SESSION 202

Using the 30-and 40-Year Laws and Other Curative Acts to Resolve Title Problems

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I. Introduction.

A. This presentation is about concepts of marketable title and the effect of the Minnesota Marketable Title Act, the "30-Year Law", and other curative legislation in determining marketability of title.

B. The Minnesota Title Standards, specifically Title Standards Nos. 13, 13A, 61, 91 and 91A, are referred to in this presentation and provide guidance in determining whether recorded documents affect the marketability of title.

II. Marketable Title Defined.

A. The seller under a purchase agreement is generally contractually obligated to provide marketable title.

B. Marketable title is defined by case law and not by statute in Minnesota. Under Minnesota case law, a marketable title is one that is free from reasonable doubt.

C. Title does not have to be perfect. Marketable title is "one that a prudent person, with full knowledge of all the facts, would be willing to accept." *Hubachek v. Maxbass Sec. Bank*, 134 N.W. 640, 642 (Minn. 1912).

D. A purchaser should receive a title that will allow use of the land free from claims of others and be reasonably free from doubts that would interfere with its value should the purchaser wish to sell it.

III. The Minnesota Marketable Title Act and Its Effect on Title Examination.

A. The Minnesota Marketable Title Act, adopted in 1943 and commonly referred to as the "40-Year Law", is codified as Minn. Stat. §541.023.

B. The Marketable Title Act provides:

As against a claim of title based upon a source of title, which source has then been of record at least 40 years, no action affecting the possession or title of any real estate shall be commenced…to enforce any right, claim, interest, *incumbrance, or lien founded upon any instrument, event or transaction which was executed or occurred more than 40 years prior to the commencement of such action, unless within 40 years after such execution or occurrence there has been recorded in the office of the county recorder in the county in which the real estate affected is situated, a notice…setting forth the name of the claimant, a description of the real estate affected and of the instrument, event or transaction on which such claim is founded, and stating whether the right, claim, interest, incumbrance, or lien is mature or immature.*

C. The Marketable Title Act combines the features of a curative act, a recording act, and a statute of limitations. *Wichelman v. Messner*, 83 N.W. 2d 800 (Minn. 1957).

D. The Marketable Title Act bars claims from becoming the basis of a present action and also extinguishes all rights and interests, including liens, rights of re-entry, and possibilities of reverter, founded upon any instrument recorded or any event which occurred more than 40 years before the date of examination. Not only are ancient claims or interests barred but they also cease to affect marketability.

E. The law also simplifies real property transactions by reducing the title search period and the number of documents required to be examined to determine the status of title.

F. Numerous interests are not barred by the Marketable Title Act. Some of the interests are specifically referenced in Minn. Stat. §541.023, subd. 6 while some are found in other statutes or determined by case law. Minnesota Title Standard No. 61 provides a summary of the interests and adverse rights not barred by the Marketable Title Act.

G. The 40-year "source of title".

1. The 40-year source of title is any deed, judgment, decree, sheriff's certificate, or other instrument which transfers or confirms, or purports to transfer or confirm, a fee simple title to real estate and has been of record for more than 40 years.

2. A 40-year source of title may even be a "stray deed", that is a deed from a transferor who is not the record owner, if the following two conditions are

fulfilled within the 40 years after the deed was recorded: (1) there is another instrument recorded which purports to transfer a fee simple title from said grantee or transferee to another person; and (2) there is no transfer of any interest in the real property made by the party who was the record title holder prior to the recording of the “source”. The purpose of the second requirement is to limit the effects of erroneous descriptions or accidental conveyances. Minn. Stat. §541.023, subd. 7.

3. A conduit or “straw” deed cannot be a 40-year source of title. *See Weber v. Eisentrager*, 498 N.W. 2d 460 (Minn. 1993). An example of a straw deed is a conveyance between spouses to create a joint tenancy.

H. Interests not barred by the Minnesota Marketable Title Act.

1. **Adverse rights preserved by notice**. The owner of an adverse right in real property may preserve an interest which would otherwise be barred by the Marketable Title Act by filing notice thereof as provided in Minn. Stat. §541.023, subd. 1 or commencing an action to enforce the right.

2. **Rights of the federal government**. This exception to the Marketable Tile Act is based on the doctrine of federal preemption. Abstracters and title examiners must search for the federal patent or congressional grant to determine the federal government no longer holds a fee interest in the real property. *See* Minnesota Title Standards Nos. 13 and 13A. Mortgages held of record by the United States or an agency or instrumentality thereof cannot be disregarded unless there is a specific federal statute imposing a period of limitation on enforcement of the mortgage. Minnesota Title Standard No. 25.

3. **Rights of parties in possession**. Possession means actual occupancy or use of part or all the real property. *Wichelman* at 814. Actual occupancy or use is itself notice of a claim which has not been abandoned. *Id*.

   a. The owner of rights under a party wall agreement, right-of-way, utility easement or other easement manifested by actual use or occupancy consistent with the nature of the easement created is deemed to be in “possession” of the servient estate. *Id*. Minnesota Title Standard No. 61.

b. Other examples of rights of parties in possession excepted from the Marketable Title Act are life estates and leases not expired by their terms.

c. The term “parties” includes “any person, partnership, state agency or department, or corporation…” Minn. Stat. §541.023, subd. 6.

4. **Mineral rights**. Mineral rights or estates which have been severed by conveyance, reservation or otherwise from the surface estate are not extinguished by the Marketable Title Act. “It is well established that the owner of the surface of the land and the owner of the minerals when they are severed from the surface estate have separate and distinct titles.” *Wichelman* at 814.

5. **Rights of certain corporations**. Rights of any railroad and other public service corporations or educational or religious corporations are not barred by the Marketable Title Act.

   a. This exception does not include: (1) reservations or exceptions of land for right-of-way or other railroad purposes contained in deeds of conveyance made by a railroad company or by trustees or receivers thereof unless said reserved or excepted land shall have been put to railroad use within 40 years after the date of said deeds of conveyance; or (2) any rights under any conditions subsequent or restrictions contained in any such deeds of conveyance.

6. **Certain mortgages.** Any undischarged mortgage executed by any of the corporations referenced in item 5 above are also not barred by the Marketable Title Act.

7. **Recorded mortgages with a term exceeding 40 years**. This exception is purely judicial as carved out in the *Wichelman* case. It is not referenced in the Marketable Title Act.

8. **Environmental covenants under the Uniform Environmental Covenants Act (Minn. Stat. §114E.01-.65)**. Minn. Stat. §114E.40(g) specifically states that “an environmental covenant may not be extinguished, limited or impaired by application of section 500.20 or 541.023.”

9. **Exemptions from 30-Year Law (Minn. Stat. §500.20).** Actions to enforce any private covenants, conditions and restrictions that are exempt from elimination by the 30-Year Law are also exempt under the Marketable Title Act. Minn. Stat. §541.023, subd. 2(c).

10. **Land dedicated to public use in a recorded plat.** This exception is also judicial as carved out in the case of *In re Moratzka*, 988 N.W. 2d 42 (Minn. 2023).

I. Rights of the State of Minnesota and Local Governments are Generally Barred by the Marketable Title Act.

1. Rights of the State of Minnesota, townships, and municipal corporations are barred by the Marketable Title Act except for possessory interests and environmental covenants.

2. For example, public rights of way not dedicated in a plat can be barred if they are recorded prior to the 40-year source of title and are not in "present, actual, open and exclusive" use. *Township of Villard v. Hotling*, 442 N.W. 2d 826 (Minn. App. 1989).

IV. The Minnesota Marketable Title Act is Not Applicable to Registered ("Torrens") Property.

A. In 2001, the Minnesota legislature amended the Marketable Title Act to exempt registered land from its coverage. See Minn. Stat. §541.023, subd. 2a.

B. The amendment was in direct response to the 1999 Minnesota supreme court decision in *Hersh Properties, LLC v. McDonald's Corporation*, 588 N.W. 2d 720 (Minn. 1999).

V. Determining the 40-Year Source of Title.

A. Identify the recorded federal patent or the congressional grant (which by its terms does not require a patent) to establish the federal government no longer holds a fee interest in the real property.

B. Find the 40-year source of title.

1. The source of title must be of record for at least 40 years, not just dated more than 40 years ago.

2. A source of title is any deed, judgment, decree, sheriff's certificate or other instrument which transfers or purports to transfer a fee title interest.

3. It includes instruments which transfer or confirm the transfer of a fee simple title, even if the transferor was not the record owner. However, if the transferor was not the record owner, two additional requirements must be met:

    a. During the 40 years after recording, there is another transfer by the transferee to a third party; and

    b. During the 40 years after recording, there is no transfer of any interest in the real property made by the party who was the record title holder prior to the recording of the presumed source of title.

4. Examples:

    a. 1970 – Warranty Deed to A recorded.
    BREAK IN CHAIN OF TITLE
    1980 – Warranty Deed from B to C recorded.
    2000 – Quit Claim Deed from C to D (last deed of record)

    Result: The 1980 deed is the 40-year source of title. Even though B was not the record owner in 1980, the deed has been of record for more than 40 years and there is a confirmatory deed from C to D during the 40 years after recording of the 1980 deed. A's interest may be ignored.

b. **1970 – Warranty Deed to A recorded.**
BREAK IN CHAIN OF TITLE
1980- Quit Claim Deed from B to C (last deed of record).

Result: The 1980 deed from B to C cannot be the 40-year source of title because B was not the record owner of the real property when the deed was recorded and there is no recorded transfer from C to a third party in the 40 years after the recording of the 1980 deed. A's interest cannot be ignored.

5. After the 40-year source of title is determined, he title examination is divided into an examination of the records prior to the 40-year source of title and after the 40-year source of title. The recorded documents prior to the 40-year source of title can largely be disregarded but must be examined for interests not barred by the Marketable Title Act, including not limited to, easements, mineral rights, rights of the federal government, party wall and well agreements, and railroad corporation interests and mortgages. Examination after the 40-year source requires greater scrutiny and is beyond the scope of this presentation.

VI. The Minnesota 30-Year Law and Its Effect on Title Examination.

A. The "30-Year Law" is codified as Minn. Stat. §500.20 and states that all private covenants, conditions and restrictions (collectively, "CCRs") affecting the title or use of real property and created by any means, including but not limited to, a grant, deed, devise, conveyance, declaration or will, which are more than 30 years old can be disregarded.

B. The 30-Year Law also bars a right of re-entry, which follows an estate in land that is subject to a condition subsequent, unless the right is asserted by entry or action within six years after the breach of the condition on which the right to re-enter is predicated. Minn. Stat. §500.20, subd. 3.

C. The 30 years is measured from the date of the document or instrument creating the CCRs and not the recording date, except that, as to a will, the 30-year period is measured from the date the will is admitted to probate.

D. The 30 years is not extended by automatic renewal or extension periods contained in the CCRs. *See Haugen v. Peterson*, 400 N.W. 2d 723 (Minn. 1987).

E. The 30 years is also not extended by a recital in a subsequent instrument in the chain of title. Minnesota Title Standard No. 91. However, the caveat to Title Standard No. 91 states that the Title Standard does not apply if a subsequent instrument in the chain of title re-states CCRs previously created or contains a specific statement of intent to recreate.

F. Exceptions to the 30-Year Law. The following interests and documents are not barred by the 30-Year Law:

1. **Condominium or Common Interest Community documents**. CCRs created by declaration, bylaws, floor plans or condominium plats for condominiums or common interest communities created under Minnesota Statutes Chapter 515, 515A or 515B or by any amendments thereto.

2. **Cooperative associations formed under Chapter 308A.** CCRs created by the articles of incorporation, bylaws or proprietary leases of cooperative associations formed under Chapter 308A.

3. **Common area.** CCRs created by the declaration or other instrument that authorizes a corporation, of which the qualification for being a shareholder or member is ownership of certain parcels of real estate, to hold title to common real estate for the benefit of the parcels.

4. **Affordable housing covenants.** CCRs created by a declaration or other instrument required by a governmental authority related to affordable housing. This exception was added to Minn. Stat. §500.20 in 2023.

5. **Real property in the City of North Oaks**. See 1988 Minn. Laws. Ch. 477, sec. 2.

6. **Conservation restrictions or easements**. Conservation restrictions or easements obtained under the authority of Minn. Stat. §§84.64, 84.65 and 84C.02.

7. **Scenic easements**. Scenic easements obtained under the authority of Minn. Stat. §§104.37,103F.311 and 103F.331.

8. **Environmental covenants.** Environmental covenants under Minn. Stat. §114E.01-.65.

9. **Utility, drainage, access or other easements.**

VII. Other Important Curative Acts.

A. **Defects in Mortgage Foreclosures by Advertisement**. Minn. Stat. §§582.25 and 582.27 cure multiple objections to defective mortgage foreclosures by advertisement. Many objections are cured one year after the last day of the redemption period of the mortgagor or the mortgagor's personal representatives or assigns.

B. **Defects in Contract for Deed Cancellations**. Minn. Stat. §§559.215 and 559.216 cures some defects in contract for deed cancellations one year after the last day of the reinstatement period of the purchaser. Minn. Stat. §559.214 allows the recording of a supplementary affidavit to cure all defects in a cancellation if the contract purchaser has abandoned the property and the abandonment has continued for at least six consecutive years after the termination proceedings.

C. **Unsatisfied Mortgages.** Minnesota Title Standard No. 25 provides a comprehensive list of Minnesota curative statutes which allow an unsatisfied mortgage to be disregarded. Generally, mortgages granted to a private party can be ignored if 15 years have elapsed since the maturity date of the debt stated in the mortgage or determined from information contained in the mortgage. Mortgages in favor of the United States or an instrumentality or agency thereof cannot be ignored unless there is a specific federal statute imposing a period of limitations on enforcement of the mortgage.

D. **Certificates of Satisfaction**. A certificate of satisfaction of mortgage which complies with Minn. Stat. §507.402 is effective to discharge a mortgage even if one or more assignments of mortgage have not been recorded. Minnesota Title Standard No. 113.

E. **Assignment of rents**. Minn. Stat. §559.17, subd. 3 states that an assignment of rents and profits Is deemed expired when a satisfaction of mortgage securing the same debt as the assignment of rents is recorded.

F. **Defective acknowledgments**. Minn. Stat. §507.251 cures defective and absent attestations, acknowledgments and certificates of acknowledgment, if the defective document has been recorded with the office of the county recorder or registrar of titles.

G. **Lack of Supporting Affidavit by Attorney-in-Fact, Trustee or Custodian**. Minnesota Title Standard No. 109 includes a comprehensive list of Minnesota Statutes which allow a title examiner to ignore the lack of a recorded affidavit relating to the nontermination or nonrevocation of the power or authority of an attorney-in-fact, trustee or custodian (collectively, fiduciary) to act if 15 years have passed since the recording of the conveyance signed by the fiduciary.

VIII. Conclusion.

A. The above-referenced curative acts are based on the theory that it is reasonable to require that stale demands be asserted within a reason time after a cause of action has accrued and that "ancient records should not fetter the marketability of real estate." *Wichelman* at 805, 806.

B. There are multiple other situation-specific curative acts not referenced in this presentation. Please see the "Gold Pages" to the Minnesota Title Standards which provide a comprehensive list of statutes of limitation and curative acts pertinent to the examination of real property titles.