

Lesson 6

Transferring Ownership Through Court Action

Please note that all state rulings in the matter of law are defined by the courts and can change at any time with new court decisions. No portion of this workbook is a substitute for legal advice.

We have seen that property ownership involves rights, privileges and benefits, including the right to *sell, lease, mortgage or give away* the property. Therefore, ownership can change hands through a variety of forums. If you were to look through the county courthouse records on any given tract of land, you might see that, over the years, title changed hands through *warranty deeds, quit claim deeds, mortgage foreclosure deeds, sheriff's deeds, final decrees, or quiet title actions.*

TRANSFERRING OWNERSHIP THROUGH COURT ACTION

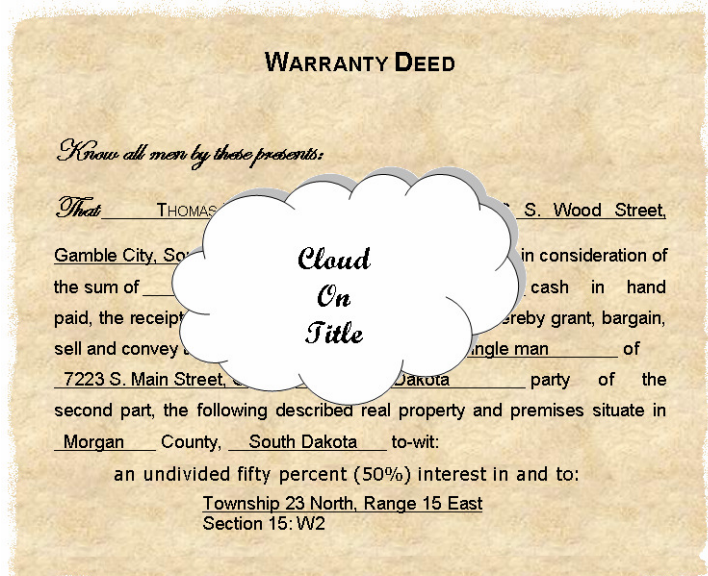
Courts or state or county agencies are involved in transferring ownership in property more times than one might think. This type of action might take place through:

- a tax sale taking place through a County Treasurer because of delinquent property taxes.
- a mortgage foreclosure because of the default on a loan.
- a quiet title action because of an ownership dispute.
- a divorce decree.
- a probate court because of the death of the owner.
- a decree of the court resolving a cloud on the title.

Courts can become involved in such actions only if they have the proper jurisdiction and authority to become involved. Courts do not have the proper jurisdiction or authority on property that is outside of the state's borders. In other words, if a Colorado resident died, owning a certain tract of land in the state of Montana, the Colorado courts would have no jurisdiction over the Montana property, and the property could not be probated in the courts of Colorado.

WHAT IS A CLOUD ON TITLE?

A cloud on title is a general term that encompasses a variety of title defects that would inhibit clear title ownership.



For instance, if you were buying a piece of property from *Samantha Pool, a single woman* but later learned she had acquired title as *Samantha and Jeffrey Pool, a married couple*, there would be a cloud on your title. What happened to Jeffrey? Is he dead or was there a divorce? Who owned his interest in the property at the time of your conveyance?

Let's say you wish to purchase a piece of property from Jim, John and Jacob Lawrence, three brothers who say they acquired title when their mother passed away 7 years ago. She died in California, and the property is located in Kansas. The Kansas court records show no probate proceedings for their mother, and no recorded deeds can be found. If you went through with this purchase, a huge cloud would be hanging over your title.

Additionally, a cloud of title also would be hanging over a piece of property that contained a county lien because of unpaid property taxes or a mechanic's lien filed because the owner failed to pay a plumber when he installed the hot water heater.

You can see that a cloud on title becomes a burden on the ownership that, if legitimate, would diminish a person's ability to benefit fully from the rights of ownership.

QUIET TITLE ACTION

A *quiet title action* is a civil legal process that removes the cloud on the title and establishes the proper ownership as determined by the courts. Such an action would establish a person's title against anyone and everyone, and thus "quiet" any and all disputes or claims on the property. The purpose, of course, is to remove the cloud of title in an ability to establish clear marketable title that is free from any encumbrance.

The final resolution comes when the court presents the final findings in the matter. What may follow is some type of conveyance whereby any disputing party transfers any claim to the property to the resolved party.

STATE OF NORTH DAKOTA
COUNTY OF BURKE,

IN THE DISTRICT COURT
FIFTH JUDICIAL DISTRICT

Elizabeth Davis Wilson,

Plaintiff,

vs

The heirs at law of Jackson Davis, deceased; the heirs at law of Martha Davis, deceased; Mary A. Trent, Robert Rou, Rex Trent, Ella S. Stevens and all other persons unknown claiming any estate or interest in or lien or encumbrance upon the real property described in the complaint, Defendants.

ORDER FOR JUDGMENT.

The above entitled action came duly on for hearing before the Honorable John P. Love, Judge of the above Court at the Court House in the City of Bowbells, North Dakota on the 15 day of September, 1932; H.A. Horace, appearing as attorney for the plaintiff and no one appearing for or on behalf of the defendants or any of them, either in person, by attorney or otherwise...

CONCLUSION OF LAW.

The Court finds, as conclusion of law, that the above named Martha Davis was, at the date of the death of the said Jackson Davis, his sole heir at law and that the above named plaintiff, Elizabeth Davis Wilson is now the owner in fee simple of the premises described in the complaint herein ...

NOW THEREFORE, it is ORDERED that the above named Martha Davis be adjudged to be the sole heir of Jackson Davis, deceased, and that the above named plaintiff Elizabeth Davis Wilson be adjudged to be the owner of the premises, described in the complaint...

The Court's final findings establish proper ownership

Example of a Quiet Title Action by the Court

ADVERSE POSSESSION

Another means whereby a person might acquire title ownership to a piece of property is known as adverse possession. Adverse possession is a provision in American law whereby one party can acquire title to another person's property without paying a single dime for the property. As the name adverse possession suggests, the acquiring party has done so in an adverse manner, one that clashes with the original owner's rights.¹

Actually, adverse possession has been a part of American property law since the first colonists arrived in the 1600's and was born from a belief that uncultivated property would better serve the people if it became productive. For instance, if a poor and hungry trespasser planted corn on a ten-acre

tract of land that had been unseeded and fallow for several years and that was owned by another party, the squatter could claim ownership to the ten-acres after continuous, visible, adverse, hostile and exclusive use of the property.²

Although the provisions vary between states, all 50 states have specific provisions whereby adverse possession would take place.

- Some states require that taxes and other assessments be paid during the adverse period.
- Some states require that maintenance, upkeep and improvements be made during the adverse period.
- Some states (Maine, Virginia, South Carolina, Vermont, Wyoming, Texas, Montana, Missouri, Nevada and Nebraska) believe that the adverse and *hostile* possession *require* that the trespasser be aware that he is trespassing.
- In order to meet the adverse and *hostile* definition, most states believe that the trespasser need not know that the land belonged to someone else.
- Still other states, Iowa, Georgia and Louisiana believe that the adverse and *hostile* possession require the trespasser to be completely innocent by making a good faith mistake, such as relying on an incorrect deed.
- All states require the trespasser to have continuous occupation of the land during the adverse period. If the trespasser abandons the property for a period of time, or if the rightful owner successfully removes the trespasser even temporarily, the "clock" usually begins ticking again. If, however, the trespasser were to sell the property to someone else before the end of the adverse period, the buyer actually becomes the new adverse possessor. In a case like this, the years that the first trespasser spent in continuous occupation count toward the years for the new owner's claim of possession.
- Color of title - In several states a claim to title through adverse possession must be made under what is called *a color of title*. This phrase refers to ownership that has an appearance of good title, but in truth, there is either no title or a title defect. *Color of title* is similar to having a cloud on the title.³
- Alaska is one of these states. If Dorothy Jamison purchased a piece of property in Anchorage through a valid deed but later found out that the previous owner's title had been defective, she would now have a *color of title* or title defect on her ownership. If she met the Alaskan adverse possession requirements, Dorothy could claim proper ownership under a color of title and through adverse possession.

State Length of adverse possession and other requirements

Alabama:	10 years under color of title; must list land for taxes 20 years without color of title
Alaska:	7 years under color title 10 years without color of title.
Arizona:	2 years against those who have no better right to estate
Arkansas:	7 years for unimproved unenclosed land under color of title 15 years for wild and unimproved land under color of title
California:	5 years; must pay taxes
Colorado:	7 years under color of title 18 years without color of tile
Connecticut:	15 years
Delaware:	20 years
Florida:	7 years under color of title 7 years without color of title; must pay assessed taxes
Georgia:	7 years under color of title 20 years without color of title
Hawaii:	20 years; must be in good faith.
Idaho:	5 years; must pay taxes and assessments
Illinois:	7 years under color of title 20 years without color of title
Indiana:	10 years; must pay taxes and assessments
Iowa:	10 years
Kansas:	15 years
Kentucky:	7 years if held under patent from state 15 years otherwise
Louisiana:	10 years where title was acquired in good faith 30 years in other cases
Maine:	20 years
Maryland:	20 years
Mass:	20 years
Michigan:	5 years under color of title 10 years under color of title by tax deed 15 years in all other cases
Minnesota:	15 years
Mississippi:	10 years
Missouri:	10 years
Montana:	5 years; must pay taxes and assessments
Nebraska:	10 years
Nevada:	5 years
N Hampshire:	20 years
N Jersey:	60 years for uncultivated land 30 years for other real estate
N Mexico:	10 years
New York:	10 years
N. Carolina:	7 years under color of title 20 years without color of title

N Dakota:	10 years; must pay taxes and assessments
Ohio:	21 years
Oklahoma:	15 years
Oregon:	10 years
Pennsylvania:	21 years
Rd Island:	10 years
S Carolina:	20 years
S Dakota:	20 years
Tennessee:	7 years under color of title 20 years without color of title
Texas:	3 to 25 years, depending on circumstances
Utah:	7 years; must pay taxes and assessments
Vermont:	15 years
Virginia:	15 years
WA:	7 years; must pay taxes and assessments
W Virginia:	10 years
Wisconsin:	10 years under color of title 20 years without color of title
Wyoming:	10 years ⁴

Adverse possession is defined as the occupation of property in a *continuous, exclusive, visible, hostile, and notorious manner for a period of years, as set out by individual state statute.*

TAX DEED

Since the early days of our nation, state governments have imposed taxes against real estate. If these taxes are delinquent or unpaid, the county government has the authority to offer through auction or lottery drawing these properties to the public through a tax lien sale. Generally, these sales are held annually, and the property is either auctioned to the highest bidder or granted to a buyer through a lottery process.

This tax lien sale is not an actual conveyance of the property. The "buyer" simply holds a lien on the property during what is called a "redemption period." He or she has, in essence, paid the delinquent taxes on behalf of the property owner. The property owner can redeem the land during the redemption period by paying all past taxes owed plus interest on the money to the holder of the lien. Redemption periods and the amount of interest assessed vary greatly from state to state.

The following examples show how these statutes vary:

<u>State</u>	<u>Redemption Period</u>	<u>Interest Owed</u>
Alabama	3 years	12%
Arizona	3 years	16%
Colorado	3 years	9%
Iowa	1.75 years	24%
Kentucky	1 year	12%
Montana	3 years	10%
North Dakota	3 years	12%
Oklahoma	2 years	8%
West Virginia	17 months	12%
Wyoming	4 years	18% ⁵

If the property owner fails to pay the interest and back taxes during this redemption period, the holder of the tax lien can foreclose on the property. At this point, the court orders a Tax Deed issued, and the property is conveyed to the tax lien holder.

EMINENT DOMAIN

Even in the United States of America, states and lessor government bodies have reserved the right to maintain an inherent power over all property without the owner's consent. This power is most often appropriated over property deemed for "public use" such as lands for roads, highways, rights of way, easements, telephone, power, water, or gas lines. Lands also have been taken in order to build parks, schools or government buildings, all under the definition of public use. At times, entire neighborhoods have been condemned (deemed "blighted") and taken in order to redevelop the area for public good.

The Fifth Amendment of the Constitution states that the owner of such property is entitled to receive reasonable compensation, which is most often defined as the fair market value.

The Gallatin Gazette

Monday, June 16, 2004

Mayor Declares Lakefield Street a Re-growth Zone

Today it was announced by the City Council that they will be declaring upscale Lakefield Street a re-growth zone. According to the announcement, the city will be selecting a developer to demolish all of the existing homes on Lakefield Street and replace them with high-rise housing and a Super Walmart.

It seems that the city council has been holding meetings on this matter for months and they are backing the idea entirely. Over the next six months the current upscale homes on Lakefield Street will be taken through the laws of eminent domain. The high-rise buildings are scheduled to begin next April.

The Mayor stated, "Lakefield Street only contains one family homes. If we replace these homes with high-rise housing, the city will be able to raise their tax revenues by 10 to 15%. More dense housing produces more revenue. It is simple math. Replacing a two-story, 3,000 square foot, one family home with a ten-story 120-unit building is a win win for the community."



"Lakefield Street was established over a hundred years ago. The upscale homes are not affordable for most people - plus the architecture of the homes is clearly out-of-date," one council member said. "What we are proposing is affordable housing - one and two bedroom apartments. The neighborhood will definitely change but we believe this is the right step toward progress."

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A recent Supreme Court decision sparked outrage over what many believed to be the misuse of eminent domain by governmental bodies. In the decision, the Court upheld a developer's rights and authority to seize private property with just compensation so that the developer could revitalize the area.

Since the decision, several states have redefined the term "public use" and prohibit the use of eminent domain for economic development purposes. The television news show *60 Minutes* interviewed two attorneys that work for a non-profit group called *The Institute for Justice*. In the interview, Dana Berliner said, "We have documented more than 10,000 instances of government taking property from one person to give it to another in just the last five years." She concluded, "Everyone knows that property can be taken for a road, but nobody thinks that property can be taken to give it to their neighbor or the large business down the street for their economic benefit."⁷

AFTER-ACQUIRED TITLE

After-acquired title is an issue that often arises and describes “the effect of a deed from a grantor who actually acquired or perfected title to the real property *after* he had already conveyed it to a third party.”⁸

For example, Sandra Michaels granted a warranty deed to Linda Frasier on a tract of land. At the time the deed was transferred, Sandra did not own any interest in the property. Sometime later Sandra Michaels came into ownership of the property.

This issue begs the question; does Sandra’s subsequent ownership of interest in the property pass through to Linda Frasier in order to make her whole?

Caution must always be exercised with respect to this issue. Statutes vary from state to state; however, generally, since the original deed from Sandra Michaels was a *warranty deed* and Sandra *covenanted to convey title*, the tract of land would automatically pass to Linda Frasier without the need for any type of corrective instrument.

In general, only grant deeds such as warranty deeds and special warranty deeds will transfer after-acquired interest. Quitclaim deeds are another matter. They will pass title to any and all interest owned at the time of the conveyance; but since they do not contain any covenant of warranty, generally, most states do not hold that quitclaim deeds can pass after-acquired title.

Again, caution must always be exercised with respect to this issue. One of the exceptions arises from the revised statutes of Nebraska, Section 76-209, which state “such after-acquired interest shall not inure to the benefit of the original grantee or his heirs or assigns, if the deed conveying said real estate was either a *quitclaim* or *special warranty*.”⁹

DORMANT MINERALS

Fourteen states have statutes that will return severed minerals to the surface owner or surface owners if those severed minerals sit dormant or unused for a period of time. Those states are Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Nebraska, North Carolina, North Dakota, Oregon, South Dakota, Virginia and Wisconsin. These statutes have various names, such as the *Century Code*, the *Natural Resources - Dormant Mineral act*, the *Adverse Mineral Possession Statute*, the *Mineral Lapse Act*, and the *Marketable Title Act*.

In essence, North Dakota has created a twenty-year fixed term on severed minerals through what they call the "Century Code." The code specifies:

Any mineral interest is, if *unused* for a period of twenty years immediately preceding the first publication of the notice . . . , deemed to be abandoned, unless a statement of claim is recorded. . . . Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment.

If minerals are considered "used" during the twenty-years, they would not qualify as abandoned minerals. *Used* minerals must meet one of the following: the minerals are being produced; operations are being conducted; the minerals are subject to a recorded lease, mortgage, assignment, or conveyance; the minerals are subject to a recorded order or agreement to pool or unitize; taxes are being paid; or a proper statement of claim has been recorded prior to the twenty-years period.¹⁰

Michigan has a similar ruling called the Natural Resources - Dormant Mineral Act. This act requires that any owner of severed minerals record a valid claim of interest within 20 years of the last sale, lease, mortgage or transfer or within 3 years of the date of the act, whichever is later. In Michigan, any such filing requires "an accurate and full description of all land affected by such notice, which description shall be set forth in particular terms and not by general inclusions."¹¹ Any severed minerals which are not recorded are treated as abandoned, and they will revert to the surface owner.

The Kansas statute requires a 20-year dormancy or unused period before the surface owner can make a claim to the severed minerals. There is, however, a provision allowing the mineral owner a 60-day grace period after the publication of notice of dormancy in which he or she can file a statement of claim with the register of deeds.¹²

The South Dakota statute requires that a notice of claim be filed on or before 23-years from the mineral severance or on or before July 1, 1958, whichever is later. The filing of this claim must set out the nature of the claim, including the legal description and be filed of record in the appropriate county courthouse. Such a filing will maintain the mineral interest.

In 2006, the South Dakota legislature passed Senate Bill 121, which provides for the assessment of severed mineral interests. Section 2 of the bill asserts that because severed minerals are real property. Taxes "shall be assessed in the same manner as any other real nonagricultural property." Section 3 of the bill asserts, "The owner of any severed mineral interest

shall, not later than November 1, 2007, file for record with the register of deeds in the county in which such severed mineral interest is located a verified statement setting forth his or her address, his or her interest, and the legal description of the property upon or beneath which the interest exists along with any other information that the register of deeds may require.”¹³

FOOTNOTES

¹ en.wikipedia.org/wiki/Adverse_possession.

² real-estate-law.freeadvice.com/real-estate-law/adverse_possession.

³ law.cornell.edu/wex/index.php/Color_of_title.

⁴ lectlaw.com/files/lat06.

⁵ rogueinvestor.com/states/tax_lien_certificates_site_map.

⁶ cityofhoboken.com.

⁷ cbsnews.com/stories/2003/09/26/60minutes/main575343.

⁸ Jeannie F. Murphy, *Better Late Than Never—The After-Acquired Title*.

Doctrine, Florida State Counsel, www.oldrepublictitle.com/flnational/resources/news/AgencyNews/Newsletters/ORT_SEP_NEWS_VOL2_008_03_PG6.

⁹ Revised Statutes of Nebraska State of Nebraska Statutes, Section 76-209

Deed; after-acquired interest; WWW.UNICAM.STATE.NE.US/LEGISLATURE/LEGALDOCS/STATUTES/CHAP76.

¹⁰ North Dakota Century Code” CHAPTER 38-18.1.

¹¹ Section 5, Marketable Record Title Act.

¹² mininglawinternational.com/Comp-Cases/AstonsCompCase20.

¹³ legis.state.sd.us/sessions/2006/bills/SB121STA.