



REAL

MARIANNE MOODY JENNINGS

ESTATE

FIFTH EDITION

LAW

REAL ESTATE
LAW

5TH

EDITION

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PREFACE

Real estate law was once regarded by attorneys and scholars as a lay term for the law of real property. However, with the phenomenal growth of the real estate market in the past twenty years, the term *real estate law* more accurately reflects and is more often used to describe the legal issues in the ownership, transfer, and development of land or real property. Those involved in the real estate market require a better grasp of the legal issues involved in their day-to-day transactions. Since the date of the fourth edition, the dramatic changes in the economy, resulting changes in land values, and resulting impact on mortgage holders have made knowledge of the law even more critical.

Legal issues no longer revolve around how the law of real property developed in England but how real estate law can help to streamline transactions. Real estate professionals need a clear set of rules that will enable them to recognize, solve, and prevent legal problems. These rules and the ability to analyze them should be taught in a three-step approach:

1. What law is applicable to this area of real estate and this particular transaction?
2. What issues exist in the circumstances?
3. Can a legal problem be prevented or solved?

In spite of this strong need for clear and quick reviews of legal issues and solutions, the need has not been met by existing books on real estate law. This dynamic field is still treated by many books as a history course, in which the students are required to memorize the structure of feudal land systems in fifteenth-century England. Such learning is of no use to a broker faced with a dual representation issue or the rights of multiple lenders in a foreclosure.

Further, many of the new developments in real estate financing and marketing remain untreated by many books. For example, significant issues of taxation in land ownership and transfer are lightly considered or ignored; the complications of real estate development through limited partnerships or syndications are overlooked; and the problems of priorities in foreclosure and due diligence in the investigation of environmental hazards are largely ignored.

In addition to the omission of many topics, most real estate law books have chosen a straight, black-letter law approach. In those texts, the rules and terms are given, but there are no cases or examples to help students with their application.

This book has been developed with these problems and needs in mind. The problems and cases have been used by my students for 21 years with remarkable results—the students really understand and learn the material, and they are able to use their knowledge and problem-solving skills in personal and professional real estate transactions. If there were ever a remark that I dreaded to hear from a student, it was, “I’ll never use this!” Since using this book, that phrase has slipped from my students’ vocabularies.

Real estate law has too long been labeled a boring subject that was acknowledged as existing but not worth the effort of authors and publishers in the development of a helpful book. This book will put to rest any such labels—real estate law is anything but boring. There are cases on selling homes that were the sites of murders, dueling relatives on inheritance, and fighting neighbors. There are problems with high-rise hotels casting shadows on neighboring hotels’ swimming areas and eccentric people with eccentric wills. This book shows the life and color of real estate law in day-to-day settings.

This book cannot make real estate lawyers of readers, but it can help them recognize problems related to real estate law. When the reading of this book is complete, the law will stick in the minds of readers because of the ghosts, the hotels, and the eccentric neighbors.

THE REVISED EDITION

As the saying goes, “If it ain’t broke, don’t fix it.” The first, second, third, and fourth editions of *Real Estate Law* were well received by students and instructors. Indeed, many brokers, agents, developers, and lawyers have found it to be a useful handbook. It has proved to be a successful textbook as well as a practical guide for those who work in the industry, and so the fifth edition continues the successful and unique features of the previous edition.

Nevertheless, the complexion of the real estate industry has changed since the earlier editions. Therefore, the primary focus of the fifth edition has been to update the materials in light of the changes in the tax laws, the financial markets, environmental issues, and the judicial imposition of liability on brokers, agents, and developers. Critical social issues such as all-adult covenants, group homes, and the unavailability of low-cost housing have created new legal issues. The environmental concerns about toxic waste have also raised new legal questions and resulted in additional environmental regulation. Issues related to lender liability for Superfund properties are updated in this edition. The new issues facing brokers and agents are covered at length with all the latest in statutory and judicial change.

The real estate industry, particularly in the area of agent/broker relationships, has continued its rapid pace of activity, and a new body of case law has developed over the past few years. These new cases have been added or substituted in the fifth edition in order to provide cutting-edge information for the classroom as well as for practical use.

Real Estate Law, Fifth Edition, has some reorganization within several of the chapters. But the color, excitement, and interest levels of the first four editions have

been increased. Real life is still present. Further, the computer interaction exercises for students in the area of title searches is a dynamic learning component retained in this edition to address the AACSB mandate for computer use in each business school course.

ORGANIZATION

The book remains divided into four parts, but has been organized so that materials are grouped together according to particular transactions and the application of the law to those transactions. Part I covers the basics of real estate law: the nature of real estate, and real estate interests. Part II covers legal issues related to the types of land ownership. Part III covers all aspects of the law involved in transferring title to real estate, from adverse possession and deeds to the roles of brokers and the intricacies of real estate financing mechanisms. Part IV covers real estate development and related issues such as environmental law, zoning, and constitutional issues.

The coverage can be as detailed as the reader or instructor desires. For example, the chapter on land descriptions (Chapter 6) could be eliminated if the students had sufficient exposure to descriptions in a principles class. Likewise, the details on future interests could be eliminated (Chapter 8), with just the cross-references in Chapter 7 used to understand just the basics of these forms of potential ownership.

Cases

Very few real estate law books have the benefit of reported cases. This book includes reported cases to illustrate major points of law. I have rewritten the case facts to help simplify the sometimes complex real estate issues. After the judge's name, the remainder of the case appears in actual case language. I have also edited the language to zero in on the particular point of law. Included in the cases are United States Supreme Court decisions on such controversial topics as redlining, environmental issues, and eminent domain. A case index is provided so that the better-known cases can be easily found by the curious reader. The fifth edition contains new cases to provide the most recent legal theories and offer insight into social issues affecting the real estate market.

Case Discussion Questions

In spite of fact summaries and careful editing, readers still find it difficult to wade through judicial language and reasoning. Because of this problem, discussion questions follow each case. These questions help readers to sort out the facts and to reach conclusions about the courts' decisions. They can guide a reader through a case. Answers for the case discussion questions are in the *Instructor's Manual*.

Industry Tips

Highlighted boxes of suggestions for avoiding legal problems and litigation in real estate, called *industry tips*, have been retained, expanded, and updated for this edition. These tips include lists, questions, and ways to avoid the problems that caused litigation in the chapter cases and questions. The tips, present in each chapter, provide yet another practical component to the text and increase its value as a handbook.

Consider Questions

Numbered Consider questions, appearing immediately following the applicable material tested in these questions, help readers grasp the segments of the chapter as they read along. These questions refine reading habits as well as improve comprehension. Answers for the questions are provided in the *Instructor's Manual*.

Ethical Issues

New to the fifth edition are ethical issues for each chapter. These real and hypothetical problems allow students to discuss and debate real world dilemmas real estate professionals face regularly. Discussion suggestions are found in the *Instructor's Manual*.

Chapter Problems

Most of the end-of-chapter problems are actual cases, with the case cites noted and answers provided in the *Instructor's Manual*. The cases are short enough to spark interest and yet detailed enough to allow discussion and review of chapter concepts. They have been revised to include more recent developments. Many chapter problems were once cases in the first, second, third, or fourth edition and have been moved to end-of-the-chapter review problems as newer cases replaced them. Some of the previous edition cases can be found in the *Instructor's Manual* and can be assigned as in-class exercises.

Charts, Diagrams, and Illustrations

Throughout the book, charts, diagrams, and illustrations aid readers' understanding of lengthy and complex topics. For example, there are diagrams and charts depicting the relationships of land interests, sample leases, and easements. New charts on syndication and property rights and interests have been added.

Glossary

In the back of the text is a glossary of key terms. The glossary provides a short definition of these terms (which appear in bold in the text) as well as definitions for other commonly used real estate terms.

SUPPLEMENTAL ITEMS

Instructor's Manual

The *Instructor's Manual* was designed to help in lecture preparation. Each chapter is outlined in detail, with examples and illustrations of each of the chapter points. The cases are briefed within the outline as they appear in the text. Answers to all of the Case Discussion questions, Consider questions, Ethical Issues, and Chapter Problems are provided in the manual. For the fifth edition, the manual has been updated to include coverage of the new Cases, Consider problems, Case Discussion questions, the new Chapter Problems, and discussion ideas for the Ethical Issues.

Each chapter has a list of books and law review articles called Resource Materials. These materials can be used to enhance the instructor's understanding of a topic. They have been increased substantially for the fifth edition.

Some cases that have been eliminated from the first, second, third, and fourth editions to make way for new ones have been added to the teacher's manual to provide supplemental readings for the instructor or for class use. New to the *Instructor's Manual* this edition are in-class, interactive learning exercises for each chapter, called in-class exercises.

Also included in the manual are sample examination questions. There are true/false, multiple choice, and essay questions in each of the chapters. The true/false questions are easier and can be used for a quick quiz. The multiple choice and essay questions test the ability of students to apply real estate law principles. The fifth edition offers additional questions to provide a larger menu for the instructor.

Computer Exercises

The fifth edition includes computer exercises on diskette for grantor/grantee title searches. The diskette appears with the *Instructor's Manual*. This program and the problems with it give students a chance to learn first-hand the complexities of tracking land title.

DEBTS OF GRATITUDE

Although only my name appears on this book, I cannot claim it as *my* book alone. As with all achievements in my life, my finished work is the result of the cooperation, work, and sacrifice of many. I cannot name everyone who has helped but there are those who labored long hours to bring this book to its present state:

- Dick Crews, my original editor, who had the educational foresight to see the need for this book and who has been proven correct through the success of the first, second, third, and fourth editions.
- Mignon Worman, the editor who remains ever gracious, insightful, and cheerful through all the details and whose standards for excellence have been both motivational and inspirational.

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- The students of *Real Estate Law*, who provided feedback on the first, second, third, and fourth editions. They have my gratitude for their responsiveness and encouragement.
- Kris Tabor for the unenviable typing tasks.
- The instructors who used *Real Estate Law* and have provided feedback on how to improve the book. Their feedback is a labor of love and evidence of their dedication to seeing higher education at its best.
- All of the realtors, insurers, lawyers, publishers, lenders, contractors, and real estate professionals who consented to have their forms and works reproduced in this text. Their names cannot be listed here, but their works are acknowledged throughout the book. Their dedication to education is evidenced by their complete cooperation in granting permission for these items to be used.
- My thanks to the anonymous reviewers of this and the previous editions who provided helpful comments, suggestions, and encouragement. Their efforts reflect a love of students and respect for quality of education. Last, but certainly not least, I am grateful to both my immediate and extended family for their support of me, my work, and this project. My husband (Terry), my two daughters (Sarah and Claire), and my two sons (Sam and John) not only provided great mental support but also sacrificed some of their “quality” time for the law library, page proofs, and my sleep. They are grateful not to have to ask, “How many chapters do you have to go?”

A WORD FOR STUDENTS

In using the book, read the narrative material that describes the law first. Follow that by reading the cases that appear after each section. Answer the discussion questions after each case to make sure you understood the case and that you grasped the issues and principles of law. Try to solve the Consider questions and Chapter Problems on your own before answers are given by your instructor. If you can solve all of the Consider questions and Chapter Problems, you understand the chapter material. The figures in chart form are designed to streamline ideas and summarize lengthy topics so that you can commit the concepts to memory. The charts are an excellent form of review for examinations or quizzes.

Finally, be sure to apply what you have learned when your course is over. Application is the true test of learning. Good luck with the book and its application. Enjoy the color and the flavor of real estate law—it is abundant in this book.

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