

Buying Property in Outer Space?

By Aaron S. Thiel, JD

Want to buy an acre on the Moon? Perhaps a stunning Carpathian Mountain vista which overlooks the famous Copernicus Crater? You're in luck. Dennis Hope of the extraterrestrial real estate firm, Lunar Embassy, is selling one acre parcels for just \$19.99. And should you happen to splurge and become the proud owner of some prime lunar real estate, then I would like to sell you a piece of the Brooklyn Bridge.

Never mind that Mr. Hope has never set foot on the lunar surface. According to the Lunar Embassy website, current space laws serve only to prohibit *nations* from appropriating the Moon, Mars, and other celestial bodies, leaving private individuals and entities free to claim legal ownership on a first-come, first-served basis. But don't load-up the wagons quite yet.

The 1967 Outer Space Treaty (OST), described by some as the "Magna Carta" of space law, is the primary document which governs outer space activities. It is best known for the "common heritage" concept which turns outer space into a gigantic commons for the benefit of all mankind. Much like the common areas of homeowners' and condominium associations, outer space can be "used" by all of mankind. But as to ownership rights, Article II of the OST prohibits national appropriation of outer space, including the Moon and other celestial bodies, by means of use, occupation, or otherwise.

In a common law society, if a country cannot claim sovereignty over outer space or a celestial body, then it is impossible for that same country to confer outer space property rights to a private individual or enterprise. As a matter of principle, a private individual or enterprise cannot do what the country that it belongs to cannot do.

A conflict arises, however, when "use" begins to look and feel like appropriation— the acquisition of property with the intent of ownership. Take President Bush's initiative to build a lunar base to serve as a platform for future missions to Mars. The United States will obviously pick the best location on the Moon to build the base and will occupy this location on a first-come, first-served basis. No other country or private enterprise will have access to the land underneath the base for as long as it is operational. Although the United States cannot claim legal ownership to the land underlying the base, some will question whether their "use" is really a de facto territorial claim. When a nation operates a facility in one particular location for an extended period of time, the end result becomes indistinguishable from territorial sovereignty.

If a private enterprise were to construct a permanent housing project on the Moon, the same challenge could be made that their "use" is also a de facto territorial claim to the underlying land. But if the homes were designed to move from location to location, like a mobile home, then the challenge would have less credibility. The mobile home would be treated as personal property, like a car or boat, instead of real estate which generally signifies land ownership.

Constructing condominium or office units in free space and allowing these units to orbit Earth would also lessen the chance of a de facto territorial claim. The private enterprise responsible for their construction would still retain ownership over the units, but like all *objects* launched into outer space, the nation of registry would retain legal jurisdiction under Article VIII of the OST. If, for example, the nation of registry for each unit was the United States, the laws of the United States would preside over each unit and its occupants.

The private enterprise could finance the project in advance by selling space to private

individuals and corporations. The inhabitants would hold title to their living or work space and pay a monthly fee for life support and maintenance. It goes without saying that the marketability of such units would depend upon a reliable means to ferry occupants to and from Earth on a regular basis.

Once established, however, the list of potential buyers could include pharmaceutical companies, tech manufacturers, time-share moguls, casinos, and even financial institutions seeking various nations of registry that have favorable tax laws. Imagine a tax haven in outer space. Numerous “offshore” banks and asset protection corporations would be clamoring for office space.

The opportunities to make money in outer space are certainly real and should begin to evolve in the not so distant future. But until the popular real estate adage, “location, location, location,” incorporates space jargon like prime orbital track, picturesque craters, and oceans without water, keep your \$19.99 firmly in hand.

*Attorney Aaron S. Thiel is an avid space law enthusiast and published author. Mr. Thiel has written his latest novel, **The Payload**, to captivate readers with issues relevant to today's Mars rover missions and not-so fictional scenarios that will thrill and excite the imagination. The book provides fast paced suspense, meticulous and intelligent research, fascinating detail, and a surprising twist in the end. To learn more about the author and his writings, please visit his website www.aaronsthiel.com. **The Payload: ISBN#0972548688***