

# Talking Real Estate



**Ilyce Glink and Samuel J. Tamkin**  
Contributing Writers

**Q.** We purchased our home six months ago and just found out there's a covenant requiring a 15-foot side yard setback our area. Our setback is only 10 feet. We had a real estate agent and an attorney and bought title insurance, but no one told us about this or gave us a copy of the covenant. We never would have bought this home if we'd known about the covenant. What are our options?

**A.** Please don't rush to judgment on this issue. Your situation is rather common. In some parts of the country, zoning regulations and other covenants that include setback requirements similar to yours were enacted after homes were built in a neighborhood.

In these cases, the homes are considered to be legal. You might even hear someone refer to your home as being "legal but non-conforming." This means the home is OK as is but doesn't conform to current zoning or covenants that govern your neighborhood.

If your home was built 50 or more years ago, you probably don't have to worry. If it's new, however, you may have cause for concern.

You indicated that you had a real estate agent and an attorney and bought title insurance for your closing. First and fore-

most, did you hire the attorney to represent you personally in the transaction and not as the closing attorney? If you hired the lawyer on your behalf, he or she should have reviewed the survey and the title for the property. A properly prepared survey should show the setback line.

If the survey showed the setback line, the title company should have raised as an exception to title the encroachment of the home over the setback line by five feet. At that point, your attorney should have discussed with the title company a way to insure your title against problems that might arise later during your ownership of the home.

If the survey did not show the setback line or you didn't get a survey with the purchase of your home, and the title company did not list the setback line on its title commitment, your attorney would not have known about the restriction and could not have known that the home was five feet over the line.

If your attorney knew the issue existed and didn't discuss this with you at, or

prior to, the closing, that was a mistake. Nothing might have changed if the attorney discussed this issue with you, but at least you would have known about it and have felt more comfortable about what you were buying and the risks involved.

For homes built many years ago, title companies in many states can issue endorsements to their title insurance policies to protect buyers from the possibility that local authorities or a neighborhood association will attempt to enforce current rules and force you to move your home back five feet. If you receive this endorsement, you have the added comfort of knowing that the title company will pay for damages you might sustain if you were forced to move the home or make changes to it.

Unfortunately if a sloppy builder recently constructed a home over the setback line, the local municipality may still enforce the setback requirement and force you to move the home or reconfigure it to conform to requirements.

If the setback requirement is a private covenant — a covenant enacted by an association that rules your community — the association would have the authority to enforce its rules. You would have to find out what action the association can take against a homeowner who violates the rules. The previous owner or the builder might have already complied with any enforcement action. You might find that the setback rule is on the books but there's no one who can enforce it. If the prior owner or builder satisfied the homeowner's association, or the setback rule is not enforceable, then you're all set.

Finally, if all homes in the neighborhood violate the setback rule, it's possible that the requirement was ignored a long time ago and can't be enforced at all.

If your home is new and was built over the setback line, and the setback line is part of the local zoning ordinance, find out if the builder obtained a variance to allow the home to be built where it is. If the builder failed to get a variance, talk with the local building department to find out if you can get a variance now. Keep in mind that if you fail to get the variance, you may have to pay to make the home conform to the current zoning requirement.

What you need now is more information. Sit down with your attorney or find a real estate attorney who specializes in zoning.



*The following real estate transactions took place in Manatee and Sarasota Counties.*

\$3,795,000 Orchid Beach Club Residences LLC to Palmer, Roy C. and Susan M., Orchid Beach Club Residences, Unit D202.

\$1,875,000 Labellasara LLC to Lonsdale, Kristy and Robert D., Labellasara, Unit 601.

\$1,100,000 Charles H., III, to Gifford, Kathryn A., Lot 12, Bird Key.

\$1,050.00 Kennedy, Richard D. to Saton,

Kathleen A. and Paul A., Sands Point, Unit 115.

\$1,000,000 Herschberger, Eli D. and Vera M., to Beitlich, Paul D., and Herschberger, Eli D. and Terry A. and Vera M. Four Bays, Lot 1.

\$915,000 Allen C. Piassick Revocable Trust and Piassick, Allen C., trustee, and Sharon, to Soriero, Michael, Promenade, Unit 4108.

\$712,000 Silverstein, Craig, trustee, and Frances J. Dec and Randy, trustee, and Scott, trustee, to Daren, Audrey and Julius J., Harbour Links at Longboat Key Club,

Unit 2031, Building E., Phase 1.

\$700,000 Terani, Massoud, to Dimarco Family Limited Partnership, St. Armand's Towers, Apartment 84.

\$680,000 Elizabeth Ludwig Fennell, Declaration of Fennell, Elizabeth Ludwig, trustee, and Swary, Mark F., trustee, to Reimers, Craig J., Turtle Cove Condominium, Unit 7.

\$580,000 Timothy J. and Nelson, Charlene R. to Quimby, Brian Sr., and Rita. Sarasota Beach, Lot 1, Block 5.

\$565,000 Richard and Pardi, Marcia to Pardi, Jon, Shoreland Woods, Lot 1.

\$550,000 Sherrill, Judith, to Jimenez, Roberto L. and Ronald J., Arlington House of Lido Harbour, Unit 302.

\$475,000 Carlson, Barbara and Wells, Clarke Dewey to Essenson, James L. and Linda S., Lido Regency, Unit 9C.

\$450,000 Riddell, Jefferson F. Tr. to Synder, Jeanette B. Tr., Jeanette B. Synder Rev Trust, Synder, Jeanette B. Rev Trust, Longboat Beach Tennis Club, Unit 224.

1484 living sq. ft. Built in 1973. Sale date: Oct. 6.

\$475,000 Carlson, Barbara and Wells, Clarke Dewey to Essenson, James L. and Linda S., Lido Regency, Unit 9C.

\$445,000 Archer, Arthur A., to Williams, Darlene and Scott L. Lido Surf and Sand, Unit 709.

\$435,000 Spinella, Margaret A., to Harris, Nader J. and O'Brien, Patricia M., Bayshore Estates, Lot 17, Block F.

\$400,000 Fred G., and Kim A., to Eggers, Thomas E., Revised Siesta, Lot 9, Block 24.

\$400,000 Slack, Cheryl L. and Michael K., to Primary Closing Corporation, Grove Point, Lot III, Unit 1.

\$319,800 Divosta Homes LP to Hasbach, Laugene F., Islandwalk at the West Villages, Lot 166, Phase 1A.

\$306,600 Divosta Homes LP to Chmela, Jean L., trustee and Jean L. Chmela Revocable Living Trust, Islandwalk at the West Villages, Lot 132, Phase 1A.



## Michael Granston

I May Still Have My English Accent,  
But I Place My Accent On Providing  
The Best Possible Service...

504-8018

www.HomesInLongboatKey.com

OPEN HOUSE



TANGERINE BAY CLUB DIRECT BAY FRONT

Watch the dolphins play and enjoy the awesome views from this 2/3 bed, 2 bath immaculate beauty. Granite kitchen, marble wet bar, marble fireplace. Tennis, fishing pier/day dock, resort style pool, fitness room, private beach club membership. Priced to sell \$1,100,000.

OPEN HOUSE THIS SUNDAY 1-4PM

340 GULF OF MEXICO DRIVE #122



THE SANCTUARY

This spectacular 3115 a/c s.f. end unit directly overlooking the Gulf, golf and pool is now offered at an unbelievable price. Impeccably decorated, perfect condition, spectacular views, 2 parking spaces, 3M hurricane protection, loads of storage. Simply the best, compare the rest, only \$2,399,000.



Prudential  
Palms Realty



595 Bay Isles Road  
Longboat Key  
Independently Owned & Operated

## JENIFER SCHWELL

Classics

Chairman's Circle

LOWEST PRICED 3 BEDROOM 3 BATH CONDO FOR SALE ON LONGBOAT KEY

Beach To Bay Bargain




High vaulted ceilings, tile floors, custom closets, many costly upgrades. Swim the Gulf in the morning & fish on the Bay in the afternoon. Private white sand beach, community dock, pool, tennis & clubhouse. Pets are welcome. Excellent rental possibilities. Completely furnished at **\$649,000.**

Presented By Jenifer Schwell

**Michael Saunders & Company** Licensed Real Estate Broker

941.780.0968 • 941.383.3209 • 941.388.4447 ext. 2922

