could not foreclose the 1970 mortgage lien after the issuance of the tax deed.

The savings and loan claimed that neither the purchaser at the tax sale nor his installment contract purchaser owned the property since the contract purchase price had not been fully paid. The court held that under the doctrine of equitable conversion, the contract purchaser was the equitable owner of the property. Further, because the Illinois Recording Act, *Ill.Rev.Stat.*, c. 30, ¶29, states that recordable instruments take effect from the time they are recorded, and not before, the unrecorded mortgage was void as to the contract purchasers since they did not have actual notice of the mortgage. Finally, the court noted that since the *lis pendens* gave only notice of the attempt to foreclose the 1970 lien, the contract purchasers clearly had superior title to the property.

Lincoln Park Federal Savings & Loan Association v. DRG, Inc., 175 Ill.App.3d 176, 124 Ill.Dec. 790, 529 N.E.2d 771 (1988).

CAVEAT VENDOR

The appellate court recently held that a seller who agrees with the buyer to perform repair work prior to conveying the property has an obligation to ensure that the work is done in a reasonable workmanlike manner, and that failure to do so constitutes a breach of contract.

A buyer entered a written contract to buy seller's home. Part of the contract called for the seller to provide a refrigerator. Prior to the closing, the buyer reinspected the home and discovered that some tiles needed replacement and regrouting. Following ensuing negotiations, the seller, orally agreed to make the necessary repairs if the buyer would forego the refrigerator. Buyer agreed. Seller arranged to have the work done, and paid $150 toward the cost, with the Realtors® paying the balance of $67. Buyer alleged that seven days after taking possession of the home, the tiles were falling from the wall and the grout was cracking. Buyer sued the Realtors® and the seller for breach of contract.

At the close of buyer's case, the trial court granted seller's motion for directed verdict, finding that testimony failed to establish that an oral contract existed and that even if there was a contract, the seller had complied with it. The appellate court, after finding that the oral contract was binding and enforceable, held that the buyer could maintain an action for breach of an implied warranty to repair in a workmanlike manner.

Acknowledging that cases considering such an implied warranty typically involve a direct relationship between the injured party and the construction contractor, the court held that buyer should not be denied the benefit of the warranty because a third party did the construction. When the buyer agreed to forego his right to the refrigerator in exchange for the repairs, he was entitled to repairs done in a workmanlike manner, and it became the duty of the seller to insure that the work was so performed. Without this requirement, a seller need only provide for the repairs to last through the closing date, a result inequitable and contrary to reasonable contract expectations.

Harmon v. Dawson, 175 Ill.App.3d 846, 125 Ill.Dec. 406, 530 N.E.2d 567 (1988).

IT DOESN'T PAY TO ADVERTISE

A property owner may maintain a cause of action for invasion of privacy where a bank advertises sale of his property without his consent or knowledge.

A farmer obtained a second mortgage loan on his farm but defaulted on the payments to the bank. The bank requested that he sell the farm, but he refused and asked for additional time in which to make his payments. Two years later, the bank allegedly placed advertisements in the local paper and distributed hand bills stating that the farmer was selling his farm at public auction. The publications did not mention the bank's mortgage nor that the sale was to fulfill the farmer's financial obligations. The advertisements were placed without the farmer's knowledge or consent and no foreclosure proceedings were pending at the time. The farmer filed a complaint for invasion of privacy against the bank, its vice president and the auctioneer.

The Court found the facts were sufficient to support a claim of invasion of privacy by placing another in a false light. The Restatement (Second) of Torts describes this privacy tort as: one party placing another before the public in a false light that would be considered highly offensive to a reasonable person, where the actor knew of or acted with reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. The Court held that the farmer had clearly been placed in a false light based on the amount of publicity generated and the fact that the farm was advertised for sale by the farmer at public auction, all of which was clearly untrue. The Court found that the farmer's extreme difficulty in obtaining refinancing after this publication weighed heavily in finding the publication to be highly offensive.

Lovgren v. Citizens First National Bank of Princeton, 126 Ill.2d 411, 128 Ill.Dec. 542, 534 N.E.2d 987 (1988).

THE DAY THE MUSIC STOPPED

By Harold Levine

The Village of Glendale Heights has passed an ordinance providing for a real estate transfer tax.

This in itself is not exceptional. Many cities and villages provide for a transfer tax that must be paid to the Municipality before the recorder can accept certain specified conveyance. What is unusual about the Glendale Heights ordinance is Paragraph 1-15-14 which provides as follows:

> The Village Collector shall issue no transfer tax revenue stamps unless he verifies that any delinquent water and sewer assessments and penalties related thereto and other debts due and

continued

owing the Village with respect to such parcel of property are paid in full and unless the declaration form contains information necessary for the billing and collection of the final water and sewer assessment charges.

It is not beyond the realm of reason to believe, and a knowledgeable, local lawyer has previously told me, that the catch-all language which states "and other debts due and owing the Village with respect to such parcel property," could include traffic fines, ordinance violations and license fees of all kinds.

What's the big deal? The big deal is that the ordinance and the avalanche of similar ordinances that will certainly follow will greatly erode or eliminate the concept of a real estate transaction as a free-market transaction between buyer and seller. The State, County, City, Town or Village will now become a real party in any real estate transaction. Between ordinances of this type, the growing demands of the environmental climate, and the increased use of impact fees, the real estate business is becoming as heavily regulated as the securities industry. This is tragic!

Real estate transactions have their own dynamics and their own rhythm. Into this fast moving, dynamic process, the Municipalities have grafted on an administrative and bureaucratic nightmare! In the never-ending quest for revenue, the Municipalities have found the *one* place where the dynamic real estate market falls into their clutches: the recording process. Somewhere along the line, documents in a real estate transaction must be recorded. The Municipalities have said - let's load up the recording process with everything we can think of - in short, we'll get them by their declarations, and squeeze whatever revenue we can! We all know what is going to happen. Here is an imaginary story that could result:

A Glendale Heights seller seeks to sell his home, buyer has 73 hours left on his commitment or the interest rate will go up one percent or the commitment will be terminated. Seller goes to the Village and finds that when his first wife left with the 3 dogs, and his car, she:

a. ran up 200 parking tickets without telling her husband;

b. failed to pay for the dog licenses; and

c. hit a city police car on the way out of town and there's a $10,000 bill for damage to City property.

The above situations must be settled before the Village will approve the declaration. We can have a contest and make up other situations, but the point is that the sellers and buyers make a serious commitment to buy and to sell real estate based on the contract to sell real estate.

The Glendale Heights seller above has probably contracted to purchase a residence and has put out a substantial down payment. The cost of money changes daily and commitments hang on threads. You cannot impose a collection mentality on a real estate transaction and destroy its internal rhythm. And friends, this is only the beginning. The next Village will demand the right to inspect your house for radon, asbestos or some other disease of the month as a condition of approving a revenue declaration. Another Village will demand proof of payment of State and Federal taxes and proof that there are no building violations.

Finally, in addition to all of the above, I'm sure some Village will demand an affidavit that you have not stepped on the Flag at the Art Institute - and so it goes!

The final result is predictable. Burdened with endless restrictions, the real estate transaction will no longer be a free market transaction. The whole process will simply stop - buyers, sellers and their lawyers will have lost control.

A SEVENTY YEAR TRESPASS

The appellate court recently held that a property owner may successfully bring actions of ejectment and trespass and seek an injunction and writ of mandamus following his discovery of a city storm sewer system buried on his property, notwithstanding the fact that the entry was made over 40 years prior to his acquisition of title.

Owner discovered a storm sewer system owned by defendant, the City of Crystal Lake, buried on his property. Owner filed a four-count complaint against the city alleging causes of action in ejectment and trespass, as well as seeking an injunction and a writ of mandamus to compel the city to institute eminent domain proceedings. Owner acquired title to the property in 1974, but became aware of the storm sewer bisecting his property in 1985. Defendant maintained that the sewer was installed in 1927 with the consent of the then property owner, but produced insufficient evidence of any agreement with the then owner.

The court rejected the argument that ejectment is proper only when a defendant enters property after the owner has acquired an interest in that property and held that when owner purchased the land, he purchased all rights that the grantor held, including the right to eject the defendant. The court also held that where a trespass is continuing, any person in possession of the land during its continuance may maintain an action for trespass. Further, because the sewer system invaded the owner's tangible property, there had been a taking, and where there has been a taking without just compensation, the owner may bring a mandamus action against the responsible agency to compel eminent domain proceedings. The right to bring such action passes to the subsequent purchasers as well.

Finally, although damages were ascertainable and easily remedied at law, the court found injunction to be a proper remedy where a public corporation has attempted an unlawful appropriation of land. In such cases, courts of equity act upon broader principles than in ordinary cases, and may grant equitable relief without regard to the existence of legal remedies or other equitable considerations.

Rosenthal v. City of Crystal Lake, 171 Ill.App.3d 428, 121 Ill.Dec. 869, 525 N.E.2d 1176 (1988).