

Unit 7: Title Records

LECTURE OUTLINE

- I. Public records give the public legal and constructive notice of written documents that affect real estate
 - A. Records maintained by:
 - 1. Recorders of deeds
 - 2. County clerks
 - 3. County treasurers
 - 4. City clerks
 - 5. Collectors
 - 6. Clerks of courts
 - B. Notice
 - 1. Constructive notice
 - a. The legal presumption that information is available and may be obtained through due diligence
 - b. Includes properly recorded documents and physical possession of the property
 - 2. Actual notice
 - a. Direct or actual knowledge
 - b. Includes knowing what has been recorded and personal inspection of the property
 - C. Recording
 - 1. The act of placing documents in the public record
 - 2. Recording acts
 - a. Documents must be recorded in the county (or in some states, town) where the real estate is located.
 - b. Documents must be drawn and executed according to the provisions of the recording statutes of that jurisdiction.
 - 3. Recorded documents usually reveal the condition of title.

D. Priority

1. Generally established by the date and time of recording
2. Establishing priority can be very complex and require legal advice

E. Unrecorded documents

1. Specific liens, such as real estate tax liens and special assessment liens, may not be recorded until the end of the period for which the amount owed is due
2. Statutory liens, such as inheritance tax liens and franchise tax liens

F. Chain of title

1. Record of a property's ownership
2. Does not include encumbrances and liens
3. Beginning with the original source of ownership and linking the passage of ownership to subsequent owners to form a chain
4. A gap in the chain requires a suit to quiet title to establish ownership.

G. Title search and abstract of title

1. Title search is an examination of public records to determine what defects, if any, exist in the chain of title
2. Search begins with present owner and traces back to the origin of title.
3. Length of search depends on local custom or laws.
 - a. 40–60 years or other definite period of time, depending on state statute
 - b. Marketable Title Act (adopted in some states)—extinguishes certain interests and cures certain defects arising prior to the "root of the title" and necessitates a search only to the root
4. Abstract of title
 - a. Summary report of the items about a property that can be found in public record; includes recorded liens and encumbrances
 - b. Prepared by an abstractor
 - c. Does not reveal items that cannot be found in the public records

H. Marketable title

1. To be marketable, examination of a property's title must disclose no serious defects and the title must not depend on doubtful questions of law or fact to prove its validity

2. A title is marketable if it does not expose a purchaser to the hazard of litigation or threaten the quiet enjoyment of the property
3. A title is marketable if a reasonably well-informed and prudent person is convinced that the property could be sold or mortgaged
4. Unmarketable title can still be transferred, but its defects may limit or restrict its ownership
5. The typical sales contract requires the seller to deliver marketable title to the buyer
6. It is customary for a preliminary title search to be conducted after a sales contract is signed to give the buyer opportunity to review and seller time to cure defects before settlement

II. Proof of Ownership is evidence of marketable title; deed by itself not sufficient

A. Certificate of title

1. Statement of opinion of the title's status as of the date of the certificate
2. Based on the title search
3. Prepared by a title company, licensed abstractor, or an attorney
4. Imperfect because unrecorded liens, rights of parties in possession, and hidden defects such as forged deeds, marital interests, or fraud cannot be detected.

B. Attorney's opinion of title

1. May be used in some areas as sufficient evidence of title
2. Issued on basis of abstract
3. Imperfect because of the same conditions that affect a certificate of title; does not protect against defects not discovered by examination of the public records

C. Title insurance

1. Insures the policyholder against loss due to defects in the title other than those exceptions identified in the policy
2. Based on the title search
3. Preliminary report of title (commitment to issue policy) describes policy to be issued and includes the following:
 - a. Name of insured party
 - b. Legal description of property
 - c. Estate or interest covered
 - d. Conditions and stipulations
 - e. Schedule of exceptions
4. Premium paid once, at closing

5. The insurer's liability cannot exceed the face amount of the policy unless an inflation rider is included.
6. Extent of coverage (see Figure 7.1)
 - a. Standard coverage policy insures against the following:
 - (1) Defects found in public records
 - (2) Forged documents
 - (3) Incompetent grantors
 - (4) Incorrect marital statements
 - (5) Improperly delivered deeds
 - b. Extended coverage policy insures against the following:
 - (1) All perils insured against by the standard coverage policy
 - (2) Defects discoverable through property inspection, including unrecorded rights of persons in possession
 - (3) Defects discoverable through examination of survey
 - (4) Unrecorded liens not known by the policyholder
 - c. Typical exclusions from both standard and extended coverage policies
 - (1) Defects and liens listed in the policy
 - (2) Defects known to the buyer
 - (3) Changes in land use brought about by changes in zoning ordinances
7. Different types of policies depending on who is insured
 - a. Owner's policy is issued for the benefit of the owner
 - b. Lender's policy is issued for the benefit of the mortgagee; coverage commensurate with amount of loan; does not protect owner's interest

D. The Torrens system

1. Written application to register the title is made with the clerk of the county court where the property is located
2. If the applicant proves to be the owner, the court enters an order to register the real estate with the registrar of titles.
3. Such registration reveals the owner and some, but not necessarily all, outstanding liens.
4. Registrar issues certificate of title.