestic or foreign owner. Nevertheless, it may be surprising, at a time when government is seeking to increase revenues while reducing taxes, when lawmakers are leaving few stones unturned in their quest for added funds, and when the public sector has seemed undaunted by the confiscatory nature of regulatory takings, that some parties have not called for greater enforcement of the "Property Owned by Aliens" Act.

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