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THE INSIDE STORY

This issue of Title News might well be labeled "The Primer of Land Titles." Such an impression will be apparent to our readers when they examine the titles of the articles we are pleased to carry this month.

We begin with material designed for presentation to those outside the profession in the excellent contribution by A. Edmund Peterson of the Chicago Title and Trust Company. We follow with the explanation of the very term we are all so familiar with, "Title," and via the sound approach of Thomas J. McDermott, Attorney of Mansfield, Ohio, this element designed for the unfamiliar is well presented.

We deviate from the every-day fundamentals and take in the general problems of Abstracting where oil and other minerals are paramount. Here, too, will be found something "new" for the anxious learner by Mr. Norman E. Hanson, Attorney of Billings, Montana.

And, finally, there is contained here the crux of the land title business, "Land Measurements," which we present through the courtesy of Mr. James D. Forward, Sr., of the Union Title Insurance and Trust Company, San Diego.

Considering these fundamental presentations, this issue is especially recommended to the new employees in member companies, and to our friends in other related fields anxious for an understanding of the title business.

"WHAT A LAYMAN SHOULD KNOW ABOUT REAL ESTATE TRANSACTIONS"

An address prepared for delivery to lay audiences by

A. EDMUND PETERSON

Vice-President, Chicago Title and Trust Company, Chicago, Illinois

Here is the kind of material that might be helpful to member companies on occasions when they are called upon to give an educational and informative talk before audiences not of the title profession. It does an effective job of reaching to the roots of the problems involved in real estate transactions and certainly helps to explain why the title business demands extensive training and knowledge. Mr. Peterson has contributed his talents to the ATA and to Title News on numerous occasions and we are again happy to express thanks for this fundamental addition.

I will try to touch on the matters that ordinarily must be considered in a typical real estate purchase transaction. There are, of course, many types of transactions involving real estate which the average layman would not be concerned with. For example, there are transactions involving (1) air space, (2) coal, minerals, oil and gas and (3) long term leasehold estates. The Prudential Building in Chicago was, for the most part, built on or in what was called the "land, property and space" lying above planes which are a certain number of feet above the surface of the ground. There are, of course, many transactions involving coal, minerals, oil and gas which are real estate in contemplation of law. Many large buildings are erected by the owners of long term leasehold estates rather than the owner of the land.

Land includes the ground or soil and everything attached to the ground or soil either by nature, e. g. trees, shrubs and foliage or by man, e. g. houses or buildings. It is because land includes not only surface of the earth but everything above and below the surface that we have transactions involving air space and subsurface areas.

Last fall Harold Reeve, a Senior Vice President of my company, addressed the real property law students of Yale University. He cautioned these students that in representing prospective purchasers of real estate to bear in mind the things that are of utmost importance to their clients. Now what are these important things? First, the buyer wants to acquire the particular piece of property that he has in mind. Second, he wants to be able to use the property in a way that he has in mind. Third, when he has no further use for the property, or can sell it at a favorable price, he wants to be able to complete the sale and get his money out of the property. I believe that these are the things most important to you or any other prospective land buyer. Therefore you should know how to assure yourself that you are getting these things when you buy a piece of land.

1. How do you make certain that you will get the property that you have in mind? There are several factors that must be considered. First, it is of utmost importance that the land be clearly described. In early days that was not generally true. In old deeds properties were commonly described by reference to oak trees, streams, boulders and the like or simply as the Jeremiah Jones farm. Today, at least in metropolitan areas where land values are high, such descriptions are clearly inadequate. If property is to be described by reference to objects, which are called monuments, they must be more permanent in character than a tree or a boulder and more static than a stream which can change its course. Fortunately in cities we have permanent objects to refer to in describing land such as streets, railroads and permanent markers placed by surveyors. Imbedded in the sidewalk on LaSalle Street in front of the Continental Illinois Bank Building you can see triangular brass

plugs marking the lot corners of the bank property. Today in the Chicago area property is generally described by reference to a subdivision plat filed for record in the Recorder's Office. The land subdivided is usually described by reference to the United States Government Survey which was made in Illinois shortly after we acquired the North West Territory from England. The subdivided land is divided on the plat into blocks and lots. So most city property is described as e. g. "Lot 12 in block 3 in Smith's Sub. of the East ½ of the North West ¼ of Section 10, Township 40 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois". It is not uncommon, however, for people to contract to buy improved property and merely describe the property by street number. Such a description is normally inadequate and can result in costly litigation because the description does not locate the boundaries of the property. In most cases, it is desirable to have a surveyor mark the the boundaries of the property on the land before you sign a contract to buy. If that is not done you should at least have your lawyer or some other competent person check the location of the boundary lines by checking the recorded plat. Boundary line disputes can be costly and are almost always unpleasant. Once the land is properly described and marked it is necessary that a contract or deed be prepared setting forth the terms and conditions of the transfer. Ordinarily a contract is made before the deed is signed and delivered. Most laymen are not qualified to prepare contracts or deeds. If you are buying property I strongly recommend that you employ a lawyer to prepare or check these papers. In preparing contracts it is most important that the agreement between the parties be clearly stated. For example, if items of personal property, e.g. rugs, drapes, machinery and the like are included in the sale the contract should make specific provision for the transfer of title to those articles. So far as deeds are concerned the contract should specify which type of deed is to be delivered, (a) warranty, (b) special warranty, (c) statutory quit claim, (d) trustee's deed or if a special kind of deed is to be made the contract should so state. The rights of the buyer against the seller vary widely depending upon the form of the deed of conveyance. So much for the moment on the matter of assuring yourself that you get what you think you are buying.

2. How do you assure yourself that you can use the land for your intended purpose? Restrictions on the use of property are of two types, those imposed by former owners of the property and those imposed by law.

(a) There are a number of types of restrictions imposed by owners on the use of land. Generally they are of two kinds, one specifically prohibits certain uses and the other limits use by reason of rights granted to others.

(1) You are all familiar with the common types of restrictive covenants and agreements, e.g. those restricting the use of the property to single family residences; building or set back of lines which prohibit construction beyond those lines; prohibitions against the use of the property for any trade or industry that will cause noxious odors or loud noises. But there are many kinds of restrictive convenants or agreements. It seems that there are no bounds to some people's imagination when it comes to the matter of restricting use of property. Many seek to prohibit the use of the property by members of certain races or by people of particular nationalities. This type of restriction has been held to violate the Federal Constitution and is no longer enforceable in the courts. But even in this area it has been recently held that use can be restricted to those of a particular race where the transfer of title was conditioned on such use with a provision that the land revert to the seller if the use provision were violated. **(Charlotte Park and Recreation Commission v. Barringer,** 88 S.E. 2d (N.C.) 114. Certiorari denied United States Supreme Court, 24 USLW 3232.) Some land developers go into great detail with

respect to the types of buildings that can be erected; the kinds and location of shrubs and plantings; the color of paint that can be used and where you can put your garbage or refuse container. Some of these restrictions are rather vague and do not submit to exact definition. One subdivision plat that I worked oi contained a provision that only houses of traditional architectural design could be erected. I asked the lawyer who prepared the plat just what a traditional design might be and who was going to decide whether a particular design was "traditional". He said he didn't know but that he had explained to his clients the inherent difficulty in enforcing this restriction and they replied that they wanted to have the restriction in the plat anyway. You can readily see that what might be traditional to a Frenchman might not be traditional to a Swede, and what might be traditional in Illinois would not be traditional in Louisiana. Be that as it may anyone buying a lot in the subdivision might find himself in trouble if he wanted to build a so-called "ranch house" and his next door neighbor who had built a French Provincial building took a notion that your proposed building was "untraditional". In any event when you consider buying property you must know just what kind of prohibitions of this type have been imposed on the land. If you buy land on which you want to build a pickle factory you certainly don't want to wind up and find that all you can build is a one story dog house of traditional architectural design.

(2.) A former owner can limit use in another way, by granting rights to others. For example, at some time in the past the owner may have granted an easement or right of way to either specified people or to the public generally. Such a grant limits the use of the property because nothing can be done which will interfere with the reasonable use of the right of way. Easements of this type can be very troublesome, e.g. when plans were being made for the erection of the One North LaSalle Street Building it developed that a right of way over the East 10 or 12 feet of the property had been created many years ago. There was no great need for such a right of way at the time the building was being planned but it was impossible to obtain a release. As a result the building could not be built over the right of way area and the floor area of the building was reduced by several thousand square feet. If this area could have been added to the building its value would be considerably higher at a comparatively small additional cost of construction. In downtown Chicago just west of the building at 100 West Monroe Street a space is still left open for a cow path although as you all know there haven't been many cows in the loop for some years and the few that get downtown are usually riding than walking. In congested areas easements for light and air are quite common as are party wall agreements. A charge of this type on the title will restrict the use of the property. Here again it is vital that the prospective purchaser know the nature of any right held by others which restrict use. Party wall rights arise by reason of agreements between adjoining property owners. Many times these agreements are reduced to writing and filed for record. If such is the case, the agreement must be checked or examined. Agreements of this type vary but generally they either give the adjoining owner the right to maintain an existing wall or they provide that a party wall can be built even if the existing wall is removed. On the other hand party wall agreements are not always reduced to writing or if a written agreement was made it was not recorded. Generally a purchaser need not be concerned with agreements that are not recorded unless the party claiming under the agreement is in possession. Here again it is necessary that some qualified person, usually a surveyor, check the property for the purpose of ascertaining whether a party wall or other encroachment is in fact located on the property. If such conditions do exist you should consult your lawyer and have him advise you as to rights of the adjoining

owner. Easements and rights of way are particularly embarrassing when they are not located definitely. It is quite common for utility companies and others to acquire rights of way that are very generally described. In rural areas grants of easements or rights of way sometimes affect an entire farm or tract of land. For example, Farmer Jones grants a right of way for a power line over the West half of the South West quarter of a certain section. True, the power line is physically in a definite location presently but has the power company the right to move it or build another. Usually in such cases it is necessary to have the agreement modified so as to definitely locate the easement area. It is vital that the purchaser know about such easements or encumbrances as they will definitely affect the use of the land. If the purchaser is willing to buy subject to such rights the purchase agreement should clearly specify the nature of the easement or encumbrance to which the transaction is subject. Many form contracts simply provide that the buyer agrees to accept title subject to conditions and restrictions appearing of record. Such a contract does not adequately protect the buyer if such matters do appear on the records. This is another reason why you need a lawyer to prepare or examine the contracts. At this point let me say this. Don't sign a contract or agreement and then go to your lawyer and ask him if it's all right. By that time your lawyer can only tell you what kind of trouble you are in. A lawyer recently told me about one of his clients who never brought a real estate matter to him until after he had signed a contract and had gotten into difficulty. The lawyer finally became so exasperated that he told the client, in connection with a particular deal, that what he needed was an undertaker and not a lawyer because the deal was dead before the lawyer was consulted. Your lawyer can't help you much if you've signed an agreement which turned out to be bad unless by some hook or crook he can find some defect in the agreement that will enable you to rescind or set aside the contract. Brokers' listing agreements sometimes take the form of contracts, and agreements in the form of offers to sell or buy are usually enforceable as contracts. If you aren't sure that you understand the nature of any writing having to do with the sale or purchase of land see your lawyer **before** you sign.

(b) Other restrictions on the use of property are imposed by law. The federal, state and local governments have certain powers to regulate the use of property. Most of the limitations on use that a property owner is concerned with are those imposed by the local government in the form of building and zoning ordinances and the exercise of the power of eminent domain. Of course, everyone is subject to what is called the police power of the government whether they own property or not. In other words under our law you are not permitted to commit a nuisance or a crime or in general do things that are not consistent with the general welfare of an organized society. So far as the prospective purchaser of land is concerned however he must ascertain what zoning and building ordinances apply to the property he is purchasing. In general zoning applies to the use that can be made of property. There are roughly four classifications, (1) single family residence, (2) residential, (3) commercial and (4) industrial. The single family residence classification is considered to be the highest classification. A structure falling in a higher classification can always be erected in a lower classification area but the converse is not true. That is, the owner of property in an area zoned for industrial use can erect a residence by the owner of property zoned for single family residence cannot erect another type of residential building, commercial building or industrial plant. Zoning regulations are comparatively new and are still in a state of development. The regulations of the City of Chicago have been changed frequently in the past and at the present time a new proposed zoning ordinance has been prepared and will be submitted to the Council in the

near future. It is sometimes difficult to construe ordinances of this type and determine the effect that they will have upon a given piece of property. It is most important that a prospective purchaser of property ascertain the character of the zoning laws that apply to the property before he enters into an agreement to purchase. It is also well to investigate the character of the zoning in the immediate area. For example, if you wish to purchase a lot for the purpose of erecting a single family residence you should ascertain how close your property is to that zoned for commercial or industrial use. In general, residential property which is adjacent or close to commercial or industrial property is less desirable. In any event you must ascertain that the zoning laws will not prohibit the erection of the type of building that you have in mind. If you are contemplating the purchase of improved property particularly when the improvement has been recently constructed the matter of zoning is important. If there has been a violation of the zoning laws you may be subjected to a suit by the City or other local governmental body to compel conformance with the law. Regardless of the outcome of such litigation it is invariably expensive and no one interested in purchasing property desires to buy a law suit.

Virtually all municipalities have ordinances which regulate the construction of buildings or other structures. For example, in the City of Chicago frame construction is prohibited, therefore if you have in mind building a frame house don't buy property in the City of Chicago but purchase a tract of land in an area where that type of construction is permitted. There are a variety of other regulations dealing with the type of material which may be used manner of construction. Generally so in a building and dealing with the far as single family residences are concerned most contractors, architects and engineers are familiar with the building ordinances and can advise you whether the building located on the property complies with the law or whether you can build the type of building that you have in mind. However, if you contemplate purchasing a substantial building or if you propose to erect such a structure you will be well advised to consult with your attorney in addition to consulting with a contractor, architect or engineer. Again, if you are purchasing a building which has been newly constructed it is important to ascertain that there are no substantial violations of the building ordinances. Both building and zoning ordinances contain provisions regulating the intensity of building developments. In residential areas they require that buildings be set back from all of the lot lines. Generally the set back from the lot front is fairly substantial and a smaller set back is required from the side and back lot lines. In a single family residence area there is a control on the height of buildings. For the most part a single family residence cannot exceed 2½ stories in height. In the case of other residential areas and in commercial or industrial areas the ordinances are more complicated and you would certainly require expert opinion to determine whether the building you have in mind can be erected on the property. Sometimes property is purchased even though a buyer anticipates that he may have difficulty with the zoning or building ordinances. A few years ago the Harris Trust and Savings Bank purchased a piece of land on Clark Street which adjoins their existing structure. They bought it for the purpose of erecting an addition to their existing building. The City took the position that the proposed addition violated the current zoning and building ordinances. It was necessary for the bank to file a suit to compel the City to issue a building permit. This litigation was successful and the permit was obtained. In the intermin however because they could not be certain as to the outcome of the suit the bank purchased other property adjoining on the west. Just a week ago it was announced in the newspapers that the bank was ready to proceed with construction on the Clark Street

property. The point is that the bank had virtually no alternative but to buy the property in question because it was adjacent to their existing structure. In a situation of this kind it is sometimes necessary to take a risk but this is not the type of risk that the average property buyer would wish to assume. Ordinarily a prospective buyer would want to be certain that he would not encounter difficulty of this type.

(c) Normally the prospective buyer need not be concerned about the government's right of condemnation for public use. If you are purchasing property in an established community such things as streets, water lines and sewers are already installed and in most new developments adequate street and utility areas are provided. In connection with condemnation rights there is one recent development that should be considered. To aid in slum clearance and neighborhood conservation several new governmental agencies have been created, e.g. Public Housing Authorities, Land Clearance Commissions and Neighborhood Redevelopment Corporations. All of these agencies have the right to condemn property for their purposes. If there is any likelihood that an agency of this type has planned a program affecting the property you propose to purchase the nature and extent of the plan are important to you. I recall one instance where a man bought a lot about 4 years ago in the area of 79th Street and Western Avenue in Chicago. The Chicago Land Clearance Commission had a plan for the development of the area but the question of the legal proprietv of the plan was being litigated. The Chicago Building Department refused to issue a building permit to the man because of the plan and to this day the buyer of the lot has been unable to use it even though the Land Clearance program has not been consummated. In another case a man bought property in Highland Park and later discovered that he could not get a building permit because the City had a plan which provided for a street to run through the center of this land. In both cases the courts would probably force the municipality to issue building permits but it costs money to prosecute suits of this kind, and if you did build you would be faced with the prospect that your property would be condemned when the plan was activated. You may or may not be adequately compensated in the condemnation proceedings because the court would, no doubt, take into account the fact that you had improved the property with knowledge of the proposed public development. If you suspect that possibility you should check with the local governmental authorities and ascertain the facts. Usually local real estate brokers, contractors or surveyors will know of such proposed programs.

3. We now come to the matter of title evidence. Adequate proof that you have acquired good title to the property is most important to you because if you don't have good title you can't use the property at all and there is little likelihood that you could sell it and get your money back. So in order to be assured that you can sell the property when you no longer need it or when you have received an advantageous offer you must have evidence that your title is good. Before we discuss the types of title evidence in current use I would like to mention briefly some of the things that brought about a need for such evidence of title. Way back when there was plenty of land to be had if a fellow had the gumption to clear it the matter of proof of title was quite simple. Pretty generally the person who had been in possession for a reasonable period of time owned it and could transfer good title. So in the inception the best evidence of ownership was possession and under our early law it was necessary that there be a little ceremony in connection with the transfer of ownership. The seller and the buyer would go to the land and before witnesses the seller would pick up a handful of dirt and put it in the buyer's hand. This completed the transaction and in contemplation of law the buyer now owned or was "seized" of the property. I suppose they said he was "seized" of the

property because he had grabbed that handful of dirt. Deeds of conveyance were also delivered but because there was no recording of deeds in public offices the delivery of possession was the thing that evidenced to the world that the land had been conveyed. As time went on and cities and villages grew, more and more reliance was placed upon deeds rather than possession. For a time it was common practice for the seller to hand the buyer, along with his deed, all of the previous deeds to the property as evidence of his ownership. As property became more valuable, particularly in urban communities, land was divided into smaller pieces. It then became impossible for each purchaser of a piece of a larger tract to have in his possession the old deeds of conveyance. To meet this situation the practice developed of lodging the old deeds with a lawyer who could then give a legal opinion as to the conditions of the title. In other words these lawyers came to be sort of informal recorders of instruments. This system broke down in time because lawyers, being normal people, were not always available. They died or moved out of the community so that in many cases the old instruments of conveyance were unavailable, lost or destroyed. To satisfy the need for permanent available records the system of recording instruments in public offices came into being. Shortly after the Pilgrims came to Massachusetts a law was enacted providing for the establishment of a public office for the recording of instruments affecting the titles to real estate. So today the question of whether you have good title can only be resolved by an examination of the public records.

This matter of record title is peculiar to land. Historically land has always been considered as the most valuable and important kind of property that a person can own. Perhaps this concept is a little archaic in our present economy because of the great increase in the value of other kinds of property. But even today land is quite important, the places we live and work in are all in some way dependent on land as a base. Even aircraft and ships have to have a landing place. In any event there are many laws that provide special protection for rights in land. You cannot buy real estate with the same reckless abandon with which you purchase a loaf of bread. There are no public records with respect to the ownership of property of this type and if you buy from a person who has possession no one can dispute your ownership. In the case of land there are many rights which may appear of record or which arise by operation of law that can affect your title. Some of these such as easements, covenants and restrictions have already been discussed. There are many others. I will mention a few. Taxes in Illinois become a lien on April 1st of each year. A married person has a dower right in the property of the spouse. A married person cannot convey a homestead property without the consent in writing of the spouse. Judgments of courts of record are liens on the debtor's property from the time they are entered. An agreement to sell land is enforceable only if in writing and signed by the owner of the property.

The matter of examining the public records for the purpose of determining rights in land was at one time, and still is, in some areas, a fairly simple thing. For example, if the records showed that John Jones had obtained a patent to the land from the United States Government and no instruments of conveyance made by Jones appeared of record you would be pretty certain that Jones still owned the property. If there were only one court in the area you could probably find out whether there were any judgments or other proceedings affecting John or his title. As a matter of fact in a rural community or small town darned near any local resident could tell you everything there was to know about Jones and his land. However, at least in urban areas, with the passage of time a great volume of material appeared on the public records which affected or might affect the title of virtually all land. It was no longer possible for an unskilled person to examine the records and determine

the condition of the title to real estate. Gradually purchasers came to insist upon a lawyer's opinion as to the condition of title before completing a transaction. This form of title evidence is still used in many parts of our country. However, the protection afforded by a lawyer's opinion proved to be inadequate in the metropolitan areas and where land values were high. A lawyer is responsible for errors in his opinion only in the event of negligence on his part. If he is not negligent and makes an honest mistake the buyer has no recourse against the lawyer. Other difficulties arose in connection with the use of lawyer's opinions. In busy communities they could not examine titles and render opinions quickly enough to satisfy the requirements of the growing economy. All lawyers did not agree on whether particular titles were good or bad. So that even though your lawyer gave you an opinion to the effect that your title was good the attorney for the fellow you wanted to sell to might think otherwise. Many times a court proceeding was the only way to resolve the argument. This is costly and today most buyers are unwilling to stand by and await the outcome of a law suit. They will usually either buy a different property, or if they are willing to wait they will insist upon a substantial reduction in the sale price.

The job of examining titles without specialized searching methods has become extremely difficult in large metropolitan areas. In 1956 there were approximately 161,000 d e e d s and mortgages filed for record in Cook County (total instruments recorded 333,000) and there are 6 trial courts (with over 125 judges) whose judgments and orders affect real estate titles.

To supply the need definite assurance in the ownership of land within the time required in our modern economy title insurance companies began, as far back as 1876, to issue insurance policies insuring against defects in title. Another system was developed called the Torrens System of Land Registration. This system was adopted in Cook County in 1899. Under the Torrens System titles are registered of record and a Certificate of Title is issued by a public official (the Registrar of Titles) certifying as to the condition of the title. No lawyer in Cook County today would advise a client to purchase property unless the seller agreed to furnish an insurance policy or a Torrens Certificate showing good title subject only to such matters as are specifically set forth in the contract of sale and the deed of conveyance. So to be assured that you have acquired good title to the land you propose to buy and will want to dispose of in the future you should receive a title insurance policy or a Torrens Certificate for your protection.

4. You should k n o w something about the closing of a real estate transaction. We will assume that a contract has been signed by the buyer and the seller which provides that the seller is required to furnish a title policy or report on title covering the date of the contract. When the report or policy is received by the buyer it must be examined and he must satisfy himself that no objections or exceptions are noted other than those relating to matters to which he has agreed to take "subject" under the terms of the agreement. If other objections or exceptions appear it is the duty of the seller to have them removed, or as we say in the trade, "waived" or "passed" before the buyer is obligated to part with the purchase money. One form of title report clearly indicates the nature of the objections but another form, instead of giving a complete description of a lien or encumbrance, will merely refer to a document number. For example, a mortgage may be noted simply as "mortgage recorder document No. ————" or "restrictions contained in document No.————". If the buyer does not have information as to the contents of instruments so referred to complete information should be obtained from the title company. If you are not sure that you understand the nature of the objection or exception, after you get all of the information, an opinion should be obtained from your lawyer as to its

meaning. Some objections are quite clear such as those noting a mortgage or a building line, but others such as those dealing with restrictions can be quite complicated. If the property is subject to a mortgage you must know the balance due. Usually the seller should furnish a letter from the mortgage holder containing that information. You also should know about the terms of the mortgage, the rate of interest, the amount and due date of payments and where payable. If the property is improved you should have fire and other types of insurance. Usually the seller has insurance which is assigned to the buyer, but the buyer should satisfy himself that the coverage and amount of insurance is adequate. The deed and other documents such as bills of sale of personal property must be checked for legal sufficiency and accuracy. There are always items to be prorated between the buyer and the seller. Common ones are taxes, insurance premiums, rents, fuel on hand and water, gas and electric bills. An inexperienced or unskilled person should never attempt to close a real estate transaction of any consequence without the assistance of someone who has knowledge of such things. You won't go wrong if you have your attorney close your deal. Compared with the total amount involved an attorney's fee for handling the average real estate transaction is a small item. Unless the transaction is closed under what is called an escrow agreement (which I will explain shortly) arrangements must be made to record the deed to the buyer and have a title policy issued insuring the buyer's title. Some period of time will have elapsed between the date of the title report or policy showing title in the seller and the closing of the transaction. Usually at the time of closing the seller delivers to the buyer an affidavit of title which states that no defects in the title or claims against the property have arisen up to the date of closing other than those referred to in the contract. There is in all cases some risk involved on the part of the buyer in closing a deal on the strength of the seller's affidavit with respect to such defects. The degree of risk depends entirely upon the character and financial integrity of the seller. If you know that the seller is a person of good character and is financially responsible there is little danger in relying on his affidavit. If you, as a buyer, know nothing about the seller or particularly if you have reason to believe that he is unreliable then you should attempt to close the transaction through an escrow. When a transaction is closed through escrow the seller deposits his deed, the buyer his money; the deed is recorded and the title searched. If the title company is ready to issue a policy to the buyer insuring his title, in accordance with the purchase agreement, the purchase money is paid to the seller. If defects appear that the seller cannot cure, the property is reconveyed to the seller and the purchase money refunded to the buyer. A transaction closed in this way fully protects the buyer. Whether the buyer should insist on an escrow closing depends on the willingness of the seller to close in that manner and on how badly the buyer wants to make the deal. If the seller refuses to close through an escrow the buyer may be willing to take the risk involved if he considers the deal to be advantageous from his standpoint. If you are a prospective buyer and the seller refuses to close through an escrow then you certainly should have legal advice. There are ways to minimize the risk and your attorney can be of great assistance in this situation.

5. After the transaction is closed and you have received your title policy or Torrens Certificate the policy or certificate should be examined to make certain that there are no special exceptions in the policy or memorials on the certificate other than those relating to matters which the buyer agreed to take "subject to". If the title report was checked at the time of closing there should be no exceptions shown other than those shown on the title report. If something else appears you may be in trouble and prompt action is necessary. If the seller does not have the additional objection removed from the policy or certificate within a

short period you must consult your lawyer. If you do not you may either legally or as a practical matter be deprived of rights to recover from the seller. In spite of all these "bogies" that I have mentioned ordinarily the buyer gets a proper title policy or Torrens Certificate. When you get it you should know what kind of protection you have. In general the protection afforded under a title policy and a Torrens Certificate is similar. Because I am in the title insurance business I feel that I should mention that a title policy gives a somewhat broader protection to the land owner than does a Torrens Certificate. I won't labor that point except to say that (a) a title policy protects against legal expense involved in defending a title whereas a Torrens Certificate does not and (b) title companies can and do insure over possible defects in title on a risk basis whereas the law properly prohibits the assumption of such risks by a public official (the Registrar of Titles). The holder of a title policy or Torrens Certificate is protected in his title subject to the matters shown as exceptions in the title policy or as memorials on the Torrens Certificate. There are a few general matters that are not covered by the ordinary title policy or Torrens certificate. You should know what these general exceptions are.

(1) We have previously mentioned questions of survey. These questions and rights of parties in possession are not ordinarily covered. Our company can and does cover them for an additional charge of 30% of our regular premium and it is necessary that we be furnished with a survey at the applicant's expense. Ordinarily a purchaser can satisfy himself with respect to these matters at smaller cost.

(2) Mechanics' lien claims not shown of record are not covered in our ordinary form of owners policy. Here again we can and do cover such claims upon payment of an additional premium of about 15% (the percentage varies slightly depending on the amount of the policy). There is little need for this coverage if a buyer checks to make certain that the cost of improvements made within 4 months prior to the sale are paid. Your lawyer can see to it that proper lien waivers are produced to protect you against such claims. To date requests for this type of coverage have come mainly from financial institutions and large corporations whose principal places of business are in states other than Illlinois.

(3) Possible liability under the Illinois Dram Shop Act. If a property is leased for a tavern or to a person who sells intoxicating beverages, a person injured or who suffers loss of support by reason of the acts of an inebriate obtaining liquid refreshments from the tenant, has a lien upon the owner's property for his damages up to $20,000. There is a definite possibility that such liability exists if you are purchasing a property that has been leased for such purposes. Possible liability of this type is generally covered by a Dram Shop Liability Policy paid for by the tenant which should be assigned to the buyer at the time the sale transaction is closed. Insurance coverage of this type is casualty insurance, much like your automobile casualty coverage, and title insurance companies are not authorized to write insurance of this type. Our company does cover this risk but only if we are furnished with proof that the property has not been leased or occupied for such purpose within the last year. Suits for damages under the Dram Shop Act must under the law be commenced within that period.

(4) Governmental Powers. All property is subject to the right of the government to regulate its use or to take it upon payment of fair compensation for

public purposes. This power to regulate like the power to tax cannot be avoided. However, if the buyer has checked into the zoning and building ordinances and possible public developments that might affect the property before entering into the transaction the only thing he has to worry about so far as the government is concerned are the taxes he will certainly have to pay. You are all familiar with the old saying "nothing is certain but death and taxes".

(5) Matters known to the insured that do not appear of record. If there are possible defects in the title that are known to the buyer and which cannot be discovered by a search of the records the buyer cannot expect to be protected with respect to such defects unless he discloses the information to the title company. If you have such information and wish to be protected against such possible defects you must advise the title company of the facts so that it may determine whether under the circumstances the title is insurable.

I realize that real estate law, in spite of its importance, is not dramatic or thrilling so I want you to know that I appreciate your attentiveness. I hope I have covered the basic things that you should know about transactions involving land. There are many things that cannot be covered in the time at our disposal tonight but I will to the best of my ability answer any questions that occur to you. I hope that you all acquire a lot of land. When you do be sure that you have the protection of a Chicago Title and Trust Company Owners Insurance Policy.

A LESSON IN SOCIALISM

Thomas J. Shelly—thirty-five years a teacher of economics and history—attempted to explain the meaning of socialism to his Yonkers High School class as follows:

"John, you made a grade of 95; and yours, Dick, was 55. I shall now take 20 points from you, John, and give them to Dick. Thus, each of you has 75, adequate for passing.

"Here I have applied the socialist-communist principle as set forth by Karl Marx: 'From each according to his ability, to each according to his need.'

"Now, let us examine this practice. You, John, won't work because you have had your incentive removed. And you, Dick, won't work because you are getting something for nothing.

"We can't exist unless we work and produce. Thus, in order to get the work done, we'll need someone with a whip or a gun. Socialism must lead to authoritarian controls."

—The Freeman—March, 1958

"WHAT DO YOU MEAN, "TITLE"?

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The author has been a prominent attorney in Ohio for many years. He has put together a number of papers on the elements of title and is the author of an ecyclopedic summary of the law of land titles, "Desk Book on Land Title and Land Law" (W. H. Anderson & Company, Cincinnati, 1954). This is one of a series of talks given as part of a course for real estate salesmen. It is another example of reaching into the heart of our business for a clearer understanding of land law. Our thanks to Mr. McDermott for making this available.

Title means ownership. Webster and a number of scholars at law can be cited in support of that indefinition; title insurance is insurance of ownership; marketable title refers to an ownership which is marketable. You are all engaged in the work of assuring prospective purchasers or lien-holders that the title or ownership of particular real estate is safe, if it is safe.

This evening we shall discuss some of the estates or interests which can be owned in real estate. As a result of the immovable character of land its ownership is capable of many divisions. The law of future interests is said to be the most difficult to understand of any of the common and fundamental branches of the whole body of law. Some technicalities are unavoidable in a grasp of the topic. I must admit that I am sometimes not patient with someone who is impatient about technicalities. As an extreme example, I recall an old lawyer in Mansfield who, when the certificate of judgment law became effective, said it would be ignored on loans made by his company; he lived to change his dictum. Whether you own your home or own only a part of it may depend upon a so-called technicality.

Estates are classified as (a) estate in fee simple absolute, (b) estate in fee tail, (c) estate subject to condition subsequent, (d) estate subject to special limitation or executory limitation, (e) estate for life, and (f) estates separately treated under the topic "Landlord and Tenant".

Future interests are classified as (a) right of re-entry, which is the right or power to terminate an estate subject to condition subsequent, (b) possibility of reverter, which is the right to possession upon the termination of an estate on special limitations, (c) reversion, which is the interest left in the grantor or in the testator's heirs, other than a right of re-entry or possibility of reverter, (d) vested remainder, and (e) contingent remainder or executory interest.

If you understand what those estates and interests are, y o u are equipped with the weapons for entering the jungle of books to track down an answer to the most difficult problems of real property law.

A fee simple absolute, also called a fee simple, is the largest interest recognized by the law, or the entire ownership.

The common-law estate in fee tail has been altered but not abolished in Ohio. It is ordinarily created by a grant "to A and the heirs of his body". Notice must be taken of the words "heirs of his body" in a deed or will because they mean that A, the named grantee, takes an estate like a life estate instead of taking a fee simple absolute. A's issue (that is, his descendants) take the fee simple at his death, unaffected by any grant from A. It should be noted that A's descendants t a k e at his death; thus, a deed from the child of A does not affect the title of A's grandchildren if the child dies before A.

The owner of a life estate has the right to possession but is liable for waste to the premises. He cannot buy the remainder at tax sale or at other sale brought for payment of a sum for which he is liable.

An estate on condition subsequent is ordinarily created by a provision that the estate granted shall revert to the grantor or his heirs upon the happening of a specified event. A

right of re-entry, also known as a power of termination, is necessarily created at the same time that such estate is created. This right is the power of the grantor, or of the successors in interest of the grantor or testator, to take possession of the land when and if the specified event occurs. Courts sometimes hold that this estate and this right are not created by restrictions in the form of conditions.

An estate on special limitation, also known as a determinable fee, is ordinarily created by a grant "so long as", "until", "during", etc. A possibility of reverter is the corresponding future interest created at the same time in the grantor or in the testator's successors in interest. At the end of the specified period the title automatically passes to the owners of the possibility of reveter.

Rights of re-entry and possibilities of reverter could always be released to the owners of the corresponding estate in possession. Prior to 1932 they could not otherwise be conveyed or devised. It has not been conclusively settled whether they can be conveyed or devised since the 1932 statute.

Reversions and vested remainders are estates of which the ownership is fixed and may be transferred or encumbered as other estates. A remainder can be vested although it may be divested according to the terms of its creation, or if it is a class gift, it may be partially divested by an increase in the members of the class.

Contingent remainders and executory interests are interests of which the ownership does not vest in ascertainable persons until some event occurs in addition to the ending of the preceding estate. For example, a devise of the remainder to the children of life tenant who survive him is contingent, while the remainder is vested if devised to the children of life tenant with a provision that the interest of a child dying before the life tenant shall go to the surviving children; a testator probably would not observe the technical difference. Whether or not a remainder is vested or contingent is the most troublesome problem of construction. Construction is the process of arriving at the precise meaning and effect of the words used in a particular case. Although the law favors the vesting of interests, it is frequently difficult to determine whether the words of the particular will should be construed as a condition precedent, this is, as a requirement that the specified event occur before the ownership is fixed. The importance of determining whether or not an interest is vested consists principally in that conveyances of, or encumbrances on, contingent or executory interests do not affect the title subsequently vesting in a person other than the grantor; for example, a warranty deed from the owner of a contingent remainder conveys nothing as against the title subsequently vesting in his children.

A remainder to a class, as a gift to children of life tenant, vests at testator's death in the living members of the class. Since it is vested, the interest of a child dying before the life tenant passes to his heirs or devisees. The distinguishing feature of such a class gift is that the share of each member of the class is decreased when another child of life tenant is born, so as to give such child an equal share.

When a fee simple is devised to A with a provision that the property shall go to B if A dies without issue, then A does not have a fee simple absolute unless he has descendants living at the time of his death. When a remainder after a life estate is devised to A with a provision that the property shall go to B if A dies without issue, then A has a fee simple absolute unless he dies without issue before the life tenant dies.

Wills

Most questions on estates and future interests arise under wills. The primary rule of construction is that the intention of the testator controls. The terms of wills and the attending circumstances are of such great variety that apparent precedents are not always dependable. Most examiners not working with the original records require a full copy of the will for an opinion, as the provisions of one part may affect the meaning and effect of another part.

A will must be signed at the end by the testator and be subscribed by two or more witnesses. A devise or bequest to one of two witnesses is void.

Legacies are a charge by implication on land devised by residuary clause. The lien of a legacy charged by implication, but not charged expressly, has been held to be barred after six years from the time the legatee had a right to sue for its collection.

A life estate is not enlarged to a fee by annexing an unlimited power of sale. Where a devise is in general terms with an added power of sale, the Ohio cases are not harmonious.

Under a devise to testator's widow "so long as she remains unmarried", she takes only a life estate although she dies without having remarried.

After-Born Children, Etc.

Here is a point we are apt to overlook if not on guard. Unless the will otherwise provides, an heir or testator takes as though there were no will if the heir was (a) born after the will was made, (b) adopted or designated an heir after making the will, or (c) reported to be dead and proves to be alive.

Lapsed and Void Dispositions

Ineffective legacies and devises pass under the residuary clause unless the testator indicated a contrary intention.

A charitable gift under a will executed less than one year before testator's death is void if he left issue.

A devisee may be barred from taking under a will which he withholds from probate for more than three years.

A devisee may renounce within a reasonable time and refuse to accept the title. An heir cannot renounce his inheritance.

A devise to a person not a relative of the testator lapses and becomes void upon the death of such person before the testator, unless the devise is to such person "or his heirs". A devise to a child or other relative of the testator does not lapse if such child or other relative leaves issue surviving the testator. If a residuary estate or less than a fee is devised to children or relatives of testator and one of them dies without issue before the testator, the estate devised shall pass to the surviving devisee or devisees.

Admission to Probate

A will shall be admitted to probate in the county of testator's domicile, or, if not domiciled in this state and his will is not probated in another state, in any county where property of testator is located.

Our Supreme Court has held that an order of probate without notice to the persons entitled thereto is void. It is therefore very important that the record show proper service of notice of the application to probate. A will is not effective until it has been duly admitted to probate.

A will admitted to probate in another county or state must be admitted to record in the probate court of the county where the land is located.

Contest

An action to contest and set aside a will may be commenced within six months after it was admitted to probate. Therefore, title is not good in the devisees during that period.

The title examination standard in this connection is as follows:

"Problem:

Can an executor convey a good title, under an otherwise valid power, within six months after the probate of the will?

Standard:

"Yes, when sold in good faith and provided proceedings to contest the will have not been commenced at the date the deed is delivered. Good faith is ordinarily presumed.

Comment:

"G.C. 10509-24 provides that sales made lawfully and in good faith by the executor and with good faith of the purchasers shall be valid as to such executor. It should be presumed that the legislature intended to make a conveyance valid as to a bona fide purchaser when making it valid as to the grantor."

Election by Surviving Spouse

The following rules apply to estates since 1941. Upon election to take

under the will the surviving spouse is not barred of right to intestate property not passing under the will, right to mansion, right to property not deemed assets of the estate, and right to year's allowance, unless it plainly appears otherwise from the will. Upon election to take under the law, the surviving spouse takes as though deceased spouse died intestate, but not to exceed half of the net estate. Upon failure to elect, surviving spouse takes under the will.

A point to remember is that the surviving spouse takes a fee title in the real estate owned in fee by the deceased spouse, free from the power of sale in the will.

Powers of Sale

Where an executor is given a power of sale but the title is not devised to him, the title vests in the heir or devisee until divested by virtue of the will through exercise of the power.

A power to sell may arise by implication but only where such intention of the testator is clear; thus, a direction in a will to convert land into money without specifying who shall do so ordinarily confers a power of sale on the executor. A power to mortgage or exchange is not implied.

Purchase by the fiduciary, whether directly or indirectly, is voidable at the instance of the beneficiary of the will or trust. Constructive notice of facts appearing of record applies here, as when the fiduciary's grantee immediately conveys to the fiduciary.

An intent to exercise the power is necessary to the conveyance. However, the intent is presumed when the fiduciary did not individually own an interest in the property described in the deed.

All the fiduciaries presently qualified must join in the conveyance. Joinder of those named but not qualified is not necessary unless the exercise of their personal discretion appears to be required. These rules apply not only where part of the named fiduciaries qualify but also where one or more of them die, resign or are removed. Successor trustees may exercise powers when appointed under the terms of the trust or by a court having jurisidiction. The statute on the power of administrators with the will annexed is merely declaratory of the common law, but it applies only where the lands are devised to the executor or where a sale is ordered. Under the common law, which is not abrogated by the statutes, the executor's successor can exercise the power if it is given to the executor as holder of the office or to aid in settling the estate, unless it appears to be personal in the named executor.

Although an infant cannot convey his own interest nor make a will, he can exercise a power if he is not prohibited by law from holding the office. An infant cannot be appointed executor or administrator but may be the trustee under the terms of the trust. An insane person cannot exercise a power during his disability.

Powers of Appointment

A power of appointment is an authority to designate who shall receive certain property or to designate the shares to be received. There is very little Ohio law on the subject. Restatement of the Law of Property is the definitive authority on this subject. The Ohio statutes do provide that the holder of the power may wholly or partially release the power.

Powers of Attorney

A power of attorney is strictly construed. Only those powers may be exercised which are expressly given or clearly implied; thus, it is usually held that general words of authority do not imply a power to sell land. The proper form for the granting clause, signature and acknowledgment is "A.B. by C.D., his attorney in fact" or "C.D. attorney in fact for A.B."

Since August 15, 1943, a power of attorney must be recorded before the deed, mortgage or lease is recorded. As to the instrument recorded previous to that date, the power of attorney must be recorded before the deed is executed.

Death of the principal terminates a power of attorney even though it expressly provides otherwise. Proof that the principal was living when

the power was exercised is commonly required. The insanity of either the principal or the attorney may make a deed void or voidable. An infant may ordinarily exercise a power of attorney.

The Bar Association standard is "Yes" to this problem: "Is one spouse competent to act for the other under a power of attorney to convey land or to release dower?"

A power of attorney to more than one person must be exercised by them jointly. A power cannot be exercised as to the joint interest of one only of the principals.

What points, related to my remarks this evening, do you wish discussed? It should go without saying that whenever I express an opinion not in accord with your title officer's, then my opinion should be treated as just another one of my eccentricities. Of course, I reserve the inalienable right to feel the same way about your title officer's opinion.

"An error in land title may have influenced the course of U. S. history. On December 12, 1808, Thomas Lincoln bought for $200 in cash a 300 acre farm known as the Sinking Spring Farm, situated a few miles south of Hodgen's Mill, Kentucky. There Abraham Lincoln was born, February 12, 1809. The Lincolns lived at the birthplace site for two and one-half years until they lost the place because of a defective land title. Had their land title been valid, the family might not have started on a series of migrations and Lincoln might have lived his lifetime as a Kentucky farmer."

—Union Title News (Indianapolis, Indiana)

"ABSTRACTS AND OIL TITLES"

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Although this deals with law and problems more prevalent in the western states, the growing search for new sources of oil creates a more comprehensive interest in the preparation of abstracts where mineral rights are concerned. What is done in other areas may often be applicable or helpful in our own state. Thus we are proud to present this treatment of a complex subject taken from the "Montana Law Review" Volume XVII, No. 1, 1955, and express our appreciation to the author and to the Montana State University, School of Law, for permission to present it to our readers.

Lawyers today are becoming increasingly cognizant of oil and gas law, and oil and gas titles and problems.

In some respects the treatment of oil and gas titles differs from the examination of surface titles.

The examiner of oil titles has a greater responsibility than the examiner of surface titles, because on the basis of his opinion very large sums of money may be spent in procuring an oil and gas lease and in developing and drilling the property.

The subject "abstracts and oil titles" is exceedingly broad. Only a very few phases of the subject can be considered and discussed within the confines of this paper. The comments herein will be general, and entirely from the point of view of the title examiner in actual practice. This is not designed to be a technical or authoritative treatise. Eminent authors, jurists and oil attorneys have written volumes on the subject herein considered; those authorities should be consulted for a more detailed treatment of this topic. The statements made will be based almost entirely on Montana statutes and decisions, however, it is assumed that much of what is said will be applicable in the states of North Dakota and Wyoming.

The statements herein are applicable only to ordinary fee titles. This discussion does not cover Indian land titles or U.S. Oil and Gas Leases, nor the title evidence and data thereon, nor the examination thereof. Those are special subjects, complex and voluminous in themselves.

1. Abstracts

(a). In general—

An "Abstract of Title" is a compilation or summary[1] of the documents and facts of record which affect the title to land. For oil and gas title examination, the abstract should be a full, complete, and unabridged compilation of all matters of record affecting the title to the particular tract of land. The purpose of the abstract is to disclose the exact state and condition of the title.

The abstract should contain or show all instruments and matters on file or of record in the county records of the county wherein the land is situated,—not only from the office of the county clerk and recorder, but also of any courts of record in the county. It should be certified as constituting a true and correct abstract of title to the lands covered thereby, and containing judgments, judicial proceedings, liens, taxes and assessments.

The abstract shows the record state of the title as of the date and time shown in the certificate. Obviously, if there are continuations or supplemental abstracts, the examiner must verify that there is complete continuity—that there is no gap or hiatus in time left uncovered.

Any abstract of title to real estate, certified to be true and correct by an abstracter duly registered in accordance with the Montana statutes, will be received by the courts of Montana as prima facie evidence of its contents.[2]

The title examiner must make sure that the description, as set forth on the cover or caption page or certificate of the abstract, is complete and accurate in all respects. If any of the description is shown by metes and bounds, he must satisfy himself that the description is entirely right and that it "closes," by reference to a plat or map or survey diagram.

If there are any exceptions, qualifications or limitations made or indicated in the abstract, either on the cover or caption page or in the abstracter's certificate or elsewhere, they must be scrutinized and carefully considered. For example, suppose the abstracter specifies (usually following the land description or on the certificate page):

"excepting therefrom all easements and rights-of-way for roads, ditches, pipes and transmission lines, railway and public highways."

At first appearance, this exception may seem innocuous. If the abstracter actually has shown in the abstract everything disclosed by the county records as to rights-of-way affecting the land, and by his statement intends only to point out expressly that he does not certify regarding rights-of-way not shown or disclosed by the records, that is acceptable; but, either the abstracter must alter his statement to so stipulate or else the examiner must be satisfied otherwise as to the true situation. If there are any right-of-way instruments of record in the county affecting the particular land, and the abstracter has decided by himself that they are mere easements and not important enough to show in the abstract, the abstracter should be requested to show or furnish the record information as to the rights-of-way so that the examiner can determine the legal effect thereof.

(b). Necessity for full and complete abstract—

Why is it important that the abstract covering mineral or potential mineral land be a full and complete compilation? Why is the customary abbreviated abstract or summary not adequate for a reliable determination of oil and gas titles?

The proper construction and legal effect of any instrument can only be determined from an examination of the entire instrument and a consideration of all its terms and provisions. Clauses or provisions which appear to the abstracter to be of no consequence may be of importance to the lawyer, and might cause the lawyer to reach a legal conclusion different from the decision he would have made if the phrase or sentence had been omitted. Occasionally, the legal effect or construction of an instrument may depend largely upon the punctuation in a sentence; I have known instances where the presence or absence of a comma was given great weight.

Although a number of examples will be mentioned in the following pages, which will point up the wisdom of having an abstract which shows the full, true and correct contents of all instruments of record, I do not wish to be understood as taking the position that an abbreviated or summarized abstract can never be used or relied upon for oil and gas title examinations. Oil and gas lawyers examine many such abstracts of title. But, in examining them, the lawyer must constantly be aware of their possible shortcomings and omissions, and he must keep in mind all of the things hereinafter stressed, among others. In using the abbreviated abstracts, the lawyer is under a greater burden, and he must require that the full contents or the complete instrument be furnished in every instance where he surmises that the entire instrument may disclose pertinent terms or provisions which are not reflected in the "skeleton" abstract.

2. Some Title Matters

Consider briefly a few oil and gas title matters,—which incidentally will serve to illustrate the need for examining the complete contents of instruments.

(a). Mineral grants v. royalty—

Probably the most important instance in which it is imperative that the full and precise wording be furnished exists where mineral grants or royalty conveyances are made, or where mineral or royalty interests are reserved.

Of course, no question arises where the grant or reservation is clearly one of an interest in the minerals in place in and under the land, or where the language employed simply conveys or reserves a certain royalty of all oil or gas or minerals which may be produced and saved. The one is "min-

eral," and the other is "royalty." A full knowledge and awareness of the distinction between them is essential to any competent examination or drafting of oil and gas instruments or provisions. However, there are innumerable instances where some question exists as to whether the grant or reservation constitutes a mineral ownership or a royalty. Difficulties frequently arise, either because the draftsman of an instrument does not know, or overlooks, the differences between a mineral interest and a royalty interest and uses language which appears to include some of the attributes of each. The name or label given to the instrument by the parties, or used therein to denominate the interest conveyed or reserved, is not controlling, though those things will be given consideration; the terms of the instrument determine its nature, character and effect.[3]

In Marias River Syndicate v. Big West Oil Co.,[4] the deed contained the following provision:

> Reserving . . . a 12½ per cent interest and royalty in and to all oil and gas and other minerals of whatsoever nature, found in or located upon or under said land . . ., or that may be produced therefrom.

It was argued by counsel in the case that the use of the word "royalty" must be given effect and the reservation must be held to be strictly one of royalty. Although the reasoning of the decision is somewhat obscure, the Montana Supreme Court held that the reservation created a separate mineral interest in the land and not a royalty interest.[5]

The decisions are legion, involving the proposition of construction of instruments to determine whether a mineral interest or royalty interest was intended and effected.

(b). Prior reservations or grants—

Similarly, where there have been prior mineral or royalty reservations or grants in the chain of title, the relative mineral and royalty rights of all parties in interest can only be ascertained from an examination of the entire instruments.

Suppose A owns Blackacre in fee simple, and conveys it to B, reserving to A an undivided ½ of all the minerals in and under Blackacre. Then B conveys Blackacre to C, by warranty deed, and therein B reserves unto himself ½ of all the minerals. If B puts nothing in his warranty deed otherwise, and particularly says nothing at all about any prior mineral reservation, C will own ½ of the minerals.[6] In this situation, the courts take the position that, by virtue of B's warranty, C is entitled to have and receive full ownership of all of Blackacre save only ½ of the minerals; and, accordingly, it will be considered that the reservation was made by B only for the purpose of protecting him on his general warranty.

If B, in his deed, unmistakably subjects his conveyance and grant to all prior mineral and royalty reservations and deeds, B's reservation of ½ of the minerals will then effectively retain the remaining ½ of the minerals for himself, and C will receive no mineral interest at all in Blackacre.

In an abbreviated or condensed abstract of title, the appropriate language or clause, making the grant "subject to" all prior mineral reservations, is often omitted; you can see what a completely different result will obtain if that language is missing when the lawyer examines the abstract.

Of course, B could also have achieved an effective reservation to himself of ½ of the minerals by providing clearly in his deed that he was reserving to himself ½ of the minerals in addition to or over and above all previous mineral reservations.

Where there are prior mineral or royalty reservations or grants in the chain of title, it will be difficult and risky for a draftsman to provide for a further partial mineral or royalty reservation, and fully achieve what he desires, unless that draftsman is fully apprised of the exact mineral and royalty interests previously severed or created and outstanding.

The situation can be just as complex with royalty. Suppose that A, owning Blackacre, conveys it to B, reserving to a A 6¼% royalty of all oil, gas and minerals which may be

produced and saved from the land. At that point B owns the full interest in the minerals in and under Blackacre, subject however to A's 6¼% royalty. Then, B conveys Blackacre to C, by warranty deed, reserving to B ½ of the minerals in and under Blackacre. If B makes no provision in his deed concerning A's royalty, B's reserved ½ mineral interest will be subject to and burdened with the full amount of A's 6¼% royalty. By appropriate provision B can shift the royalty burden or equalize it; but, the language which B employs to accomplish his purpose must be carefully selected and considered,—his object must be clearly and unmistakably shown.

(c). Rights-of-way—

Right-of-way instruments also must be perused in full for a proper decision as to whether fee simple title to the strip is conveyed or a mere easement results.

In Basin Oil Co. of California v. City of Inglewood,[7] and in Las Posas Water Co. v. Ventura County,[8] the California courts construed deeds covering strips of land for streets or highways; the applicable statutes are identical to those existing in Montana.[9] The California courts held that these conveyances transferred fee simple title to the strips described.[10]

(d). Old oil and gas leases—

Where there are old unreleased oil and gas leases of record, the abstract should show the primary term and all provisions pertaining to expiration of the lease or providing for its continuance and the conditions thereof. If no release is obtainable, and proof that the lease has expired is to be furnished by affidavit or otherwise, the examiner must know the terms and provisions of the old lease (including all the lands covered thereby) before he can be satisfied that it is effectively terminated.

Sometimes an old lease, unreleased of record, will provide for payment of delay rentals indefinitely after the expiration of the primary term, and will specify that the lessor shall have the right to declare a forfeiture of the lease if delay rental payment is not made within a fixed time following written notice therefor by lessor to lessee. In the case of McDaniel v. Hager-Stevenson Oil Co.,[11] where the oil and gas lease contained such a provision, the Montana Supreme Court held that notice to the lessee to pay rentals is unnecessary, that declaration of forfeiture by the lessor is wholly unnecessary, and that the lease ceases automatically and expires by limitation at the end of the fixed term in the absence of production (or in the absence of payment of delay rental under the lease considered in the decision, which the court pointed out was an anomaly).[12]

(e). Old mortgages—

Where old mortgages, unsatisfied of record, appear in the abstract, the most important single item is the maturity date or final due date of the mortgage obligation. In Montana the mortgage is a lien on the real property from the time it is recorded until 8 years and 60 days after the maturity of the entire debt or obligation secured; within 60 days after the 8 years the mortgage owner may file an affidavit of renewal; if such a renewal affidavit is properly made and filed of record, the mortgage lien continues for a further period of 8 years.[13]

An old mortgage may be safely waived, if the lien thereof has expired and no renewal affidavit or extension agreement whatever appear of record, provided title to the mortgaged land is not still vested in the mortgagor, and provided either the present owner of the land or the lessee is a bona fide purchaser without notice.[14]

(f). Record reference to unrecorded instrument—

A record reference to some unrecorded instrument should not be overlooked either in the abstracting or in the examination.

This can be best illustrated by an actual case. A, owning Blackacre, gave X an oil and gas lease, which was not recorded. Thereafter A gave B an option to purchase the land; the option, by its terms, was made subject to the lease to X; the option was duly recorded. Later, A conveyed Blackacre to C by warranty deed. Upon the commencement by explora-

tion for oil and gas under the lease, C sought to restrain and enjoin the operations. The question which arose was whether C purchased the land with notice of the unrecorded oil and gas lease. On these facts, the Montana court held in Guerin v. Sunburst Oil & Gas Co.,[15] that C took the land with constructive notice of the option and of the contents thereof, including the recital therein about the oil and gas lease, and that C was chargeable also with notice of all material facts which an inquiry suggested by that recital would have disclosed; the court held that C was chargeable with notice of the contents of the oil and gas lease even though it was not recorded.[16]

(g). Miscellaneous—

Full and complete acknowledgments should be shown for instruments recorded after June 30, 1947.[17] An acknowledgment may be void, as where it is taken by a Notary Public on a corporate instrument when the Notary Public is an officer of the corporation and as such is a party to the instrument as a representative of the corporation;[18] or, it may be otherwise defective or insufficient, such that the acknowledged instrument does not constitute constructive notice even though recorded.

Even with such comparatively simple instruments as quitclaim deeds the full contents must be furnished if any question of after-acquired title is involved in order to ascertain whether the instrument is one under which after-acquired title will be held to have passed.[19]

3. Facts Not Shown in the Abstract

It must be recognized that there are non-record items and matters, which accordingly will not be disclosed by the abstract, which could affect or change the title situation shown by the abstract. In general, these are:

(a). rights or claims of parties in possession;

(b) whether land has been riparian, or title has been affected by alluvial changes, though the land is no longer riparian;[20]

(c) facts an accurate survey would show;[21]

(d) roads, ways and easements, not shown of record;

(e) mechanic's and materialmen's lien claims not shown of record, because of improvements on the land;[22]

(f) homestead (in North Dakota and Wyoming) dower (in Montana);

(g) judgments in U. S. District Courts, not of record in county;

(h) zoning ordinances, if city property;

(i) claims of persons under unrecorded instruments;

(j) fraud, incapacities of grantors, forgery of instruments, lack of delivery, acknowledgment of grantor never actually taken (although proper certificate of acknowledgment appears of record), etc.;

(k) parts of instruments not recorded, through error or omission in transcribing onto the county records, or because of deletion from original instrument before recording, etc.

As regards items (a) through (h) above, the title opinion will expressly except them,[23] or be made subject to them, or otherwise attention will be called to them or appropriate requirements made for the furnishing of satisfactory proof to obviate them.

Items (i) through (k) above comprise possible, but improbable, situations which cannot be discovered from the records or an inspection of the land. It is not considered necessary to call attention thereto,[24] unless their presence is in some manner suggested or indicated from the abstract or title data examined.

Certainly, however, anything in the title data which raises some question should be investigated. As an example, consider this actual case. The abstract showed that A, owning Blackacre, conveyed it to B. Thereafter A gave an oil and gas lease to X Company, and B separately gave an oil and gas lease to Y Company. In that situation, inquiry should be made to ascertain why A has given an oil and gas lease to X Company after having apparently conveyed the entire interest in Blackacre to B. It developed that in the deed A had reserved 50% of all the oil, gas and minerals in and under Blackacre. However, B felt that the mineral reservation was

unfair, and took it upon himself to eradicate the mineral reservation from the instrument before he recorded it. Under these circumstances, certainly A remained the owner of ½ of the minerals, his ownership not being affected by B.'s wrongful act. Y Company had only a half-interest oil and gas lease, despite the fact that the title to the full interest in Blackacre appeared to be vested in B according to the record.

May I suggest a precaution which I take concerning U. S. patents? In patents issued prior to July 17, 1914, the U. S. A. did not reserve any interest whatever in the oil and gas (or in any of the minerals, excepting coal). In some of the patents issued after July 17, 1914, the U. S. A. reserved the oil and gas, and in some of the patents issued after December 29, 1916, the U. S. A. reserved all the minerals. For all U. S. patents issued after July 17, 1914, I suggest that a photocopy thereof be obtained from the Bureau of Land Management or from the U. S. Land Office. The U. S. Land Office at Billings now has, on microfilm, all of the patents issued after July 17, 1914, covering the lands in Montana, North Dakota and South Dakota, and it can furnish a photocopy of any thereof on request for $1.00 each. In view of the ease with which photocopies of these patents can be obtained, at very small expense, it would seem prudent to do so before actually drilling upon the land. I follow this practice because I know of several actual cases where the oil, gas or mineral reservation contained in a U.S. patent was not transcribed onto the county records for some inexplicable reason. In one instance in northern Montana, the U.S. patent was recorded in the county in 1920, but the record thereof showed no oil or gas reservation. A host of oil and gas leases, conveyances, and oil agreements affecting the land were placed on the county records during the years 1920 to 1952, —all on the premise that the patentee had received the fee simple title. In 1952 a photocopy of the patent was obtained and recorded in the county, and thereby it became evident that the U. S. A. had reserved and still owned the oil and gas in and under the land.

The question whether or not the judgment of a federal court rendered in Montana becomes a lien, even though not filed in the county wherein the land is situated, has not been judicially determined. The appropriate federal statute[25] provides that every judgment rendered by a U. S. District Court within a state shall be a lien on the property located in such state, and that the state law requiring the docketing of such a judgment in the county before such lien attaches shall apply only if the state law makes provision for equal treatment between federal judgments and state court judgments from the standpoint of docketing and time of attachment of the lien. If the state statute provides the necessary conformity, the federal court judgment does not become a lien upon real property of the judgment debtor until it is filed with the Clerk of the District Court of the county wherein the land lies; but, if the state statute fails to provide the necessary degree of conformity, the federal judgment becomes a lien as soon as docketed in the office of the Clerk of the Federal Court[26] and without more it extends to all lands of the judgment debtor located anywhere within that federal court district.[27] It would seem that the Montana statute[28] provides the requisite conformity and equality. However, at least some doubt has been expressed as to whether it furnishes the exact equality and complete conformity established as the test by the U. S. Supreme Court.[29] Two eminent authors on real property, Patton and Parsons, have said that in the Montana statute there is the required conformity; but a third authority, Evans, indicates there is no satisfactory solution to the question. In the absence of judicial determination as to the effectiveness of the Montana statute, it is impossible to say with certainty whether the statute meets the test; therefore, for complete safety, some title examiners require a judgment search of the docket of the federal courts of the district.[30]

If the title data examined in any way indicates or suggests that the lands have been or are riparian lands, or are covered or affected by a stream or lake or body of water, further investigation is required. Sometimes the informal map or plat, which usually follows the caption page in complete abstracts, will show a river, stream or lake adjoining; or these facts may come to your attention as a result of any physical inspection made of the premises. It will then be necessary to determine just what changes have occurred, over the years, in the course and channel of the river or in the banks and boundaries of the body of water. The U. S. government plats of survey covering the land will have to be examined, and possibly also the notes of the U. S. Surveyor and Engineer. A current survey will probably be advisable or necessary. Without facts showing all changes which have occurred, how and when the changes were effected, and concerning the alluvial changes and accretions and any avulsion, no reliable determination can be made of what legal effect has resulted to the title to the affected lands. Even with such facts, an examiner's only recourse in many cases will be to indicate the necessity for a court action, to fully and conclusively determine and establish the title situation and the rights of all parties.[31]

There may be other facts, pertaining to oil and gas leases, which will not be shown in the abstract. It is necessary that it be determined that the oil and gas lease, of the party for whom the title is being examined, is currently in full force and effect. If any delay rentals have accrued under the oil and gas lease, a determination must be made that all such delay rentals have been timely, properly and fully paid in all respects; the title examiner will either require proof thereof, or will specify in his opinion that the lease-owner should satisfy himself on that score. Of course, if the oil and gas lease provides that it will terminate if drilling is not performed within a designated area, either on or outside the particular tract covered by the lease, the examiner must be furnished with proof from which he can determine whether or not such drilling was performed.

4. The Title Opinion

Writing the title opinion is the final act in a title examination, and the purpose for which all the work has been performed. There is no standard or set form for the title opinion, except such as may be prescribed by the client. Every lawyer develops his own variations. A suggested outline, showing only headings and sub-headings considered desirable, is appended hereto.[32]

In an oil and gas title opinion, it is not sufficient merely to set forth the ownership and state of the title to the land. The oil and gas lease is the most important instrument to the lessee or lease-owner; he desires to know explicitly what his ownership, rights, privileges and obligations are under that lease contract. He expects the lawyer, in addition to setting forth the title ownership and all title defects or objections, to indicate clearly and unmistakably in the title opinion all matters whatever which may in any way impair, detract from, or reduce the full leasehold estate.

Therefore, the lawyer must examine the oil and gas lease carefully. The necessary parties to the lease must be ascertained; and the lawyer must determine that all of them have duly executed the lease, that the lease has been properly acknowledged and appropriately recorded, and that the lease effectively covers and includes the full and entire interest in the oil and gas (and possibly other minerals) in the land.

Oil and gas leases which cover only a partial interest raise additional questions. Illustrative of this proposition is the holding of the Texas Court of Civil Appeals in Texas Co. v. Parks.[33] In that case the oil and gas lease described and covered an "undivided one-half interest" in Blackacre, which contained 320 acres. The lease provided for the payment of $160.00 per year delay rental. The lessee paid $80.00 delay rental, which the lessor refused to accept as being insufficient. The lessor contended that he was en-

titled to the full delay rental which was specified in the lease, the entire $160.00. The lease contained the usual "lesser interest" clause; and the company contended in the lawsuit that it was entitled to reduce the rental in proportion to the lessor's interest in the entire fee simple estate, in other words by one-half. The court held that the lessor was entitled to receive an annual rental of $160.00, because the lease stipulated a lump sum payment of $160.00 and there was no failure of title as to the leasehold interest specifically granted and leased by the lessor. The court held that the lessee could not rely upon the reduction clause to decrease the specified rental, in view of the fact that the lease clearly described only the "undivided one-half interest" which the lessor owned.

Whether or not lawyers generally agree with that decision, the title examiner cannot ignore it. If he is confronted with such a situation, he must take the safe course and point out the risk that other courts may hold likewise. Moreover, in the situation mentioned immediately above, the risk exists that some courts may apply the same principle to payment of royalty. Where a lease by its terms purports to cover only a partial interest, the courts may rule that the lease-owner is not entitled to decrease the stipulated royalty; if so, the lease-owner will be obliged to pay that one lessor a full ⅛ of all oil or gas produced and saved, even though the lease is only a partial-interest lease. The court in Texas Co. v. Parks indicated that its holding would not necessarily govern as to royalty payment; but, it is difficult to see why the same principle would not apply.

Under the heading "oil and gas lease" in the title opinion, some pertinent information concerning the integral parts and provisions of the lease should be stated. Usually the oil and gas lease will be tabulated in some form. If the lease has been altered or changed from the ordinary, or if it contains special provisions or additional requirements which are not customary in the usual form of lease, those things should be pointed up in the opinion in such fashion that they will not be overlooked.

5. Curative Instruments and Information

The instruments, proof or data necessary to meet the objections or requirements set forth in the title opinion are very important. Too often the curative material and facts are given little consideration, either because the person obtaining the curative considers it of no great consequence or because of the desire to expedite the acquisition of the oil and gas lease or drilling in the area. The lawyer cannot accept less than full compliance with his requirements.

Oil titles are attacked or litigated only when they become valuable or prospectively so. It is an old maxim in the oil industry that "a dry hole cures the title." Conversely, however, when production has been discovered or is imminent, curative instruments usually cannot be secured and litigation is the only course open to the parties.

Where old oil and gas leases have apparently expired by reason of non-development or non-payment of rentals, but have not be released of record, the lawyer will usually accept proof by affidavit or otherwise of non-development, non-production, and non-payment of rentals, satisfactorily evidencing that the lease has terminated by its own terms. It is preferable, of course, to obtain a release of such leases if possible (and if practicable, when consideration is given to the factors of expense and time). In cases where the primary term has not expired, a release should be required; if, for good reason, such a release is not obtainable, strong and credible evidence should be presented to the lawyer, sufficient to convince him that the lease has indeed expired or terminated, because such a situation is fraught with the risk that there may be a controversy between the parties as to the sufficiency of delay rentals or performance of terms of the lease, etc.

Obviously, it is not sufficient that such an affidavit of non-development covers only the lands under examin-

ation or described in the lease under title consideration. The affidavit must describe and cover all of the lands which were covered by the old unreleased lease, since otherwise it is at least possible that production from other lands have kept the old lease in force and effect as to all the lands.

A "proof of possession" affidavit is insufficient if it recites simply that the lessor is in possession. The affidavit or proof should show clearly and positively that no person whomsoever except the lessor is in possession or occupancy of the land or any thereof. And, it is prudent that at least some facts concerning the use of the land, and as to the persons using it, be recited, in order that the meaning of "possession" is not left entirely to the conclusion of the affiant.[34]

Affidavits of heirship are certainly not conclusive of the facts therein shown. They are simply some proof. A summary statement as to the "heirs" of a decedent is unsatisfactory, because standing alone it is a pure legal conclusion. In any such affidavits or proofs, it is always desirable that facts be stated, and that some information be shown regarding the means of knowledge or qualifications of the affiant. Is he an old-timer, long a resident of the county, or a neighbor, who is well-acquainted with the land? Is he a close friend, family doctor or lawyer, or otherwise particularly situated or qualified to know whereof he speaks? If no other good affiant is available, sometimes the affidavit of the owner will be accepted. But, usually his affidavit should be only additional, or in support of other proof.

If any mineral interest whatever remains outstanding, not effectively covered by the client's oil and gas lease, it must be committed by the obtaining of an oil or gas lease or appropriate ratification instrument. Where an ambiguous mineral-royalty instrument appears, the examiner will require that the parties stipulate as to the nature of the interest intended to be reserved or conveyed, or that they clarify in writing what their specific interests are. If it is impossible to obtain a stipulation or clarification, or an appropriate ratification, the only thing to do is to treat the interest as a possible mineral interest and secure a lease from the owner or owners thereof, and then let the respective parties determine their interests in production if oil is discovered and before the royalty is distributed. If the title instrument is not ambiguous, but is clearly erroneous, a correction instrument should be obtained.

Conclusion

It is not suggested that the oil title examiner should be over-meticulous. But he certainly should, by all standards, exercise greater care in resolving reasonable doubts as to the mineral title than would perhaps be exercised in most ordinary title examinations. As such an examiner must be constantly alert to ferret out, recognize and investigate any circumstances appearing in the chain of title which indicate some title question. He must never assume anything; a diligent adversary will uncover and show the actual facts, if production is obtained and litigation arises.

A famous English barrister of two centuries ago said that a lawyer must painstakingly adhere to accuracy and must have "an ignominious regard for details." This is especially true of the oil title examiner.

1. The Abstract of Title most commonly known and used is an epitome of the recorded conveyances, transfers and other evidences of title, and also of such facts appearing of record as may impair the title. State *ex rel* Freeman v. Abstractors Board of Examiners, 99 Mont. 564, 577, 45 Pac. 2d 668 (1935).

2. REV. CODES OF MONTANA § 66-2116 (1947).

3. See 3 Oil and Gas Reporter 445.

4. 98 Mont. 254, 38 P.2d 599 (1934).

5. Oil and gas lawyers, from other states as well as from Montana, often comment on this decision. Most of them disagree with it.

It is difficult to see how the court could so definitely adjudge the reservation to be a mineral interest as a proposition of law. There is at least as much basis for holding it to be a royalty interest. In truth, the reservation is ambiguous and uncertain, and evidence should have been required to determine the intention of the parties.

6. Howell v. Liles, 246 S.W.2d 260 (Tex. Civ. App. 1951). See discussion at 2 Oil and Gas Reporter 509 and note 2. Also, see 2 Oil and Gas Reporter 1359, and cases and authorities there enumerated.

7. 3 Oil and Gas Reporter, 125 Cal. App. 2d 661, 1226, 271 P.2d 73 (1954).

8. 97 Cal. App. 296, 275 Pac. 817 (1929).

9. REV. CODES OF MONTANA §§ 32-107, 67-1518, 67-1608 (1947). All were adopted by Montana from the California Civil Code.

10. See also Haines (Boothe) et al v. McLean et al, 4 Oil and Gas Reporter 683 (Tex. Sup. Ct. 1955). And see discussion note at 4 Oil and Gas Reporter 696.

11. 75 Mont. 356, 243 Pac. 582 (1926).

12. See also Steffes v. Allen, 295 Mich. 510, 295 N.W. 245 (1940); Lewis v. Grininger, 198 Okla. 419, 179 P.2d 463 (1947).

13. REV. CODES OF MONTANA § 52-206 (1947).

14. See Aitken v. Lane, 108 Mont. 368, 374, 92 P.2d 628 (1939); 1 MONT. LAW REVIEW 74; IV AMERICAN LAW OF PROPERTY, § 16.168.

15. 68 Mont. 365, 218 Pac. 949 (1923).

16. Other facts shown in the decision were: just before A conveyed to C, X assigned the oil and gas lease to Y, who in turn assigned it to Z, both such assignments being duly recorded. These assignments were not discussed by the court. Since the oil and gas lease was unrecorded, the recorded lease assignments would not furnish constructive notice of the lease.

17. The last validating statute was REV. CODES OF MONTANA § 39-133 (1947) effective July 1, 1947.

18. REV. CODES OF MONTANA § 56-106 (1947).

19. See Henningsen v. Stromberg, 124 Mont. 185, 221 P.2d 438 (1950).

20. *i.e.* avulsion; or situations where the water no longer crosses over or adjoins the particular tract being examined.

21. *i.e.*: riparian land, accretion, erosion, alluvial changes; conflicts of surveys or lines.

22. REV. CODE OF MONTANA § 45-501 (1947).

23. A qualification or limitation sometimes expressed in a title opinion is as follows: "We render no opinion as to the following: possessory rights, discrepancies of survey or location, rights of way, or claims not reflected by the data examined, the existence of which will be reflected or may be determined from a physical examination or inspection of the land; and mechanic's liens or other statutory liens not reflected by the data examined."

24. A bona fide purchaser for value will be protected, to a considerable extent, against most of such matters by the recording acts, statutes or limitation, and other statutory bars and equitable defenses.

25. U.S.C.A. § 1962.

26. The enire state of Montana is one federal district

27. IV AMERICAN LAW OF PROPERTY § 18.77; THOMPSON, REAL PROPERTY § 5533.

28. REV. CODES OF MONTANA § 93-5714 (1947).

29. See complete discussion of the problem in 8 MONT. LAW REVIEW at 65.

30. This applies regardless of whether or not the federal court clerk's office is located within the county of the situs of the land involved in the examinations.

31. See IV AMERICAN LAW OF PROPERTY § 18.26.

32.

Petroleum Oil Company
Billings, Montana
Gentlemen:

Re: File No.
DESCRIPTION OF LANDS
Acreage
County
John Doe lease

TITLE OPINION

ABSTRACT EXAMINED:
INSTRUMENTS EXAMINED:
TITLE TO THE LAND:

Subject only to the objections and requirements hereinafter set forth, the above abstract and instruments show fee simple title to the capioned lands to be vested as follows:

Surface—

All Minerals, including oil and gas—

OIL AND GAS LEASE:
TITLE TO LEASEHOLD AND ROYALTIES:
ENCUMBRANCES:

Mortgages—
Judgments—
Taxes—
Other liens—
Unreleased oil and gas leases—
Easements and rights-of-way—

TITLE COMMENTS:

OBJECTIONS and REQUIREMENTS:

33. 247 S.W.2d 179 (1952), 1 Oil and Gas Reporter 555, 2007.

34. On one occasion, an affidavit was furnished containing the general statement that no one was in possession of the land. It was subsequently shown that no one resided upon the land, but that a tenant who resided on adjoining land was farming the tract under an agreement with the owner. Because no person actually *resided* upon the land, the affiant said it was his opinion that no one was in "possession" thereof.

"LAND MEASUREMENTS"

We thank Mr. James D. Forward, Sr., Chairman of the Board, Union Title and Trust Company, San Diego, California, for permission to print material from a booklet distributed by the company on land measurements. After explaining the methods of measuring land and the United States Rectangular System of Surveying, the booklet also carries this message of assurance: "More than 15,000 maps—records more than a century old—plus the people to interpret and keep them up to the minute to help you get faster and more reliable insurance and trust service. . . . These maps are carefully indexed, constantly revised, to help the title experts at Union Title quickly pin-point the property in which you're interested and determine the accuracy of a complete legal description."

In this manner the company not only distributes useful information but, additionally, advertises the effectiveness of their title plant.

THE UNITED STATES RECTANGULAR SYSTEM OF SURVEYING

The first public surveys in the United States were made in Ohio in 1786 under an ordinance of the Continental Congress passed May 20, 1785. The system of surveys provided in this act was thought to have been devised by General Rufus Putnam, pioneer settler of Ohio. Though modified since its original adoption, the act is still in force and is the basis for all surveys of United States public lands, except private land grants.

Briefly, this system is as follows:

Base and Prime Meridian

From a prominent point or natural monument taken as a starting point, there is run a true North and South line and an East and West line on a true parallel of latitude. This East and West line and North and South line which intersect at this point or **Monument** are called respectively the **Base** and the **Prime or Principal Meridian.** For San Diego County, the monument is the top of San Bernardino Peak in San Bernardino County (which used to be part of San Diego County) and the Base and Meridian intersecting this point are known as the San Bernardino Base and Meridian. Looking at a large map one will see that the Meridian line runs through San Diego County just east of Bostonia and the Base line is about 90 miles north of Bostonia.

Parallels

Because of the curvature of the earth additional lines called **Guide Meridians** are run every 24 miles east and west of the Meridian. Other lines, called **Standard Parallels,** are run every 24 miles north and south of the Base Line. The Parallels north of the Base line are designated First Standard Parallel North, Second Standard Parallel North, etc., and those South as First Standard Parallel South, etc. These Guide **Meridians** and Standard Parallels also are known as **Correction Lines.**

Ranges and Townships

Lines next are run North and South parallel with the Principal Meridian 6 miles apart, thus marking the surveyed area into strips 6 miles wide called Ranges, which are numbered East and West from the Principal Meridian. Similar lines are run at every 6-mile point North and South of the Base line, and parallel with the Base line, cutting the Ranges into squares, 6 miles each way, which are called **Townships.** The first Township North of the Base line is numbered Township 1 North, the second Township 2 North, etc. Those South of the Base line are numbered Township 1 South, Township 2 South, etc.

Sections

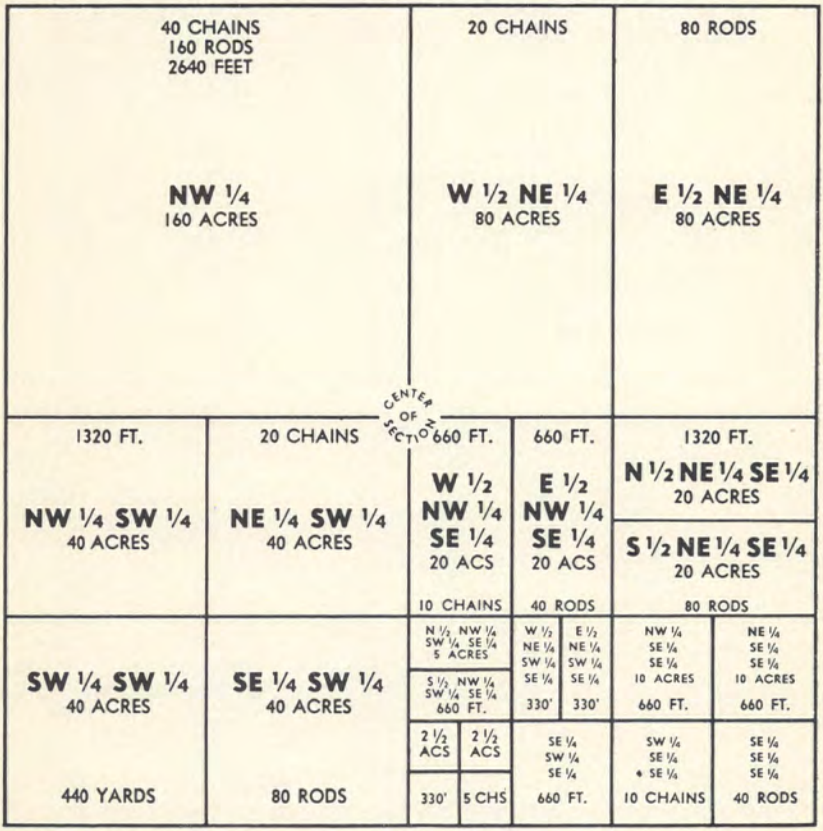
Townships are subdivided into 36 **Tracts**—each one mile square, as near as may be, called **Sections**—accomplished by running through the Township, each way, parallel lines at the end of each mile. The 36 Sections into which the Township is divided are numbered from 1 to 36 beginning with the Northeast corner and proceeding West and East alternately through the Township. In California and some other states, Sections 16 and 36 in every Township are set aside to the State for school purposes.

The Sections are the smallest tracts the law requires to be surveyed but

further subdivisions are made by the division of the Sections into 4 quarters containing 160 acres more or less, and named Northeast **Quarter,** Northwest **Quarter,** Southeast **Quarter** and Southwest **Quarter.** Due to the earth curvature and unavoidable errors, the Sections along the North Boundary and West Boundary of each Township are irregular. The quarter sections along the North and West boundaries of these sections take up the excess or shortage in the Township, and the quarter quarters along the North and West Township boundaries are given Lot Numbers; for example, Lot 2, Section 5, Township 11 South, Range 3 West, or Lot 7, Section 31, Township 11 South, Range 3 West.

In California and some other states, a Township frequently will be occupied partially by a Spanish or Mexican Grant. United States Government Surveys do not cover such Grants, going only to and including their boundaries.

Fractional Quarter Quarters in the Sections created by reason of the Grant Line are given numbers by the Government at the time of survey; for example, Lot 2, Section 26, Township 11 South, Range 4 West. Also, when the meander line of a body of water is a boundary or when there is an excess or deficiency due to natural error in a section or township, the Fractional Quarter Quarters thus created are described as Section Lots. In short, a Lot exists for the purpose of describing sectional property which cannot be described as a true quarter quarter or 40 acres.



Bearings are ALWAYS read in Degrees and Minutes (plus Seconds if fraction of a Minute is involved) from the **North** point or from the **South** point — NEVER from the East or West points.

TABLE OF LAND MEASUREMENTS

Linear Measure

1 inch =	.0833 ft.
7.92 inches =	1 link
12 inches =	1 foot
1 vara =	33 inches
2¾ feet =	1 vara
3 feet =	1 yard
25 links =	16½ feet
25 links =	1 rod
100 links =	1 chain
16½ feet =	1 rod
5½ yards =	1 rod
4 rods =	100 links
66 feet =	1 chain
80 chains =	1 mile
320 rods =	1 mile
5280 feet =	1 mile
1760 yards =	1 mile

Square Measure

144 sq. in =	1 sq. foot
9 sq. feet =	1 sq. yard
30¼ sq. yds. =	1 sq. rod
16 sq. rods =	1 sq. chain
1 sq. rod =	272¼ sq. ft.
1 sq. ch. =	4356 sq. ft.
10 sq. chs. =	1 acre
160 sq. rods =	1 acre
4840 sq. yds. =	1 acre
43560 sq. ft. =	1 acre
640 acres =	1 sq. mile
1 section =	1 sq. mile
1 Twp. =	36 sq. miles
1 Twp. =	6 miles sq.

An Acre Is:

43,560 sq. ft.
165 feet x 264 feet.
198 feet x 220 feet
5280 feet x 8.25 feet.
2640 feet x 16.50 feet.
1320 feet x 33 feet.
660 feet x 66 feet.
330 feet x 132 feet.
160 square rods.
208' 8½" square or
208.71033 feet square*

or any rectangular tract, the product of the length and width of which totals 43,560 sq. ft.

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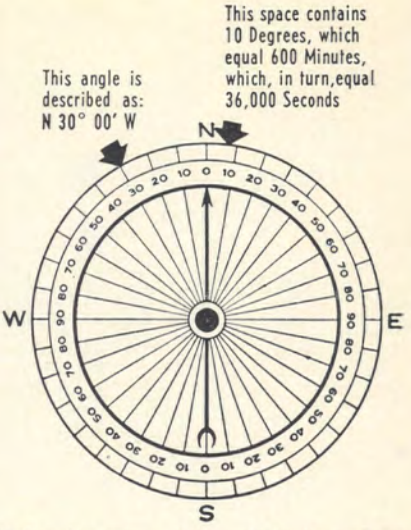
*$(208.71033)^2 = 43{,}560.002$ sq. ft.

Chains	Feet	Chains	Feet	Chains	Feet
01	66.	34	2244.	67	4422.
02	132.	35	2310.	68	4488.
03	198.	36	2376.	69	4554.
04	264.	37	2442.	70	4620.
05	330.	38	2508.	71	4686.
06	396.	39	2574.	72	4752.
07	462.	40	2640.	73	4818.
08	528.	41	2706.	74	4884.
09	594.	42	2772.	75	4950.
10	660.	43	2838.	76	5016.
11	726.	44	2904.	77	5082.
12	792.	45	2970.	78	5148.
13	858.	46	3036.	79	5214.
14	924.	47	3102.	80	5280.
15	990.	48	3168.	81	5346.
16	1056.	49	3234.	82	5412.
17	1122.	50	3300.	83	5478.
18	1188.	51	3366.	84	5544.
19	1254.	52	3432.	85	5610.
20	1320.	53	3498.	86	5676.
21	1386.	54	3564.	87	5742.
22	1452.	55	3630.	88	5808.
23	1518.	56	3696.	89	5874.
24	1584.	57	3762.	90	5940.
25	1650.	58	3828.	91	6006.
26	1716.	59	3894.	92	6072.
27	1782.	60	3960.	93	6138.
28	1848.	61	4026.	94	6204.
29	1914.	62	4092.	95	6270.
30	1980.	63	4158.	96	6336.
31	2046.	64	4224.	97	6402.
32	2112.	65	4290.	98	6468.
33	2178.	66	4356.	99	6534.

To find the number of feet in a given number of links, divide the number of feet in a like number of chains by 100.

To segregate any number of acres in a square or rectangular form from a larger tract where a definite length or width is known:

Multiply 43560 by the desired acreage and divide the product by the known length or width and the result is the other dimension of the tract to be segregated. In all cases where the shape of the tract is irregular or has curved boundaries or where the line of buildings or of possession is in doubt, consult a Registered Engineer or Licensed Surveyor.



60 Seconds equal one Minute; 60 Minutes equal one Degree; 360 Degrees equal a complete circle.

Diagram showing division of Fractional Section into Government Lots.

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

Sectional map of a Township showing adjoining Sections.

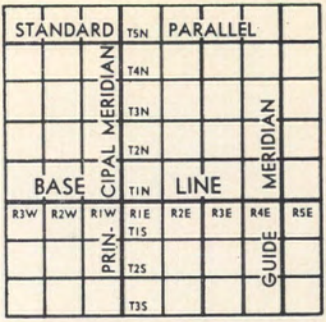
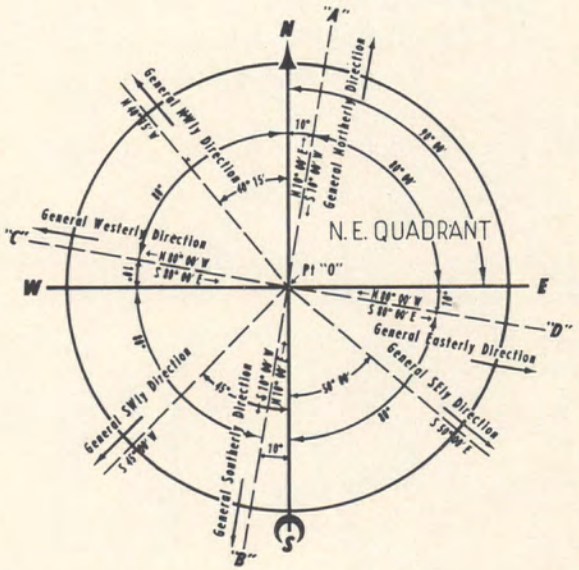
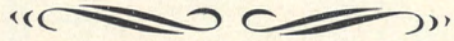


Diagram showing division of Tract into Townships.



Line direction diagram, showing typical method of describing the direc tion of lines in preparing legal descriptions of land parcels. Solid heavy lines N-S and E-W are cardinal directions due North-South and East-West. Each Quadrant (NE Quadrant shown) equals 90°00'00" (90 Degrees). One Degree may be written: 60 Minutes; 0°60'00"; 1°; or 1°00'00". 60 Seconds may be written; 0°00'00"; 1' (one Minute); or 0°01'00". Broken lines A-B and C-D are typical survey lines, showing typical bearings (directions) in each direction.



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COMING EVENTS

Date	Convention	Place
May 4-6	Iowa Title Association	President Hotel, Waterloo, Iowa
May 4-7	Atlantic Coast Regional Title Insurance Executives	Skytop Club Skytop, Pennsylvania
May 9-10	New Mexico Title Association	Alvarado Hotel Albuquerque, New Mexico
May 14-15-16	Illinois Title Association	Pere Marquette Hotel Peoria, Illinois
May 16-17	Pennsylvania Title Association	Claridge Hotel Atlantic City, New Jersey
June 9-10	Central States Regional	Drake Hotel Chicago, Illinois
June 13-14	Southwest Regional	Adolphus Hotel Dallas, Texas
June 16-17	South Dakota Title Association	Sheraton-Johnson Hotel Rapid City, South Dakota
June 19-21	Colorado Title Association	The Crags Estes Park, Colorado
June 26-28	Idaho Land Title Association	Shore Lodge, McCall, Idaho
June 29-30	Michigan Title Association	Grand Hotel Mackinac Island, Mich.
August 1-2	Montana Title Association	Placer Hotel Helena, Montana
Sept. 21-26	**Annual Convention— American Title Association**	**Olympic Hotel Seattle, Washington**
October 12-14	Nebraska Title Association— 50th Anniversary	Town House Omaha, Nebraska
November 3-6	Mortgage Bankers Association Convention	Conrad Hilton Hotel Chicago, Illinois
November 5-6-7	Kansas Title Association	Broadview Hotel Wichita, Kansas

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