

Owning Your Own Land



By Paul Engel

June 17, 2025

- Do you own your own land?
- What is your property?
- What powers to local government have to tell you what you can do with your land?

If you rent rather than own your home, you may be tempted to skip over this article. I suggest you don't, because the underlying question of ownership leading to control goes far beyond a house or land.

When people think of the American dream or what the Declaration of Independence means when it talks about "the pursuit of happiness," what seems to come to mind most often is owning property. But do you actually own your property in America anymore? From taxes to regulations, it seems governments at all levels want to tell you what you can do with your own land. I want to take a recent experience I had as an opportunity to take a closer look at the question: Do you actually own your own land?

Local Government

This investigation started while I was researching a county commission meeting. I noticed in the agenda a proposed resolution regarding the use of "recreational vehicles (RVs) and campers," and other structures as "permanent dwellings." The proposed resolution would create a planning ordinance prohibiting these "readily removable" structures as permanent dwellings. This was justified by the fact that the Tennessee

Code Annotated (TCA) prohibited using such structures as housing.

No ready-removable shall be modified for use as residential, recreational, or emergency housing in this state.

[Tenn. Code Ann. § 68-126-311\(b\)](#)

The logic presented for this county resolution was two-fold. First, these structures do not meet current building codes and therefore are not safe for permanent housing. Second, the only method of enforcement of state law was cruel and dangerous, while the County Planning Department should find a “better” housing solution.

As I frequently warn you, local governments can just as easily infringe on your rights as the federal government. Yet most American pay very little attention to what goes on at this level of government. What no one in my county government seemed to realize was both their resolution and the state law were in violation of the Constitution of the United States.

Due Process

The two clauses in the Constitution which seem to be overlooked most often are the Due Process Clauses of the Fifth And Fourteenth Amendments.

nor shall any State deprive any person of life, liberty, or property, without due process of law;

[U.S. Constitution, Amendment XIV](#)

So what is this “due process of law” the Constitution is talking about?

An established course for judicial proceedings or other governmental activities designed to safeguard the legal rights of the individual.

[Due Process: The Free Legal Dictionary](#)

Now, if we read the Fourteenth Amendment with that definition in mind, it means you cannot be deprived of your life, liberty, or property without a judicial or governmental process designed to protect your individual legal rights. And that is where the TCA and my county's resolutions violate the Constitution.

Property

Let's start with property. I'm sure we all have an idea in our minds of what is meant by the word property. James Madison wrote an essay on the topic, where he wrote:

This term in its particular application means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

In the former sense, a man's land, or merchandize, or money is called his property.

[Property – For the National Gazette, 27 March 1792](#)

The first thing to notice is that property isn't just land, as it's often used today. Anything to which you attach a value and have a right to is your property. What makes property yours is your legal ability to exercise exclusive control over it. My home is my property because I have a legal right to control it, and no one else does (except my wife). So when government claims control of my property, they are depriving me of it since I no longer have exclusive control of it. For this to be legal, it must be done with due process of law, meaning the process must protect my legal rights. For example, if the government can prove that I have failed to pay the

required taxes on my home, they have a legal right to sell it to pay my debt. (I'll talk more about taxes later.) So when the State of Tennessee or my county claims that I cannot use my property the way I want, like putting an RV or other "readily removable" structure on it for housing, they are depriving me of my property without due process of law. This is because the state has not shown how my using a readily removable structure for housing harms anyone other than myself. That makes this law a violation of the Constitution of the United States, which means it is void.

Liberty

Liberty is a pretty broad subject. In fact, I teach an entire class about rights and liberty. When the Constitution talks about liberty, I believe it means "civil liberty," which Webster's 1828 Dictionary defines as:

Civil liberty is the liberty of men in a state of society, or natural liberty so far only abridged and restrained, as is necessary and expedient for the safety and interest of the society, state or nation.

[Liberty – Webster's 1828 Dictionary](#)

In other words, liberty is your right to live your life as you see fit without unnecessary external influence. So tell me, how does someone using an RV or other readily removable structure for housing pose a safety hazard to the society, state, or nation? The answer is: It doesn't. People claim that they pose a safety hazard to the occupant, but that is not a hazard to anyone else. So when the State of Tennessee claims I cannot use a readily removable structure for housing, they are depriving me of that liberty without due process of law, making the law void.

Property Taxes

While not the focus of this article, there are plenty of

people who claim that if you have to pay property taxes you don't really own your land. At the surface, there appears to be some logic to this position, but only at the surface. This position assumes that taxes are like rent, something you pay for the privilege of occupying someone else's property. However, taxes are not rent. According to Webster's 1828 Dictionary a tax is:

A rate or sum of money assessed on the person or property of a citizen by government, for the use of the nation or state.

[Tax – Webster's 1828 Dictionary](#)

Therefore, a tax is a fee assessed to fund the operation of government. Before someone claims that taxes are theft because they are taken without our consent, may I point to an example from the Tennessee Constitution.

In accordance with the following provisions, all property real, personal or mixed shall be subject to taxation

[Tenn. Const. Art. II, § 28](#)

You personally may not have consented to property taxes, but the people collectively did when they adopted their constitutions. This also applies to the direct federal income tax, which we consented to when the states ratified the Sixteenth Amendment.

Consequences of Ignorance

My concern with the county resolution was not the state law, but the potential exposure it would give both to the county and its employees. As things stand now, should someone be fined for using a readily removable structure for housing, they would have a cause to sue the state under 42 USC §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any

citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress,

[42 USC 1983: Civil action for deprivation of rights](#)

If the county were to pass this resolution, they too would be liable since the deprivation of rights would be under the color of their ordinance. The consequences for state employees could be even worse, considering 18 USC § 242:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both;

[18 USC 242: Deprivation of rights under color of law](#)

And if the person even threatens to use a dangerous weapon, the penalties get even worse. While many in the county government threw plenty of allegations about why I opposed the resolution, as I pointed out to both you and the County Commission, I thought the liability they would expose themselves to, not to mention what their constituents would think, was not worth any benefit the people of the county would gain. It seemed many in county government pointed to the state law as justification for their ordinance, but they had forgotten the Supremacy Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or

Laws of any State to the Contrary notwithstanding

[U.S. Constitution, Article VI](#), Clause 2

Anything in the laws or constitution of any state that contradicts the Constitution of the United States is invalid and void, at least according to the Supreme Court.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

[Marbury v. Madison, 5 U.S. 137 \(1803\)](#)

That also means that every judge in every state is bound by that document to invalidate Tennessee's law in any case brought before them.

Planning and Zoning

Don't get me wrong, I am not against planning and zoning, but they have to follow the Constitution and due process. In listening to the arguments for this resolution, it sounded like people wanted the Planning Department to act more like a county-wide Homeowner Association (HoA). While some had legitimate concerns about the disposal of waste water, it seemed most concerns were about the look of these structures or the stereotype of the people who lived in them.

I still don't understand why RVs or readily removable structures can't be required to meet the same general zoning requirements that are designed to protect the rights of their neighbors, such as set-backs, sanitary hookups, and approved electrical systems. That would take care of the legitimate concerns about these residences without infringing on their owner's rights.

Conclusion

The underlying concern I have is the ever growing belief that governments have the right to tell people how to live their lives. While the desire to use government to get one's own way is nothing new, in this country it seems more and more people are willing to use the power of government not only to protect their own legal rights, but to also infringe on the legal rights of others. One of the ways I'm seeing this done at the local and state level are things like planning departments, zoning laws, and building codes. While there are legitimate purposes for all of these, more often than not, they are being used to enforce the belief that government actors know better than the average citizen about how they should live their lives. My question is: Do they have the legal authority to enforce that idea?

I'm glad I found this resolution before the Commission voted on it. I hope that my comments both at the public hearings and on local media helped lead to its defeat. However, we must remain diligent as resolutions like this and others can easily be brought back. That is why I tell people it's probably more important to focus on state and local governments than the feds. They are just as able to infringe on your rights, but since most Americans pay little attention to their local governments, this is where infringements on your rights can be slipped into the law. If you have a question about a law in your state or local government, [please ask it here](#).

As always, stay vigilant, and learn to defend and assert your rights legally.

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