

If the same individual owns two contiguous lots that meet or exceed the minimum lot size required by zoning, do the lots legally merge?

No, the lots do not merge because the statute upon which the merger rule is based only applies to *existing small lots*. The principal elements of the 'existing small lot' provision are: (1) the lot is in individual and separate and non-affiliated ownership from surrounding properties; (2) the lot existed prior to the effective date of the zoning regulation; (3) the lot has a minimum width or depth dimension of 40 feet; and (4) "*though not conforming to minimum lot size requirements,*" the lot is not less than 1/8th acre in area. 24 V.S.A. § 4406(1). Therefore, because both lots meet or exceed the minimum area lot size required by zoning, they fail the small lot test.

Because there is much confusion about the application of this provision, it might be helpful to keep in mind its primary purpose. First, this provision is intended to 'grandfather,' or recognize as individual parcels, lots that existed prior to zoning which otherwise, because of size, would be restricted from development or sale. *Id.* Second, it is the purpose of the provision to bring into compliance with existing zoning any lots that do not currently meet a municipality's minimum area requirements, whenever there is an opportunity to do so. The 'opportunity' identified by law to cure the nonconformity occurs when an existing small lot comes under the same ownership with an adjacent lot.

Prior to 1997, same ownership was all that was needed to trigger lot merger. However, the law has since been amended and now recognizes certain vested rights of small lot owners. Now, any pre-existing small lot that comes into same ownership with a contiguous lot *does not merge*, and may be sold separately, provided that ALL of the following elements exist: (1) the small lot is conveyed in its preexisting, nonconforming configuration; AND, (2) *each* lot had been developed with a water supply and wastewater disposal system on the effective date of zoning; AND, (3) at the time of transfer, each water and wastewater system is functioning in an acceptable manner; AND (4) the deeds of conveyance contain easements on both lots for replacement wastewater disposal systems.

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