

What Makes Torrens Property Unique?:

A Guide to Dealing with Registered Land.

June 17, 2021

David Gates, Deputy Examiner of Titles



Hennepin County
Law Library

TORRENS vs. ABSTRACT

- All land is “abstract” property until it is registered, when it becomes “Torrens” property.

Abstract = summary of the material parts of recorded documents that affect title to land.

- Registration changes:

1. Timing: when documents affect title

- Generally, registration on certificate of title is act that affects land, not delivery or recording.
- Prior to registration, instrument is valid only between parties as contract. Minn. Stat. § 508.47, subd. 1.

2. Scope of title examination.

3. How administered.

ABSTRACT OF TITLE		
TO Lot 4 Ejeck 5 feet North 1/2		
1	Lot	Block
		, in BRADFORD & LEWIS' Addition, Minneapolis
2	UNITED STATES TO JOEL B. BASSETT.	} Pre-emption entry 27, April 1855. Land Office Records. Lots 3, 4, and 5, Sec. 22, T 29, R 24.
3	UNITED STATES TO JOEL B. BASSETT.	} Patent 2d April, 1857. Filed 13th January 1872, 8 A. M. Book 34 Deeds, page 134. Lots 3, 4, and 5. Sec. 22, T 29, R 24.
4	JOEL B. BASLETT, and AURELIA B., his wife, TO ALEXANDER MOORE, and WILLIAM D. GARLAND.	} W. Deed, 8th December, 1856. Filed 9th December, 1856, 4 P. M. Book "D" of Deeds, Page 742. Consideration of \$35,000. Lots 4, 5, and that part of lot 3, north of Bassett Creek, all in Sec. 22, T 29, R 24.
5	JOEL B. BASSETT, TO ALEXANDER MOORE, WM. D. GARLAND.	} Bond, 8th December, 1856. Filed 9th December 1856, 4 P. M. Book A, Bonds, page 305. Penal sum of \$50,000. said Bassett, upon receipt of Patent and of the sum of \$12,062.50 to execute deed and release certain lands from lein of mortgage No. 6.
6	ALEXANDER MOORE, WM. D. GARLAND, TO JOEL B. BASSETT.	} Mortgage, 8th December, 1856. Filed 24th December, 1856, 1 P. M. Book D of Mortgage, page 451. Same land as in No. 4, to secure sum of \$24,125.00.
7	JOEL B. BASSETT, TO HENRY S. HOWELL.	} Assignment of Mortgage, No. 6. Date 21st October, 1857. Filed 6th November, 1857, 9 A. M. Book G Mortgages, page 542.
8	HENRY S. HOWELL, TO JOEL B. BASSETT.	} Assignment of Mortgage No. 6. Date 2d February, 1859. Filed 2d February, 1859, 11 1/2 A. M. Book L, Mortgages, page 228.
9	JOEL B. BASSETT, TO A. BRADFORD, and WM. D. GARLAND.	} Satisfaction of Mortgage No. 6. Date 23d March, 1859. Filed 24th March, 1859, 2 P. M. Book L, Mortgages, page 418.
10	JOEL B. BASSETT, and AURELIA B. his wife, TO ADOLPHUS BRADFORD, and WM. D. GARLAND.	} O. C. Deed, 18th January, 1858. Filed 18th January, 1858, 12 M. Book K of Deeds, page 191. Consideration of \$5,000. Lots 4 and 5, Sec. 22, T 29, R 24, and other lands.

WHERE DO YOU LOOK?

ABSTRACT

Characterized by “time-consuming and expensive title searches.” *In re Collier*, 726 N.W.2d 799, 804 (Minn. 2007)

- Review recorded documents and, potentially, facts and documents outside of real estate records.
Hersh Properties, LLC v. McDonald's Corp., 588 N.W.2d 728, 733 (Minn. 1999).
- START: U.S. government patent, search to present
- May require review of court documents ... and more
- Implied / Inquiry Notice may apply.
“based upon actual knowledge of facts which would put one on further inquiry...” *Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384–85 (Minn. 1978)



WHERE DO YOU LOOK?

- Review Certificate of Title

“it is expected that anyone dealing with registered land need look no further than the certificate of title for any transactions that might affect the land.” *Mill City Heating & Air Conditioning Co. v. Nelson*, 351 N.W.2d 362, 364–65 (Minn. 1984)

Generally, the “[Torrens] act abrogates the doctrine of constructive notice except as to matters noted on the certificate of title.” *In re Collier*, 726 N.W.2d 799, 806 (Minn. 2007)

- Investigate:

- statutory exceptions
- interests of which you have actual knowledge

Certificate of Title
 No. 1
 DC 86531

First Certificate of Title, Pursuant to an Order of the District Court, Trusts Judicial District, County of Hennepin and State of Minnesota, dated December 28th 1921

STATE OF MINNESOTA, S.S.
 COUNTY OF HENNEPIN, S.S.

This is to certify that Frank K. Summers
 of the City of *Minneapolis*
 County of *Hennepin* and State of *Minnesota*
 is now the owner of an estate, to-wit: *see fee simple*

in the following described land situated in the County of Hennepin and State of Minnesota, to-wit:
Lots numbered Four (4) and Nine (9) in Block numbered Two (2) in
Bell Brothers Addition to Minneapolis, according to the plat thereof on
file and of record in the Office of the Register of Deeds in and for said
County of Hennepin and State of Minnesota.

Subject to the incumbrances, liens and interest noted by the memorial indorsed hereon, and subject to the following rights or incumbrances subsisting, as provided by law, namely:

- 1. Taxes, liens or rights arising or existing under the laws or the constitution of the United States, which the statutes of this State cannot require to appear in the registry.*
- 2. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.*
- 3. Any lease for a period not exceeding three years when there is actual occupation of the premises under the lease.*
- 4. All public highways embraced in the description of the lands included in the certificate shall be deemed to be shown thereon.*
- 5. Such right of appeal or right to appeal and contest the application as is allowed by law.*

That the said *Frank K. Summers* is of the age of *47* years and is *not* under any disability

In Witness Whereof I have hereunto subscribed my name and affixed the seal of my office this *twentieth* day of *December* 1921.

Wm. Merrill
 Register of Titles
 In and for the County of Hennepin and State of Minnesota.

MEMORIAL

OF ESTATES, EASEMENTS OR CHARGES ON THIS LAND DESCRIBED IN THE CERTIFICATE OF TITLE HERETO ATTACHED.

DOCUMENT NUMBER	KIND OF INSTRUMENT	DATE OF REGISTRATION			AMOUNT	RUNNING IN FAVOR OF	SIGNATURE OF REGISTRAR
		MONTH	DAY	YEAR			

TRANSFER TAX NO. *8169*

HOW ADMINISTERED

ABSTRACT

- System does not determine title. Records are merely evidence of title.
- If it meets recording requirements, it can be filed
 - Whether or not you own it!

TORRENS

- Maintain adjudicated title
- Limits on who can file
 - Voluntary instruments from owner, if properly acknowledged. Minn. Stat. § 508.47, subd. 1.

“... in order to maintain the reliability of certificates of title, certain subsequent transfers of title and changes to the certificate must be made either by court order or by approval of the examiner of titles.”

Hersh Properties, LLC v. McDonald's Corp., 588 N.W.2d 728, 734 (Minn. 1999).
- Involuntary or complicated transfers require examiner approval
- If interest cannot be registered, parties may provide notice as claim only. Minn. Stat. § 508.70.

WHY REGISTER TITLE TO LAND?

- Cure title defects, *e.g.*:
 - Extinguishing interests that have not legally terminated
 - Fix legal description problems
 - No deed given to fulfill contract for deed
 - Preclude rights based on possession, encroachment
 - Register boundaries to prevent conflicts, ensure permanent boundary on ground, marked by judicial landmarks
- Create condominium.
 - Cannot have part-Torrens, part-abstract condominium.
Minn. R. Gen. Prac. 222.
- Plat in 3-D, through registered land survey (“RLS”).
 - only RLS and condominiums provide for vertical subdivision of land

WHY REGISTER vs. QUIET TITLE ACTION?

Quiet Title Action

- Binds only parties named
- Possibility of adverse possession / prescriptive easements
- More complicated title exam
 - length and scope

Torrens Registration

- After 6 months, Torrens decree binds the world.*
Minn. Stat. § 508.28.
*except: Fraud. *Vill. of Savage v. Allen*, 95 N.W.2d 418 (Minn. 1959).

Failure to name known parties
Konantz v. Stein, 167 N.W.2d 1 (Minn. 1969).
- No adverse possession / prescription. Minn. Stat. § 508.02
- Title guaranteed – backed by State fund. Minn. Stat. § 508.76
- Simplified title exam. Minn. Stat. § 508.24
- Certainty re: Marketable Title Act – exempt
Minn. Stat. § 541.023, subd. 2a
- No inquiry notice. Even judgments and tax liens (except those in favor of U.S.A.) must be on certificate.
- Benefit of involvement of County Surveyor and Examiner of Titles – but additional steps add to time

if time of essence, consider CPT if possible

THE REGISTRATION PROCESS

Registration - Ch. 508

- Can cure any title defect
- Application
 - Approved by Examiner
 - Recorded
- Abstract / Name Search
- County Surveyor inspection
- Examiner's Report
- Process served on defendants, like civil case
- If contested, proceeds like civil case

Registration of Possessory Title - Ch. 508A

- Requires "good" record title
- Application
 - Approved by Examiner
 - Recorded
- Abstract / Name Search
- No inspection
- Examiner's Report
- Mailed notice
- If contested, ends. Must proceed under Ch. 508.

RESULTS OF REGISTRATION

Registration - Ch. 508

- Creates Certificate of Title
- Title subject only to matters shown on Certificate, plus statutory exceptions

Registration of Possessory Title - Ch. 508A

- Creates Certificate of Possessory Title
- Title subject only to matters shown on Certificate, plus statutory exceptions,

plus – claims made within 5 yrs.

e.g., interests missed by examiner,
unrecorded interests

– rights of persons in possession

– rights that a survey would disclose

e.g., adverse possession completed before CPT
registration



Certificate of Title

Certificate Number: 1417460

Created by Document Number: 5322014

Transfer from: 763182

Originally registered February 28, 1938 Volume: 199, Certificate No: 62706, District Court No: 4545

State of Minnesota }
 County of Hennepin } **s.s.** **Registration**

This is to certify that
 August Schell Brewing Company, whose address is 1860 Schell Road, New Ulm, Minnesota, 56073;
 is now the owner of an estate in fee simple

In the following described land situated in the County of Hennepin and State of Minnesota:
 Lot 8, Auditor's Sub-division No. 92, Hennepin County, Minnesota

Subject to the easement set forth in that certain deed recorded in the office of the Register of Deeds in and for said County of Hennepin, State of Minnesota, in Book 15 of Deeds, page 433, as said deed is construed by judgment entered by the district Court in and for the County of Hennepin, Fourth Judicial District, in Case No. 46124.
 Subject to the provision and conditions in M.S. 282.018 as reserved in Deed Doc No 5310055

Subject to the interests shown by the following memorials and to the following rights or encumbrances set forth in Minnesota statutes chapter 508, namely:
 1. Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;
 2. Any real property tax or special assessment;
 3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
 4. All rights in public highways upon the land;
 5. Such right of appeal or right to appear and contest the application as is allowed by law;
 6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
 7. Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

Memorials				
Document Number	Document Type	Date of Filing Month Day, Year Time	Amount	Running in Favor Of
T2463885	Final Certificate	Jan 7, 1994 5:00 PM		County of Hennepin. For Highway purposes (See Inst) Parcel No 12. Same as Notice Doc No. 1861122.

Indexes Verified through 5/10/2021



In Witness Whereof, I have hereunto subscribed my name and affixed the seal of my office this 22nd day of January, 2016.

Martin McCormick
 Registrar of Titles,

In and for the County of Hennepin and State of Minnesota.

CERTIFICATE OF TITLE

- Legal description
- Lists interests affecting title to land
- Recitals vs. Memorials
 - Recitals – below description
 - Memorials – listed below
- No legal difference between the two
- Notes statutory EXCEPTIONS

In the following described land situated in the County of Hennepin and State of Minnesota:

Lot 8, Auditor's Sub-division No. 92, Hennepin County, Minnesota

Subject to the easement set forth in that certain deed recorded in the office of the Register of Deeds in and for said County of Hennepin, State of Minnesota, in Book 15 of Deeds, page 433, as said deed is construed by judgment entered by the district Court in and for the County of Hennepin, Fourth Judicial District, in Case No. 46124.

Subject to the provision and conditions in M.S. 282.018 as reserved in Deed Doc No 5310055

Subject to the interests shown by the following memorials and to the following rights or encumbrances set forth in Minnesota statutes chapter 508, namely:

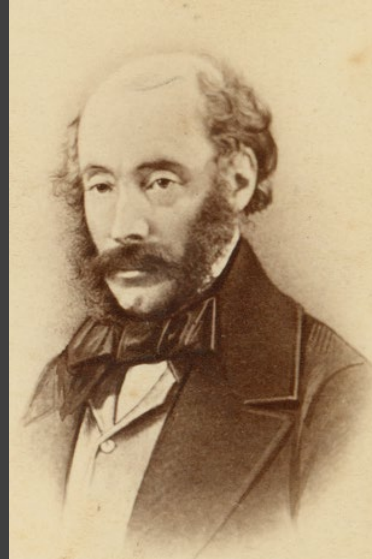
1. Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;
2. Any real property tax or special assessment;
3. Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
4. All rights in public highways upon the land;
5. Such right of appeal or right to appear and contest the application as is allowed by law;
6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
7. Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.

Memorials				
Document Number	Document Type	Date of Filing Month Day, Year Time	Amount	Running in Favor Of
T2463865	Final Certificate	Jan 7, 1994 5:00 PM		County of Hennepin. For Highway purposes (See Inst) Parcel No 12. Same as Notice Doc No. 1861122.

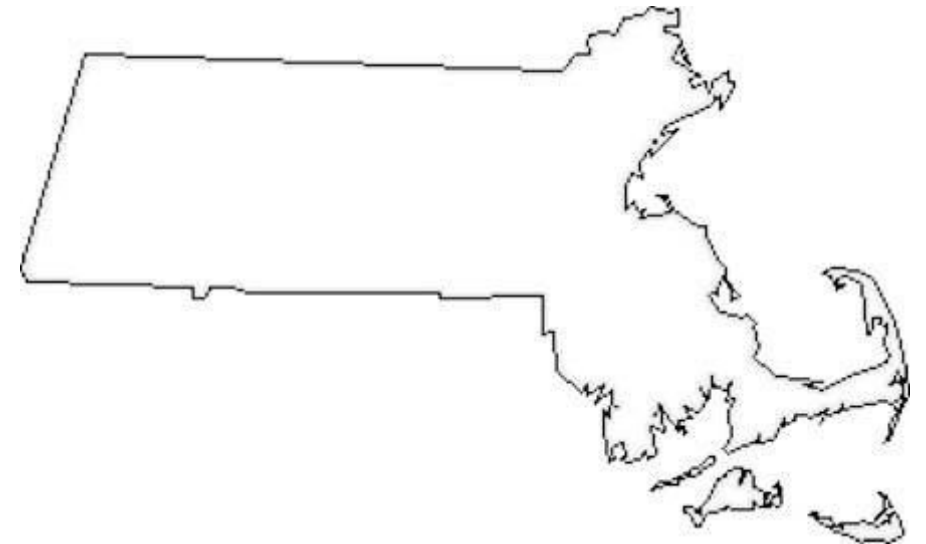
Indexes Verified through 5/10/2021



THE TORRENS SYSTEM

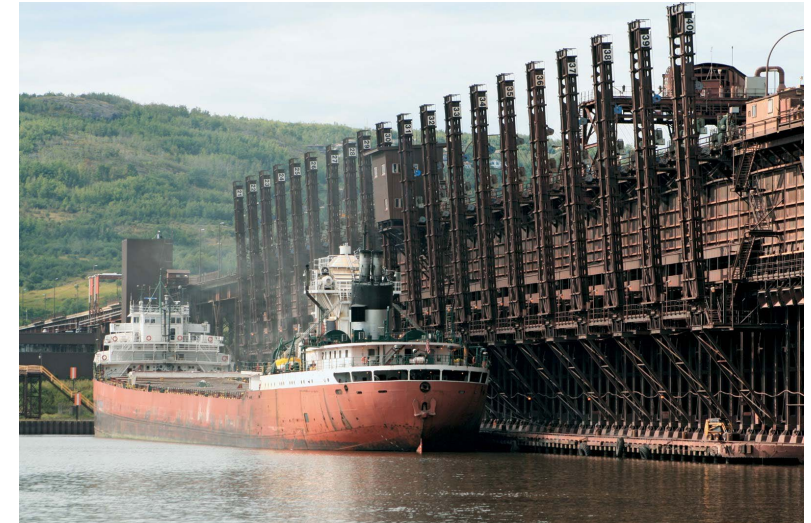


- In U.S., used primarily in: Minnesota, Hawaii, and Massachusetts
- Exists in CO, GA, HA, NY, NC, OH, VA, and WA
- Used widely throughout world.
 - 3 eastern Canadian provinces recently converted to all-Torrens system.



WHY US?

- *Lakes* – water bodies present challenging survey, title issues
- *Tax forfeitures* – registration used to clear title to tax-forfeited land following Great Depression
- *Iron ore* – steel companies insisted on registration
- *History* – poorer abstracting in early statehood
- *R.G. Patton* - nationally recognized authority and author of leading treatise (*Patton on Titles*), happened to be ... the Examiner of Titles for Hennepin County.



THERE ARE THREE OF US IN THIS TRANSACTION

EXAMINER INVOLVEMENT AND APPROVAL:

1. BRINGING LAND INTO SYSTEM
2. APPROVING SOME DOCUMENTS
3. COURT PROCEEDINGS



EXAMINER APPROVAL

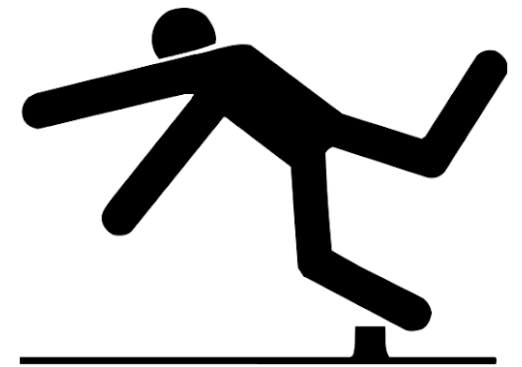
Required before certain documents can be filed, given effect, deleted, or corrected.

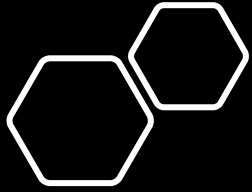
1. Applications to register title
(esp. to avoid conflicting descriptions, gaps)
2. Condo documents. Minn. Stat. § 508.351
 - declarations, including amendments
 - bylaws
 - creating Common Interest Community Certificates of Title (“CICCT”) for condos
 - for interests affecting all units
3. Deletions / corrections. Minn. Stat. §§508.71, subd. 3; 508.73, subd. 2.
 - interests that have expired / terminated
 - correct name, designation, marital status
 - adding description of vacated roads

4. “Problematic” Transfers

Questions of grantor’s authority, extent of interest

- Probate instruments. Minn. Stat. §§ 508.68; 508.69
- Trustee’s deeds, plats. Minn. Stat. § 508.62
- Divorce decrees, other judgments
Minn. Stat. § 508.59
- Others. Minn. Stat. § 508.12
 - *e.g.*, Deeds by attorneys-in-fact,
 - Transfer on Death Deeds
 - Religious corp.
 - Foreign notaries





EXAMINER APPROVAL, cont'd

5. INVOLUNTARY TRANSFERS

- **Condemnation.**

Examiner must approve legal sufficiency. Minn. Stat. § 508.73, subd. 1.

- **Foreclosures by action.**

Examiner can approve legal sufficiency by directive. Minn. Stat. § 508.58, subd. 2

- **Cancellation of contracts for Deed.**

Examiner may approve legal sufficiency – if cancellation documents have been registered for 5 years. Minn. Stat. § 508.58, subd. 5.

- **Tax forfeiture.**

Examiner may direct entry of new certificate of title – if forfeiture documents have been registered for 10 years. Minn. Stat. § 508.67, subd. 2.

COURT PROCEEDINGS & Examiner's Office

Some changes to certificate of title require court action.

“Proceeding subsequent, for:

- Deleting interests, adding interests that cannot be filed, correcting errors, any other reasonable grounds for an alteration or adjudication. Minn. Stat. § 508.71, subd. 2.
 - e.g., contract for deed cancellation
 - new certificate of title after fulfillment of contract for deed
- Follows process similar to registration: Pleading, Examiner's Report, Notice, Hearing.

COMMON EXAMPLES – forms on Examiner's website

- New certificate of title after foreclosure, condo lien. Minn. Stat. § 508.58, subd. 1; 508.67, subd. 1.
 - New certificate of title after tax forfeiture. Minn. Stat. § 508.67, subd. 1.
 - New certificate of title after contract for deed paid in full.
 - Deleting memorials related to cancelled contract for deed – if cancellation registered < 5 yrs.
-
- Most cases proceed on default.
 - However, contested registrations and pro subs may be referred to examiners for hearings, trial.

COMMON MISTAKES

- Document approval
 - check Examiner's website for tips, required supporting documents
 - <https://www.hennepin.us/business/property/examiner-titles>
 - check Title Standards

Probate transfer (PDF)

Includes deed of sale, deed of distribution, decree of distribution, decree of descent, summary assignment.

Before you submit your deed from a personal representative and probate documents, check to make sure:

- The deed is dated and acknowledged the same day or before the certification date of the letters.
- The deed is dated and acknowledged at least 30 days after the issuance of the "letters" in an informal probate.
- The required Notice to Commissioner of Human Services ([UCB Form 70.3.1](#)) and Affidavit ([UCB Form 70.3.4](#)), ([Minnesota Statute 524.3-801](#)) accompany your Deed of Distribution/Decree of Distribution.
- If 70 days have not passed from the day notice was served on the commissioner, you are also submitting a consent to early distribution ([UCB Form 70.3.7](#)).

COMMON MISTAKES

- Affidavit of Trustee, Par. 3 – is for authenticating an instrument

- 1st blank = names of trustees
 - 2nd blank = names of grantees
 - 3rd blank = date of trustee's deed or other "new" instrument*
- *NOT date of trust

Page 2 of 2

Minnesota Uniform Conveyancing Blanks Form 90.1.3

3. The trustee(s) who have executed that certain instrument (deed, mortgage, or other conveyance), relating to the real property described above, between _____, as trustee(s), and _____, which instrument is dated _____, (a) are empowered by the provisions of the Trust to sell, convey, pledge, mortgage, lease, transfer title to, or release, any interest in real property held in trust; and (b) are the requisite number of trustees required by the trust instrument to execute and deliver such an instrument.

- The instrument being authenticated is the new instrument being given by the trustees (new deed, mortgage, etc.), not the original trust.
- Info about the trust is in the Certificate of Trust - don't need to say it twice

COMMON MISTAKES

- Acknowledgments vs. Jurats
 - Deeds, mortgages, easements, need acknowledgments
“This instrument was acknowledged before me ...”
 - Affidavits are made under oath, need jurats
“Signed and sworn to (or affirmed) before me ...”
- Name discrepancies – fix by Examiner’s Directive
- Wrong state of organization – fix by Examiner’s Directive
Sample affidavits available on website
- *Exceptions

* EXCEPTIONS

Minn. Stat. § 508.25

1. Federal rights

Supremacy Clause (Art. VI, Par. 2).

- Interests of U.S. Gov't
- Federal tax liens and judgments in favor of U.S.
- Bankruptcies



2. State and local interests

a. Public Highways

Generally, for roads established PRIOR to registration

“because statutory dedication operates fundamentally similar to adverse possession, we conclude that statutory dedication is prohibited by the Torrens Act.” *Hebert v. City of Fifty Lakes*, 784 N.W.2d 848, 855 (Minn. Ct. App. 2010); *see also*

Current practice (in Hennepin Co.) is to adjudicate existing highway rights

*EXCEPTIONS

Minn. Stat. § 508.25

2. State / local interests, cont'd

b. Lien of property taxes / special assessments

- Take priority over other interests
- However, state income tax liens and judgments in favor of State must be registered, and so affect title only then.

Minn. Stat. §§ 270C.63, subd. 9;
508.63

*EXCEPTIONS

Minn. Stat. § 508.25

Some recognize rights that “relate back”

3. Mechanic’s liens

“attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement, and shall be preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof.” Minn. Stat. § 514.05, subd. 1.

Torrens property does not affect this priority. *But see Imperial Devs., Inc. v. Calhoun Dev., LLC*, 790 N.W.2d 146, 151 (Minn. 2010) (mortgage “of record” when filed, date-stamped, and given document number, even if omitted from certificate of title).

4. Appeals

*EXCEPTIONS

Minn. Stat. § 508.25

5. Possession

a. Parties in possession under deed or contract for deed from owner.

b. Leases less than 3 years

Why?

One possible reason:

Minn. Stat. § 504B.311

- No eviction action can be brought more than 3 years after expiration of lease.



*EXCEPTIONS

Are you “closing your eyes to a situation you do not wish to acknowledge”?

“If so, my friends, ya got trouble.”

6. Actual Notice

“since ... 1929, the law in Minnesota has prevented a prospective purchaser with actual notice of a superior interest in Torrens property from becoming a good faith purchaser.” *In re Collier*, 726 N.W.2d 799, 809 (Minn. 2007)

Collier – mortgage filed with County Recorder, not Registrar of Titles

Grantee took subject to purchase-money mortgage filed after mortgagor’s deed, because of actual notice. *In re Mortg. Elec. Registration Sys., Inc.*, 835 N.W.2d 487, 495 (Minn. Ct. App. 2013)

Claim (like equitable mortgage) or possible interest that requires proceeding to be established may not constitute actual notice. *Burkhalter v. Mays*, 877 N.W.2d 788, 794 (Minn. Ct. App. 2016)

*EXCEPTIONS

— sort of.

7. Other general principles governing real property.
“Registered land shall be subject to the same burdens and incidents which attach by law to unregistered land.” Minn. Stat. § 508.02
 - Marital interests
 - Implied easements?
In re Wells Fargo Bank, N. A., No. A15-1557, 2016 WL 3582593, at *8 (Minn. Ct. App. Jul. 5, 2016) (unpublished).

8. Boundary by practical location
 - Applies to Torrens property. Minn. Stat. § 508.02

QUESTIONS?

- Don't forget:

Forms, instructions, and other guidance are available on the Examiner of Titles website:

<https://www.hennepin.us/business/property/examiner-titles>