Land Title Institute

COURSE 1 – CHAPTER 1

WHAT IS A TITLE?

INTRODUCTION

You are about to set sail on a voyage exploring many areas and expanses of the land title business. Some of you are old salts, having previously sailed these seas; others may have waded around a little and acquired some knowledge of the subject by listening to old sailors' tales; while still others are landlubbers who have yet to learn not to spit into the wind.

The chapters of this course undertake the difficult objective of maintaining a level of interest and understanding acceptable and stimulating to all. Therefore we believe an introduction is appropriate.

The land title business is technical. In many respects it is scientific. Had it been developed two hundred years ago, it would probably now be regarded as a profession. While closely related to the law, to engineering, and even to accounting, it has distinguishing characteristics which set it apart from such related professions. Anyone entering the title business soon realizes that he is not pitching hay or digging ditches. He has chosen a highly respected, dignified vocation which is vital to the economy and daily takes the responsibility of determining ownership of real estate - the foundation of all wealth. In case the last six or seven words went shooting by without rubbing off on you, permit us to repeat: Real estate, which is the nucleus of the title business, is "the foundation of all wealth".

The land title business has its own language. It is English, of course, but is laced with a multitude of words, phrases, terms and idioms beyond the comprehension and vocabulary of the uninitiated layman. Perhaps the greatest difficulty in acquiring title industry knowledge lies in comprehending the language. Comprehension involves not only an understanding of work definitions; it also involves a visualization of the operational functions to which such terms apply. Besides a glossary which we will furnish you, you should frequently consult a good dictionary when studying the texts of this course. The course is not difficult, but it will no doubt cover areas, subjects and terms with which you are not entirely familiar. This course would be of no benefit to you if it did not provide the opportunity to learn something new about the title business.

In all systems of education, history is of prime importance. The past is the yardstick by which we measure the present and predict the future. All employees should be conversant with the historical background of their company. It is embarrassing to be asked a simple question regarding your company's origin, growth, and development and not be able to give an intelligent answer. You doubtless are proud of your company, but your pride should be based not only upon knowledge of the present; it should be enriched with knowledge of the past.

WHAT IS A TITLE?

When a polite old gentleman at a reception asked a charming young lady from a title company, "What is a title?", she stammered and replied, "That's something you're supposed to get when you buy land." Strange as it may seem, she hit the nail on the head twice in one short breath, perhaps without realizing it - once when she said "supposed to" and again when she, in effect, said that a title is what you get when you buy land. One of the first things a person should learn about real estate titles is that they are precarious and that many times when a person buys land he does not get title to it like he is "supposed to". While it may seem a distinction without a difference, it is true that what you actually get when you buy land is the title and not the land itself. No one can pick up a piece of land and hand it to you. You can't put it in your pocket or carry it away. All that you get is the title, and the title gives you the right to enter upon the land and to possess, occupy, use, control, enjoy and dispose of the land.

In the title business, one must develop a vivid sense of imagination because many things in this business exist which are real, but which you cannot see, touch, or feel. Such things exist because the law says that they exist and it describes them, their characteristics and their effect. A title is of this nature. It is said that a title is composed of a bundle of rights and that such rights may vary from title to title. A "right" may be a term more familiar to you than the term "title". As a citizen, you have many rights, but you can't see or touch them. Courts and lawyers speak of good titles, bad titles, defective titles, perfect titles, and even describe some titles as marketable titles, yet no one has ever seen a title. Of course we have seen "evidence of title" such as a deed, a will, or court decree which passes title from one person to another, but no one, except in his imagination, has ever seen a title.

A title to real estate is basically the rights of ownership recognized and protected by the law. The word "entitle" is a derivative of the word "title". If you say that a person is entitled to something it means that he has the right to own and possess it. If you say that a person holds title to a piece of real estate, you are saying, in effect, that such person has the right to possess, occupy, use, control, enjoy and dispose of the real estate. In some cases the rights of ownership are almost absolute, while the others, some rights in the property do not pass to the purchaser, but remain outstanding, held by third parties. Therefore, in the latter cases, the ownership of the purchaser and consequently his title, is limited or restricted. We use the term "almost absolute" because there is no such thing as an absolute title to real estate held by an individual. If nothing more, there is always outstanding the rights of governments to tax and take land for defaulted taxes, and the rights of governments to regulate and restrict the use and occupancy of land, and to condemn and take land under the powers of eminent domain. Again, we frequently find absolute ownership diminished by outstanding rights held by third parties such as easements across the property for underground or overhead utilities, and we often find the rights of ownership restricted by what are commonly called "subdivision restrictions".

The word "title" is applicable to virtually every estate and interest in real estate which a person may own. If a person can own it, he can hold title to it for, as stated above, title to anything constitutes rights of ownership recognized and protected by the law. Estates and interests in real estate vary in effect, extent, and quality. The highest quality estate which a person can have in real estate is known as a "fee simple estate" or a "fee simple interest", or a "fee simple title" - the three terms being used interchangeably. The term "fee simple" is an old English term brought over by the early colonists. Generally speaking, it means unqualified ownership of land with unqualified power of disposition. Unqualified ownership does not mean that such ownership cannot be subject to outstanding encumbrances and interests of a lower quality than fee simple. A person may hold a fee simple title to real estate, but such title may be subject to easements, mortgages, restrictions, leases, mining rights, and numerous other rights and interests.

The farther one goes in explaining titles, the more technical and involved the subject becomes. We are now at the threshold of legalistic technicalities. To go deeper would soon bog us down in legal aspects. While much more could be said regarding titles we believe this is the point in the course at which we should pass on to another subject. Now when someone asks you, "What is a title?" you can answer, "It is the rights of ownership of real estate recognized and protected by the law, and such rights are primarily the right to possess, occupy, use, control, enjoy, and dispose of the real estate." That "bundle of rights" is called a title.

REAL PROPERTY AND PERSONAL PROPERTY

The two classes of property with which we are generally familiar are real property and personal property. These two classes of property have characteristics entirely different from each other. Real property, which is basically land, is permanent, immovable, and indestructible. Personal property, on the contrary, is usually impermanent, movable, and destructible, and ranges all the way from needles and pins to steamboats and locomotives. In the title business we have very little to do with personal property. Real estate title companies generally deal with real property. At the risk of appearing contradictory, however, we point out that real estate leases are dealt with by title companies and in many states the courts hold a lease to be personal property although it creates an interest in real property. This is just one of those inscrutable fictions of law which we learn to accept because the courts say that's the way it is.

The terms "land" and "real estate" are often used interchangeably but they are not quite synonymous. Land is the ground composing the crust of the exposed surface of the earth and, of course, is real property. The term "real estate" encompasses more than just land. It also includes things of relatively permanent nature imbedded in or attached to land which are intended to be real property, such as trees and buildings. Observe that word "intended" - here again we encounter a baffling aspect of the law. When a building is constructed, all of the lumber and other building materials are personal property. When such materials are incorporated into a building, they are converted, by operation of law, into real property unless the owner clearly makes known his intention that such building, when constructed, and such trees, when planted, are to remain personal property. Whether a tree or a building is a part of the real estate depends upon the intent of the owner, but in the absence of proper notice of the owner's intent to the contrary, the law presumes that trees and buildings are a part of the real estate. Although a building or a tree has become a part of the real estate, it is possible for the owner to change their character to personal property by selling the same with the intent that they shall be moved from the real estate to which they are attached. So when you see a tree or house being moved, you will know that such items have lost their real property characteristic and have taken on the characteristics of personal property.

Since the earliest days of our civilization, real estate has stood apart form other forms of property. Early lawyers and judges were so intrigued with its peculiar characteristics that they formed a separate body of law applicable to it. The relatively permanent, immovable and indestructible features of real estate, together with its adaptability to use, have resulted in it occupying a pre-eminent position in civilized society. More money is invested in real estate than in any other form of property, and more mortgage loans are secured by real estate than by any other type of security.

The characteristics of permanence and immovability make it possible and convenient for numerous people to hold different, simultaneous, and concurrent interests in the same piece of land. Its adaptability to use has resulted in the creation of innumerable rights, interests, and estates. As society and the economy have progressed, land has been utilized to serve more ends. As the use of land has increased, possible rights therein have multiplied and its title aspects have become more intricate and involved.

HOW TITLES ARE CREATED

We have previously explained that a title consists of a group or bundle of ownership rights, viz: rights of possession, occupancy, control, use, enjoyment, and disposition; and, that the law recognizes the existence, validity and extent of such rights; and, that the courts will protect and preserve such rights (or title) in behalf of the owner. It is, therefore, apparent that "title" and "rights of ownership" are practically synonymous. Since "ownership" is probably a more familiar term than "title," this subject heading might be changed to read "How Ownerships in Real Estate are Created".

Briefly stated, ownerships (and consequently titles) are created by deeds of conveyance, wills, inheritance, court decrees, and operation of law.

DEEDS

A deed is a written contract or agreement between a seller, who signs the deed and is called the "grantor", and a purchaser to whom the deed conveys real estate and who is called the "grantee". However, a deed should be signed only by the grantor. For this reason it is called a unilateral agreement. For a deed to be valid, its execution must conform to several technical requirements with respect to signatures, witnesses, seals, acknowledgments, delivery, and land description. Such requirements vary from state to state. We suggest that you ask some knowledgeable person in your company what these requirements are in your state and to explain them to you. If possible, obtain specimens of all forms of deeds used in your state and ask for explanations.

There are several kinds of deeds. The six principal types are: (a) Warranty Deeds, (b) Special Warranty Deeds, (c) Bargain and Sale Deeds also known as a Deed Without Warranty, (d) Quit Claim Deeds, (e) Deeds Issued by Judicial and Governmental Officials and (f) Deeds Made by Fiduciaries.

In a Warranty Deed, the seller (grantor) who signs the deed says, in effect, to the buyer (grantee), "I warrant (guarantee) that I have good title to the land, that there are not material defects in my title and no outstanding interests held by third parties; that there are no mortgages, unpaid taxes or other liens or encumbrances outstanding on the land; that I have good, right and lawful authority to sign and deliver this deed; and that this deed conveys to the purchaser good, indefeasible title to the land."

In a Special Warranty Deed the seller (grantor) says, in effect, to the buyer (grantee), "I only warrant (guarantee) that I have done nothing to make the title bad or defective or encumbered while I have owned it; that I have good, right and lawful authority to sign and deliver this deed; that the title which this deed conveys is good and is clear insofar as my actions are concerned."

In a Bargain and Sale Deed which is sometimes called a fee simple deed, there is an implication that the grantor owns the real estate. In such a deed the seller (grantor) says, in effect, to the buyer (grantee), "I bargain, sell, transfer and convey to you the real estate described in this deed. I make no representations or warranties with respect to title or anything else."

In a Quit Claim Deed there are no warranties or representations or even an implication that the grantor owns or holds title to the land or to any particular interest in it. In such a deed the grantor simply says to the grantee, "I surrender to you and quit claim and abandon all claims and interests, if any, which I may have in the land described herein." While quit claim deeds are seldom used to convey title, in most states such deeds, like Bargain and Sale Deeds, will pass title to the grantee if the grantor owns the land.

Deeds Issued by Judicial and Governmental Officials convey title to purchasers at various types of judicial and governmental sales. In most states tax deeds are common. Sheriffs deeds are frequently issued in connection with the sales of property of judgment debtors to pay judgments. A form of deed issued by some states and by the Federal Government initially conveying public lands to private individuals is called Letters Patent.

There are also deeds made by fiduciaries, most prominent among which are trustees deeds, executors deeds, and guardians deeds. Such deeds only convey the interest in the property which the grantor controls and do not warrant the title.

Deeds, regardless of their type, usually create titles acquired by the grantees.

LEASES

Leases of real estate, while definitely transferring from the lessor (owner) to the lessee (tenant) a leasehold interest in real estate for a term of years, are held to be personal property in most states. However, throughout the country title insurance companies issue title insurance to lessees (tenants) on their leasehold estates or interests. Regardless of the fictions of law, in the title industry we regard the lessee as holding title to an insurable interest in real estate, so we must include the lease among the instrumentalities creating titles. Warranty provisions may be written into a lease similar to those contained in a warranty deed.

WILLS

Most people have a fairly clear concept of a will. A person who makes a will is called a testator. Wills are made during the life of the testator and provide for the disposition of his property upon his death. Wills take effect only upon the death of the testator. At any time before his death a testator may cancel or revoke his will, or he may amend the same by signing an amendment called a codicil. In a will, the provision which passes title to real estate is not called a conveyance as it is in a deed; it is called a devise. The person designated to receive real estate is called a devisee. While requirements regarding the execution (signing, witnessing, etc.) of a will vary somewhat from state to state, such requirements are not quite as technical as those relating to the execution of a deed. For instance, a provision in a will devising real estate may be valid and effectual without specifically describing the real estate. Uncle Joe's will may say, "I devise to my nephew, Joe Doaks, all of my real estate in Madison County: and such a provision is effectual in a will whereas in some states such a description would not be sufficient in a deed. Of course, there may be a little difficulty finding and identifying all of Uncle Joe's property in Madison County, especially if he had the habit of putting his deeds in an attic trunk instead of recording them - and especially if the old house burned down, including the trunk. However, such circumstances add mystique and the elements of a treasure hunt to a devise and seem to enchant some people.

INHERITANCE

If a person dies without leaving a will he is said to die "intestate" and his property passes to his heirs according to the laws of descent and distribution. In other words, his heirs inherit his property by operation of law. Laws of descent and distribution specify the relative of the deceased person first in line to inherit and proceed to specify, according to degrees of kinship, the order in which other relatives are entitled to inherit. Titles to real estate frequently pass from deceased persons to their heirs in this manner.

COURT DECREES

Some courts have power and authority to decree that the title to certain real estate is by virtue of decree, either vested in (held by) or transferred to a certain person. This frequently happens in divorce cases where property is held jointly by husband and wife and the court decides that only one of such parties is entitled to the property. It also happens in suits to quiet title and in ejectment suits where a person succeeds in convincing the court that he is the rightful owner of the real estate. Again it happens in cases where "A" takes "B's" money and buys real estate, taking title in "A's" name and the court decides that "B" actually owns the property.

Because people are accustomed to seeing titles transferred (conveyed) by a deed, the courts, in entering a decree such as above described, will often require the person who apparently holds title to make a deed to the person whom the court says is entitled to the real estate, further providing that if such person fails to make such deed within a given time, an officer of the court be directed to make such deed. In some states, in cases of judicial sales of property such as mortgage foreclosures and partition suits, a deed is made by an officer of the court to the purchaser.

TITLES BY OPERATION OF LAW

Under the provisions of a law, whenever a title to real estate passes from one person to another without anyone having to sign a deed or other instrument of conveyance, the title is said to pass by operation of law. We have already mentioned, under the subject of inheritance, that in case a deceased person does not leave a will, title to his property passes to his heirs by operation of law. There are a number of other situations in which title passes to a new owner by operation of law. In many states, title to real estate can be acquired by adverse possession in which case title passes by operation of law. Various governments may acquire title to real property through exercise of the powers of eminent domain. Governments may also acquire title to real property through the operation of the law of escheat. On occasion, the Federal Government conveyed land to the states by a simple Act of Congress, and states have conveyed land to the railroad builders and canal diggers by a simple state statute. Of primary importance to you in this regard at this time is that titles can be created simply by operation of law.

THE NATURE OF A CHAIN OF TITLE

Title to all land in this country was originally held by some nation or government. Nations acquired this land by discovery, conquest, and purchase. Nations (including the United States) which held title to this land conveyed tracts both large and small to individuals, and such individuals sold and conveyed the land to other individuals. Thus was started a succession of conveyances to many succeeding owners. The first conveyance from a government to an individual was variously called a grant, a patent, and sometimes it was simply referred to as a deed. Regardless of what it was called, it was the first link in the chain of title to the land. Beginning with the first conveyance from the government to an individual, each succeeding conveyance was a link in the chain of title.

An old saying which holds that "a chain is no stronger than its weakest link" is basically true with respect to titles. As the links in a chain of title are formed by conveying title from one owner to the next, it is necessary that each owner receive all rights of the former owner. If any rights of ownership are left behind and not transferred to the new owner, that link in the chain of title is weakened. If the conveyance or transfer of title to the next owner is defective or invalid, or not made in accordance with the law, that link may be considered bad and may well result in a break in the chain of title.

Sometimes the grantee in a defective deed is unaware of the defect, and thinks he has good clear title to the property. He, in turn, sells and attempts to convey the land to another, and so on. A person cannot convey what he does not own. If the defect was a type which made the deed invalid, the man who took the defective deed has nothing. He was a fradulent owner. He had nothing to sell and convey. The deed which he gave conveyed nothing and the same was true of deeds made by owners who followed him. Irrespective of all deeds made by succeeding false owners, title remained vested in that person back up the line who owned it prior to the invalid deed. For a chain of title to be good, every link in the chain, from the first government conveyance to the present owner, must be good and valid. The job of title examiners is to determine that each link in a chain of title is valid, is without material defect, and that no outstanding liens, claims or interests affect the property.

Where a chain of title is begun by an original conveyance from a government, such government is known as the original source of title. Chains of title can begin from other sources. In some localities, an ancient, well-recognized owner is treated as the source of title. Where title is acquired by adverse possession or by a tax deed, the person acquiring such title is usually recognized as the source of title with respect to the chain of title which he initiates.

POSSIBLE DEFECTS IN A CHAIN OF TITLE

The term "defects" covers a wide range of flaws and imperfections in titles, the effects of which range all the way from material irregularities to complete invalidation of the title. Defects in a title usually result in a loss to the person claiming ownership.

A list has been compiled of over thirty possible defects in a chain of title. It will suffice here to mention only a prominent few, viz:

(a) Deeds by persons supposedly single, but secretly married
(b) Forged deeds, releases, etc.
(c) Undisclosed missing heirs
(d) Deeds by minors
(e) Deeds by incompetent persons
(f) Wills discovered after administration of decedent's estate
(g) Erroneous interpretation of wills
(h) Impersonation of the true owner
(i) Instruments executed under fabricated or expired power of attorney
(j) Deeds delivered after death or without the consent of the grantor
(k) Falsification of public records
(l) Mistakes of recorders in recording legal documents
(m) Lack of jurisdiction of persons by courts when entering decrees
(n) Bankruptcy.

You have doubtless heard that a forged deed is void and that no minor or incompetent person has the ability to make a good deed. The other possible defects listed above are just as serious and can cause material loss to the ownership claimant. We use the words "ownership claimant" because where defects in a chain of title exist, the person who claims to be and thinks he is the owner may not be the owner at all.

As you progress in this course, the whys and wherefores of title defects will become clearer and more understandable. (We heard you - you said, "Well, I hope so!")

HOW TITLE LOSSES OCCUR

Title losses by owners usually occur because of defects in or liens upon the title which the owners did not know about at the time they acquired title. With the exception of gifts and inheritances, the means by which real estate is usually acquired is through purchase, and purchasers often pay a high price for it. If their title fails completely and someone else actually owns the property, a 100 percent loss of their investment can, and often does, result. If an undisclosed heir of a former owner holds title to, say a one-third interest in the property, the owner will lose at least one-third of the value of the property. If there are material irregularities in the chain of title, or outstanding interests such as an easement, or an encroachment of an owner's building upon adjoining property, the owner may have to obtain interests or releases to correct the irregularities. If, for some reason, a mortgage or mechanics lien was overlooked when the owner purchased the property, he has no option except to pay off such mortgage or mechanics lien in order to keep from losing his property.

Failure of execution of real estate instruments in conformity with the requirements of law sometimes results in title losses. Laws of various states set up requirements for execution of deeds, wills, leases, mortgages, contracts, and other real estate instruments. These laws usually establish requirements relating to signatures, seals, witnesses, acknowledgments, and property descriptions. Carelessness or ignorance of the law are the principal causes of title losses in this category. People often make the mistake of assuming that laws are the same in all states. For instance, if the laws of Pennsylvania require only one witness on a deed, and the laws of Florida require two, a deed attempting to convey Florida real estate executed in Pennsylvania with one witness is not good.

Secret marriages have caused serious title losses. In many states a wife automatically acquires a dower interest in her husband's real estate the minute he buys it. In such states, if he owns real estate prior to his marriage, the minute he marries his wife acquires a dower interest in all real estate he owns. She may never have been in the state in which the land is located. She may not even know that her husband owns such land. Her name may not appear in any of the title documents. It could be that no one ever heard of her where the land is located - yet she automatically owns and holds a dower interest in all real estate her husband owns in such states.

Frequently during World War II, lonely G. I. Joe, far from home, precipitously married Sally. After a short interlude he was transferred to other parts of the world. Neither of them attached much significance to the marriage and it became only a vague memory. After the war Joe returned home, never mentioning the marriage to anyone. He eventually bought and sold real estate, representing himself to be a single man. Every person who bought real estate from him thought they were getting a good title. Then doomsday dawned - Sally appeared on the scene and advised all the purchasers that her husband had died and that she owned a substantial interest in their homes and other real estate. That's the way some title losses occur.

The unknown heir has been the subject of many novels and magazine stories. Unknown heirs have also been the cause of material title losses. For example, a man marries in California and has three children by that wife. A divorce takes place, the wife being awarded custody of the children. Embittered, the husband disappears and eventually starts life over again in New Jersey. He marries the second time there, never mentioning the three California children. Later on he dies intestate. The court, in probating his estate, decides that his New Jersey widow and the two New Jersey children are his sole and only heirs, and enters an order to that effect. The widow and children sell the real estate. The title on its face looks perfectly regular. Several successive sales of the real estate take place, then up jumps the devil. The California children, who were entitled to one-half of their father's estate, show up with a lawyer and assert their claims against the present owners. The owners have no option except to buy the interests of the California children

or go into court asking the court to sell the properties and divide the proceeds between them and the California children. That's another way title losses occur.

With respect to forgeries, let's take the case of the forged deed. We will assume that the title is vested in and held by John Bailey. An imposter, representing himself to be John Bailey, enters a real estate sales office and lists the real estate for sale. The real estate agent finds a purchaser. The imposter and his girlfriend, who represents herself to be Mrs. John Bailey, sign a deed to the purchaser using the names of Mr. and Mrs. John Bailey. The impostors take the money and vanish. No one except the impostors knows the deed is a forgery and that the impostors have engaged in false personation. The deed looks perfectly good on its face. The title as a whole looks good and would be passed by any title examiner. The purchaser sells the property and it changes hands a number of times before the real owner shows up and uncovers the forgery. The purchaser who took the forged deed and the purchasers who succeeded him got nothing. Their deeds conveyed no title. The title remained in the person who owned the property at the time of the forgery.

We could continue with example after example of situations in which title losses occur. You may ask, "If titles are so tricky and hazardous, how does an innocent purchaser of real estate protect himself?" The answer is elemental: "That's what title insurance is for."