

UNIFORM MARKETABLE TITLE ACT*

Drafted by the

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ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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* The conference changed the designation of the Marketable Title Act from Uniform to Model as approved by the Executive Committee on January 18, 1998.

UNIFORM MARKETABLE TITLE ACT

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UNIFORM MARKETABLE TITLE ACT

Prefatory Note

This Act originally appeared as Part 3 of Article 3 of the Uniform Simplification of Land Transfers Act (USLTA) promulgated by the National Conference of Commissioners on Uniform State Laws in 1977. It is now promulgated as a separate Act for states which wish to adopt marketable title legislation but do not wish to adopt other provisions of USLTA. The Act is derived from the Model Marketable Title Act prepared by Professor Lewis M. Simes and Clarence B. Taylor for the Section of Real Property, Probate and Trust Law of the American Bar Association and for the University of Michigan Law School. That Act was itself based on earlier legislation which had been adopted in Michigan, Wisconsin, and Ontario. The Model Act is discussed in L. M. Simes & C. B. Taylor, *The Improvement of Conveyancing by Legislation* (Ann Arbor: University of Michigan Law School, 1960), pp. 6-16. Legislation based on the Michigan Act or the Model Act has been adopted in Connecticut, Florida, Indiana, Iowa, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Utah, and Vermont. Marketable title legislation on somewhat different patterns is found in a number of other states. A full discussion of marketable title legislation can be found in P. E. Basye, *Clearing Land Titles* (2d Ed. 1970), Chapter 9.

The basic idea of the Marketable Title Act is to codify the venerable New England tradition of conducting title searches back not to the original creation of title, but for a reasonable period only. The Model Act is designed to assure a title searcher who has found a chain of title starting with a document at least 30 years old that he need search no further back in the record.

Provisions for rerecording and for protection of persons using or occupying land are designed to prevent the possibility of fraudulent use of the marketable record title rules to oust true owners of property.

The most controversial issue with respect to marketable title legislation is whether or not an exception should be made for mineral rights. This Act follows the Model Act in making no such exception. Any major exception largely defeats the purpose of marketable title legislation, by forcing the title examiner to search back for an indefinite period for claims falling under the exception. The Act, however, contains an optional provision, Section 7(5), for states which choose to exclude mineral rights from the interests cut off by the Act.

States which wish to give special treatment to mineral interests should consider adopting the Uniform Dormant Mineral Interests Act, which was promulgated by the National Conference in 1986, along with adoption of this Act. If the Dormant Mineral Interests Act is adopted along with this Act, Section 7(5) of this Act should be amended to state that mineral interests are subject to the Dormant Mineral Interests Act, rather than this Act.

UNIFORM MARKETABLE TITLE ACT

SECTION 1. DEFINITIONS. In this [Act], unless the context otherwise requires:

(1) "Conveyance" means a transfer of real estate other than by will or operation of law.

(2) "Document" means a writing, plat, or map, and includes information in electronic, mechanical, or magnetic storage; microfilm; electronic data transmission signals; and other media that can be converted into a legible writing, plat, or map by a machine or device.

(3) "Effective date of root of title" means the date on which the root of title is recorded.

(4) "Law" includes statutes, case law, administrative actions, and legislative acts of local governments.

(5) "Marketable record title" means a title of record, complying with Section 3, that operates to extinguish interests and claims existing before the effective date of the root of title, as provided in Section 5.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity. [In the case of a land trust, however, the term means the beneficiary of the trust rather than the trust or the trustee.]

(7) "Real estate" means an estate or interest in, over, or under land, including minerals, structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land though not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the interest is claimed. The term includes rents and the interest of a landlord or tenant.

(8) "Record," used as a verb, means to present to the recording officer for the place in which the land is situated a document that the recording officer accepts and either enters in a daily log or notes thereon an identifying number, whether or not under applicable law the recording officer is directed to file the document or otherwise to maintain a record of it.

"Recorded" and "recording" have corresponding meanings.

(9) "Record chain of title" means the series of recorded documents creating or evidencing rights of the successive holders of title to real estate.

(10) "Record location" means the location by book and page, document number, electronic retrieval code, or other specific place of a document in the public records accessible in the same recording office in this State where the document containing the reference to the location is found.

(11) "Recording office" means [].

(12) "Records" includes probate and other official records available in the recording office.

(13) "Restriction" means a covenant, condition, easement, or other limitation created by agreement, grant, or implication affecting the use or enjoyment of real estate, but does not include a security interest or lien.

(14) "Root of title" means a conveyance or other title transaction, whether or not it is a nullity, in the record chain of title of a person, purporting to create or containing language sufficient to transfer the interest claimed by that person, upon which that person relies as a basis for marketability of title, and which was the most recent to be recorded as of a date 30 years before the time marketability is being determined.

(15) "Signed" includes the use of a symbol executed or adopted by a party with

present intention to authenticate a writing.

(16) "Title" means the right to an interest in real estate, including the interest of an owner, lessee, possessor, lienor, holder of a security interest, and beneficiary of a restriction including an owner of an easement.

(17) "Title transaction" means a transaction purporting to affect title to real estate, including title by will or descent, by tax deed, by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, or sheriff's deed, by decree of a court, by warranty deed, by quitclaim deed, and by a security interest.

(18) "Utility easement" means an easement (i) of way for a railroad, subway, street railway, or trolley bus line; (ii) for the transmission line for the transmission of electricity, electronic communications, water, oil, gas, or other goods; (iii) for sewerage or drainage; or (iv) for similar utility uses.

(19) "Writing" includes printing; typewriting; electronic, mechanical, or magnetic storage; microfilm; electronic data transmission signals; and any other intentional reduction of language to tangible form that can be converted into legible form by a machine or device.

Comment

1. "Conveyance." This term is intended to include any method of lifetime transfer (*e.g.*, deed, lien foreclosure) of an interest in real estate. Since a real estate security interest creates an interest in land, a mortgage or other security interest is a "conveyance." Similarly, if the creditor assigns his claim secured by the security interest and his interest in the real estate of the debtor, the "assignment" is a conveyance.

2. "Document" is defined broadly to allow for the introduction of electronic data transmission.

3. "Law" is defined to make clear that it includes administrative actions and legislative acts of local governments.

4. "Real estate." The definition provides that real estate is the legal relationship (interest) a person has against the world with respect to the land. It includes both the common law estate and easements and other incorporeal hereditaments. The term is also used, if the context warrants, to refer to the physical object (the land) in which the interest exists. Leaseholds are defined as real estate for the purposes of this Act. However, the treatment of leaseholds as "real estate" is only for the purposes of this Act and is not intended to change other law, such as the law on decedents' estates, under which leaseholds may be treated as personal property.

5. "To record" is defined to include the situation where a document not entitled to record is nevertheless accepted by the recorder.

6. "Record chain of title" is defined to include all possibly relevant documents.

7. "Record location" is defined so as to limit the efforts of a title searcher who encounters in one document a reference to another.

8. "Recording office" is to be defined by each state to be the appropriate local office, such as the Office of the County Recorder.

9. "Restriction" is a generic term used to cover a variety of interests typically held by one party in land of another. It is defined to include easements.

10. "Root of title." The definition makes clear that a quitclaim deed or a forgery can be a root of title.

11. "Writing" is taken from the Uniform Commercial Code (UCC) Section 1-201. The definition has been expanded to allow clearly for electronic data transmission and storage. The omission of other definitions found in UCC Section 1-201 and elsewhere in the UCC is not intended to indicate that the omitted words have a different meaning when applied to real estate.

SECTION 2. NOTICE; KNOWLEDGE; GIVING NOTICE; RECEIPT OF NOTICE.

(a) A person has notice of a fact if:

(1) the person has actual knowledge of it;

(2) the person has received a notice of it; or

(3) from all the facts and circumstances known to the person at the time in

question that person has reason to know it exists.

(b) Except as provided in subsection (e), a person has knowledge or learns of a fact or knows or discovers a fact only when the person has actual knowledge of it.

(c) A person notifies or gives or sends notice to another, whether or not the other person actually comes to know of it, by taking steps reasonably required to inform the other in ordinary course, but if this [Act] specifies particular steps to be taken to notify or to give or send notice, those steps must be taken.

(d) A person receives a notice at the time it:

(1) comes to the person's attention; or

(2) is delivered at the place of business through which the person conducted the transaction with respect to which the notice is given or at any other place held out by the person as the place for receipt of the communication.

(e) Notice, or knowledge of a notice, received by a person is effective for a particular transaction at the earlier of the time it comes to the attention of the individual conducting the transaction or the time it would have come to the individual's attention had the person maintained reasonable routines for communicating significant information to the individual conducting the transaction and had there been reasonable compliance with the routines. Reasonable compliance does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SECTION 3. MARKETABLE RECORD TITLE.

(a) A person who has an unbroken record chain of title to real estate for 30 years

or more has a marketable record title to the real estate, subject only to the matters stated in Section 4.

(b) A person has an unbroken chain of title if the official public records disclose a conveyance, or other title transaction, of record not less than 30 years before the time marketability is determined, and the conveyance or other title transaction, whether or not it was a nullity, purports to create the interest in or contains language sufficient to transfer the interest to:

(1) the person claiming the interest; or

(2) some other person from whom, by one or more conveyances or other title transactions of record, the purported interest has become vested in the person claiming the interest.

(c) If anything appears of record, in either case described in subsection (b), purporting to divest the claimant of the purported interest, the chain of title is broken.

Comment

This is the basic section which frees the holder of marketable record title from adverse claims antedating his root of title, even if the root of title is a forgery. *See Marshall v. Hollywood, Inc.*, 224 So.2d 743 (Fla. App. 1969), affirmed 236 So.2d 114 (Fla. 1970).

SECTION 4. MATTERS TO WHICH MARKETABLE RECORD TITLE IS

SUBJECT. The marketable record title is subject to:

(1) all interests and defects that are apparent in the root of title or inherent in the other muniments of which the chain of record title is formed, but a general reference in a muniment to an easement, restriction, encumbrance, or other interest created before the effective date of the root of title is not sufficient to preserve it unless a reference by record location is made in the muniment to a recorded title transaction that created the easement, restriction,

encumbrance, or other interest;

(2) all interests preserved by the recording of proper notice of intent to preserve an interest;

(3) all interests arising out of title transactions recorded after the effective date of the root of title, and which have not been previously extinguished; [and]

(4) all interests preserved under Section 7[; and][.]

[(5) all interests preserved by the [Torrens Title Act].]

Comment

This section states the types of claims to which a marketable record title is subject. As mentioned in the Prefatory Note, any extension of this list may defeat the whole purpose of marketable title legislation.

SECTION 5. INTERESTS EXTINGUISHED BY MARKETABLE RECORD

TITLE.

(a) In this section, "person dealing with the real estate" includes a purchaser of real estate, the taker of a security interest, a levying or attaching creditor, a real estate contract vendee, or another person seeking to acquire an estate or interest therein, or impose a lien thereon.

(b) Subject to Section 4, a marketable record title is held by its owner and is taken by a person dealing with the real estate free and clear of all interests, claims, and charges, the existence of which depends upon an act, transaction, event, or omission that occurred before the effective date of the root of title. All interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether the interests, claims, or charges are asserted by a person who is or is not under a disability, whether the person is within or without the state,

whether the person is an individual or an organization, or is private or governmental, are null and void.

(c) Recording an interest after the effective date of the root of title does not revive an interest previously extinguished.

Comment

This section is designed to make absolutely clear what has already been indicated in Section 3, that all interests except those indicated in Section 4 are extinguished by marketable record title.

SECTION 6. EFFECT UPON MARKETABLE RECORD TITLE OF RECORDING NOTICE OF INTENT TO PRESERVE AN INTEREST.

(a) A person claiming an interest in real estate may preserve and keep the interest, if any, effective by recording during the 30-year period immediately following the effective date of the root of title of the person who would otherwise obtain marketable record title, a notice of intent to preserve the interest. Disability or lack of knowledge of any kind on the part of anyone does not suspend the running of the 30-year period. The notice may be recorded by the claimant or by another person acting on behalf of a claimant who is:

- (1) under a disability;
- (2) unable to assert a claim on his [or her] own behalf; or
- (3) one of a class, but whose identity cannot be established or is uncertain

at the time of recording the notice of intent to preserve the interest.

(b) The notice must:

- (1) state the name of the person claiming to be the owner of the interest to be preserved;

(2) contain a reference by record location to a recorded document creating, reserving, or evidencing the interest to be preserved or a judgment confirming the interest;

(3) be signed by or on behalf of the person claiming to be the owner of the interest; and

(4) state whether the person signing claims to be the owner or to be acting on behalf of the owner.

(c) A notice recorded to preserve a utility easement claimed in the real estate of another may include a map incorporating the claim.

Comment

A simple method is provided for persons whose title depends solely upon documents which have been of record for more than 30 years to prevent a later recorded document from cutting off the effect of the documents upon which they rely. Suppose real estate was owned by A in 1945 and that A conveyed to B in 1955, to C in 1965, and to D in 1975. Also suppose that the property is carried on the property tax rolls in the name of D, but that neither D nor any of the other parties is otherwise "in possession" of the real estate. (See Section 7.) If this Act became effective in 1990, then in 1996 C has a marketable record title free of all claims of A and B and superior to that of D since C has an unbroken chain of title for 30 years. (See Section 3.) If, however, C fails to record a notice of intent to preserve the interest by 2005, C's interest will be extinguished because D will then have an unbroken chain of title for 30 years. If, however, C does record a notice of intention to preserve his interest within 30 years from the recording of his deed from A, C's record interest will be preserved. Of course, D's interest might be cut off by an adverse possession claim of D under the adverse possession law of the particular state. Observe that, if the property had been carried on the tax rolls in C's name within three years before marketability is being determined, C's interest would not be cut off, even if the deed from A to D gave D marketable record title under the Act.

SECTION 7. INTERESTS NOT BARRED BY [ACT]. This [Act] does not bar:

(1) a restriction the existence of which is clearly observable by physical evidence of its use;

(2) a use or occupancy inconsistent with the marketable record title, to the extent that the use or occupancy would have been revealed by reasonable inspection or inquiry;

(3) rights of a person in whose name the real estate or an interest therein was carried on the real property tax rolls within three years before marketability is to be determined, if the relevant tax rolls are accessible to the public when marketability is to be determined; [and]

(4) a claim of the United States not subjected by federal law to the recording requirements of this State and which has not terminated under federal law[; and][.]

[(5) oil, gas, sulphur, coal, and all other mineral interests, whether similar or dissimilar to those minerals specifically named.]

Comment

This list of exceptions is designed to be as limited as possible, given the restrictions imposed by federal law and the need to avoid use of marketable record title for fraudulent purposes. The position of the Uniform Law Commissioners is that mineral interests should be subject to the Act, but optional subsection (5) is included for states which do not wish to bar mineral interests by marketable title legislation. As noted in the Prefatory Note, an alternative way of dealing with mineral interests is to adopt the Uniform Dormant Mineral Interests Act along with this Act.

The provisions on use or occupancy and on tax assessment should virtually eliminate situations in which more than one person can claim marketable record title to the same property. Paragraph (3) derives from the Florida Marketable Record Title Act, F.S.A. Sec. 712.03(6).

SECTION 8. EFFECT OF CONTRACTUAL LIABILITY AS TO INTERESTS

ANTEDATING ROOT OF TITLE. This [Act] does not relieve a person of contractual liability with respect to an interest antedating the person's root of title to which the person has agreed to be subject by reason of the provision of a deed or contract to which the person is a party, but a person under contractual liability may create a marketable record title in a transferee not otherwise subjected to the interest antedating root of title by this [Act].

Comment

This section is meant to overcome a possible constitutional problem of impairment of the obligations of contracts. Its application is limited so that it should pose no problem for the title examiner.

SECTION 9. LIMITATIONS OF ACTIONS. This [Act] does not extend the period for bringing an action or for doing any other required act under a statute of limitations.

SECTION 10. ABANDONMENT IN FACT. This [Act] does not preclude a court from determining that an interest has been abandoned in fact, whether before or after a notice of intent to preserve it has been recorded.

SECTION 11. EFFECT OF INDEFINITE REFERENCE IN RECORDED INSTRUMENT.

(a) Unless a reference in a document is a reference to another document by its record location, a person by reason of the reference is not charged with knowledge of the document or an adverse claim founded on it, and the document is not in the record chain of title by reason of the reference to it.

(b) References that are not to a record location and are too indefinite to charge a person with knowledge of an interest or to bring the document within the record chain of title include:

- (1) "subject to the terms of a deed dated July 4, 1976, from A to B;"
- (2) "subject to a mortgage from A to B;"
- (3) "subject to existing encumbrances;"
- (4) "subject to easements of record;"

(5) "subject to mortgages of record;" and

(6) "excepting so much of the described premises as I have heretofore conveyed."

(c) This section does not prevent an indefinite reference from constituting a waiver or exception or from being taken into account in determining the existence of:

(1) a contractual obligation or condition between the immediate parties to the document in which the reference occurs; or

(2) a negation of a warranty of title.

(d) This section does not limit the effect of recording a memorandum of lease or other document the recording of which is permitted by law.

Comment

This section derives from the Model Act Concerning Indefinite References, which in turn is patterned after Massachusetts legislation. The Model Act was prepared by Professor Lewis M. Simes and Clarence B. Taylor for the Section of Real Property, Probate and Trust Law of the American Bar Association and for the University of Michigan Law School. It is discussed in L. M. Simes & C. B. Taylor, *The Improvement of Conveyancing by Legislation* (Ann Arbor: University of Michigan Law School, 1960), pp. 101-106.

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

SECTION 13. SHORT TITLE. This [Act] may be cited as the Uniform Marketable Title Act.

SECTION 14. SEVERABILITY. If any provision of this [Act] or its application to

any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 15. TIME OF TAKING EFFECT; PROVISIONS FOR TRANSITION.

(a) Except as otherwise provided in this section, this [Act] takes effect at 12:01 a.m. on [].

(b) If a period of limitation specified in this [Act] would result in prohibiting commencement of a judicial proceeding before the effective date of this [Act] or within two years after its effective date, the period during which the proceeding may be brought is extended until two years have expired after the effective date, but only if the period would have continued to run under the former law until after the effective date. In all other cases the period of limitation is that specified in this [Act].

(c) A person who claims an interest that would be extinguished under this [Act] may preserve the interest by recording a notice of intent to preserve the interest within two years after the effective date of this [Act]. The notice has the effect provided in Section 6.

SECTION 16. REPEAL. The following acts and parts of acts are repealed:

- (1)
- (2)
- (3)