

The Law of Merger

Take caution when purchasing a vacant parcel of land or purchasing a parcel adjacent to one already owned, as the possibility of the merger of lots is a real danger. The doctrine of "merger" involves adjacent lots, which do not conform to the lot area or lot width requirements of the zoning code and which are held in common ownership, merging to become one zoning lot. Often this happens unbeknownst to the owner, and may not be discovered until after one of the lots is conveyed to a third party, resulting in an illegal subdivision. Correcting this problem can be complex, and in some cases impossible, and may involve the necessity of zoning variances, or even unwinding the transaction, both of which will require the cooperation of the other property owner, which may not be forthcoming.

In New York, many municipalities have adopted zoning provisions which provide that adjacent nonconforming lots held in common ownership must be treated as a single lot for zoning purposes. When buying in these jurisdictions, a title search should be conducted to investigate the ownership, past and present, of adjacent parcels, to ensure that no merger has occurred.

It is crucial that title to adjacent lots be held in different names at all times to prevent a merger from occurring. Even if the lots are currently conforming, if the regulations are changed and the lots are rendered substandard in any way, those lots will be deemed merged. If, however, a code change renders two adjoining, but separately-owned, lots undersized, the two properties will not be affected. Each lot will continue to be lawful, non-conforming lots.

It is essential that experienced zoning counsel be consulted on the purchase of vacant or adjacent lots to ensure that an unwanted merger has not already occurred and will not be likely to occur.

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