

Chapter 13 Lecture Notes Guarantees of Title and Location

13-1 Scope

Ownership of Land consists of

1. a good written title with right of possession
2. possession with the right to acquire title as a result of a lawful, unwritten conveyance.

The surveyor certifies the location of land and the status of encroachments. Guarantees of title free from defects is left to other professionals: title companies, attorneys, courts or the state.

Land is rights...they extend from the center of the earth upward through the land surface to the heavens. Land is not one facet, it includes many different rights. They could be surface, subsurface or aerial.

Land Rights:

1. possession
2. ownership
3. timber
4. water
5. aerial

In its true perspective, ownership of land is never complete; someone else always has a right against the land (taxes, zoning, authority, etc)

A deed is never proof of ownership. It is however, evidence of that ownership.

13-2 Registration of Titles vs Registration of Ownership

Recording a deed in a public place is evidence of landownership.

Torrens title registers both the owner and the land, similar to an automobile registration.

13-3 Aids to Title and Location Guarantee

Courts do not guarantee title...they declare by decree what are the existing rights unimpaired.

13-4 Title and Possession Guarantees

Within the US title guarantee, possession guarantee, and statements of title condition guarantee (abstracts) vary from state to state and can be classified as follows:

1. Warranty Deed
2. Abstract (guarantee of facts)
3. Abstract with attorney's opinion
4. Written title insurance
5. Written title insurance and possession insurance
6. Torrens title system
 - a. Written ownership of title guarantee
 - b. Written ownership guarantee

13-5 Warranty Deed

The grantor of the warranty deed guarantees the title to be free of defects...works if the grantor has sufficient funds to cover claims.

13-6 Patents

Sovereigns issuing patents do not guarantee title...a patent is merely a quit claim to any rights or interest possessed by the sovereign.

13-7 Chain of Title

History of title from creation to the present...only as good as the weakest link in the title registration.

13-8 Abstract of Title

A statement of publicly recorded facts relating to the chain of title. It is not a complete statement of every detail of past title transfers; it is a summary of the essential facts necessary to pass judgement.

13-9 Abstract Companies

This use to be an attorneys job, now there are companies that specialize in abstracts of title.

13-10 Sources of Abstract Information

1. public records
2. courts
3. county offices
4. state offices
5. state and national archives
6. quasi-public bodies
7. educational districts

13-11 Typical Abstract of Title

See pages 385-388 of text for examples.

13-12 Effect of Abstract of Title

It is a guarantee of facts...good thorough research will yield a good abstract...if the title policy is created without a good research of the facts is like issuing life insurance without a physical exam.

13-13 Abstract and Attorney's Opinions

Someone's opinion of what has been discovered in an abstract...

13-14 Title Insurance Policy

A written guarantee that as of a particular moment no title defects, other than those listed, exists. There is limited financial liability based on cost of the insurance.

Title Insurance policies ordinarily insure against the following:

1. taxes
2. bonds
3. assessments
4. trust deeds
5. mortgages
6. easements
7. liens
8. insanity
9. minor children's right
10. forgery
11. false impersonations
12. wives with common rights
13. irregularity of conveyance forms
14. omissions
15. heirs
16. leases
17. attachments
18. judgements
19. restrictions
20. reservations
21. reversal of court decision
22. senior rights errors in public records
23. errors in transcribing public records
24. attack on title

13-15 Wording of Title Policies

Wording varies from company to company. In general a person(s) or companies are insured for a maximum amount against loss or damages sustained because of:

1. unmarketability of the described title
2. title to land being vested otherwise than stated
3. any defects in title not listed (including easements)
4. defects in previous execution of mortgages, deeds of trust, liens, and the like
5. priority of other claims over mortgage being insured.

Among the exceptions:

1. taxes, liens, easements, encumbrances, and assessments not shown in public records
2. rights of a person in possession of land not shown in public records
3. mining claims, water rights, claim or title to water and reservations in patents
4. any right, interest or claim or facts that could be ascertained by an inspection of the land or by inquiry of the person in possession or by a correct survey
5. laws, government acts or regulations

13-16 Title and Location Insurance Policy

If the land has been surveyed and location certified a title company may insure location also.

13-17 Location Guarantee

This is the surveyor's job...survey it, map it, certify it and record it!

13-18 Corrective Instruments

There are always methods and documents to correct a mistake.

13-19 Torrens Principle of Title Registration

20 states in the union are using or have used the Torrens Land Registry System.

13-20 Characteristics of a Torrens System

Beginning point, chain of title and proper maintenance...as long as it is kept up to date and maintained properly it is a very accurate and precise system.

13-21 Advantages and Disadvantages of the Torrens System

No need for title searches...document contains the chain of title for that parcel, beg to end!

Cost to maintain is usually the prohibitive factor.

Torrens prohibits adverse possession claims...so if a state allows such acts it will defect the Torrens system.

13-22 Land Registry in Illinois

Read it your self!

13-23 Land Courts

Courts of law set up to specialize in land dispute cases...their own judges and rules specifically for land related issues.

13-24 Massachusetts Land Court

Read it your self!

13-25 The Hawaii Land Court