

WASHINGTON
PRACTICE

Methods of Practice

TOWNE

WASHINGTON PRACTICE

Volume 1

Methods of Practice

with Forms

SECOND EDITION

By

VERNON W. TOWNE

Judge, Municipal Court
Seattle, Washington

ST. PAUL, MINN.

WEST PUBLISHING CO.

1976

COPYRIGHT © 1956, 1957, 1959, 1961, 1963, 1966, 1968, 1970, 1972 WEST PUBLISHING CO.

COPYRIGHT © 1976

By

WEST PUBLISHING CO.

Library of Congress Catalog Card Number: 76-22941

PREFACE

This is a revised edition of a book first published twenty years ago. The changes during those years prove that the law is not static and that the practicing lawyer must ever be aware of what is new.

As with the original volume this is intended to serve as a guide to Washington practice and as an entry to the cases, statutes and court rules. It presents, in convenient arrangement, practical information not found in the usual text or form book.

To prepare a work of this breadth and content for the bar of this state, and to receive suggestions from many able judges and lawyers concerning it, have been most pleasant experiences. To each of those most gracious colleagues of the bench and bar, I express my appreciation.

My thanks, too, must be given my wife, whose patience did not fail as I labored evenings and weekends preparing the manuscript.

VERNON W. TOWNE

Seattle, Washington
September, 1976

SUMMARY OF CONTENTS

PART 1. REAL ESTATE LAW

Chapter	Sections
1. Land Descriptions	1-20
2. Options to Purchase Real Estate	21-40
3. Earnest Money Agreements	41-60
4. Deeds	61-120
5. Real Estate Contracts and Remedies	121-160
6. Closing Real Estate Transactions	161-180
7. Escrows	181-190
8. Title Insurance and Abstracts of Title	191-210
9. Curing Defects in Titles	211-240
10. Actions to Quiet Title	241-280
11. Leases	281-330
12. Termination of Tenancies and Leases	331-360
13. Unlawful Detainer	361-400

PART 2. SECURITY TRANSACTIONS

14. Uniform Commercial Code	401-420
15. Commercial Paper	421-450
16. Promissory Notes	451-470
17. Real Estate Mortgages	471-530
18. Foreclosure of Real Estate Mortgages	531-600
19. Deeds of Trust	601-640
20. Bulk Sales under Commercial Code	641-670
21. Secured Transactions	671-710
22. Mechanics' Liens	711-750
23. Execution	751-780
24. Supplementary Proceedings	781-800

PART 3. WILLS AND ADMINISTRATION OF ESTATES

25. Community Property Agreements	801-820
26. Drafting and Execution of Wills	821-870
27. Probate and Administration	871-1030
28. Guardianship	1031-1080

PART 4. DOMESTIC RELATIONS

29. Adoption	1081-1130
30. Dissolution of Marriage	1131-1200

SUMMARY OF CONTENTS

PART 5. BUSINESS TRANSACTIONS

Chapter	Sections
31. Organizing a Corporation	1201-1250
32. Partnerships	1251-1280

PART 6. SPECIAL PROCEEDINGS

33. Bills of Sale	1281-1310
34. Attachment	1311-1350
35. Bankruptcy	1351-1390
36. Certiorari	1391-1410
37. Change of Name	1411-1430
38. Garnishment	1431-1470
39. Injunctions	1471-1510
40. Mandamus and Prohibition	1511-1540
41. Motor Carrier Applications	1541-1580
42. Replevin	1581-1620
43. Workmen's Compensation	1621-1650

PART 7. COURTS OF LIMITED JURISDICTION

44. Practice in Courts of Limited Jurisdiction	1651-1700
--	-----------

PART 8. CRIMINAL LAW

45. Criminal Practice and Procedure	1701-1740
---	-----------

PART 9. PREPARATION FOR TRIAL

46. Preparing for Trial	1741-1820
-------------------------------	-----------

PART 10. APPELLATE PRACTICE

47. Appeals to Superior Courts	1821-1850
48. Review of Decisions by Court of Appeals	1851-1870
49. Review of Decisions by Supreme Court	1871-1884

	Page
Table of Statutes	833
Table of Court Rules	851
Index	855

TABLE OF CONTENTS

PART 1. REAL ESTATE LAW

CHAPTER 1. LAND DESCRIPTIONS

Sec.

1. Introduction.
2. Government Surveys.
3. Washington Survey Lines.
4. A Township.
5. A Section.
6. Size of an Acre.
7. Government Lots.
8. Recorded Plats.
9. Metes and Bounds Descriptions.
10. Units of Measurement.
11. Official Records.

CHAPTER 2. OPTIONS TO PURCHASE REAL ESTATE

21. Types of Option Agreements.
22. Definition of Option to Purchase Real Estate.
23. Formal Requisites of an Option to Purchase Real Estate.
24. Designating the Parties.
25. Consideration for the Option.
26. Description of the Property.
27. Purchase Price and Terms of Payment.
28. Time in Which to Exercise Option.
29. Manner of Exercising the Option.
30. Abstract of Title or Title Insurance.
31. Type of Conveyance.
32. Proration of Taxes, Assessments and Insurance.
33. Other Provisions.
34. Short Form of Option to Purchase Real Estate.
35. Another Form of Option to Purchase Real Estate.

CHAPTER 3. EARNEST MONEY AGREEMENTS

41. Introduction.
42. Definition of Earnest Money Agreement.
43. Where to Find the Law.
44. Applicable Law.
45. Matters to be Checked by Purchaser.
46. Matters to be Checked by Seller.
47. Designating the Parties.
48. Description of Property.

TABLE OF CONTENTS

- Sec.
49. Personalty Included in the Sale.
50. Price and Terms of Payment.
51. Down Payment or Earnest Money.
52. Type of Conveyance.
53. Abstract of Title or Title Insurance.
54. Possession.
55. Escrow.
56. Acceptance by Seller.
57. Form of Earnest Money Agreement.

CHAPTER 4. DEEDS

61. Necessity.
62. Warranty Deeds.
63. Bargain and Sale Deeds.
64. Quit Claim Deeds.
65. What Deed Form to Use.
66. Executing a Deed.
67. Revenue Stamps.
68. Recording.
69. Real Estate Sales Tax.
70. Designating the Grantor or Grantors.
71. — If the Property is Community.
72. — If the Grantor Conveys Separate Property.
73. — If Grantor is Single, Divorced or Widowed.
74. — If Grantors are Tenants in Common.
75. — If Grantor is a Minor or Incompetent.
76. — If Grantor Acts in Fiduciary Capacity.
77. — If Grantor is a Corporation.
78. — If Grantor is a Partnership or Joint Venture.
79. — If Grantor has Legally Changed His Name.
80. Designating the Grantee or Grantees.
81. — If Grantee is Acquiring Community Property.
82. — If Grantee is Acquiring Separate Property.
83. — If Grantee is Acting in Fiduciary Capacity.
84. — If the Grantee is a Corporation.
85. — If the Grantee is a Partnership.
86. Expressing the Consideration.
87. Description of Property.
88. Reservations and Exceptions.
89. Restrictive Covenants.
90. Easements.
91. Encumbrances.
92. Explanations.
93. To Show Exemption from Revenue Stamps.
94. Deeds for Special Purposes—Correction Deeds.
95. Deed in Fulfillment of Land Contract.
96. Deeds between Husband and Wife.
97. Deeds by Guardians, Trustees, Administrators, etc.

TABLE OF CONTENTS

CHAPTER 5. REAL ESTATE CONTRACTS AND REMEDIES

Sec.	
121.	Purpose.
122.	Facts Necessary for Drafting a Real Estate Contract.
123.	Formalities of Execution.
124.	Use of Printed Forms of Real Estate Contract.
125.	Introductory Clause.
126.	Designating the Seller or Sellers.
127.	Designating the Purchaser or Purchasers.
128.	Designating a Corporation.
129.	Designating a Partnership.
130.	Description of Property.
131.	Items of Personalty.
132.	Encumbrances.
133.	Terms of Payment.
134.	Sale Subject to Mortgage or Deed of Trust.
135.	Date of Possession.
136.	Taxes and Insurance.
137.	Seller's Right to Pay Taxes, Insurance, etc.
138.	Inspection and Repairs.
139.	Seller's Obligations.
140.	Forfeiture Provision.
141.	Miscellaneous Provisions.
142.	Execution by Parties.
143.	Assignment of Real Estate Contracts.
144.	Remedies of Seller.
145.	Forfeiting the Contract.
146.	Action to Forfeit.
147.	Actions for Specific Performance or Damages.
148.	Remedies of Purchaser.
149.	Form of Real Estate Contract.
150.	Form of Complaint Forfeiting Real Estate Contract.
151.	Form of Report on Title Search.
152.	Form of Motion and Affidavit for Default.
153.	Form of Order of Default.
154.	Form of Notice of Application for Judgment.
155.	Form of Findings of Fact and Conclusions of Law.
156.	Form of Judgment for Forfeiture of Real Estate Contract.

CHAPTER 6. CLOSING REAL ESTATE TRANSACTIONS

161.	General Remarks.
162.	Federal Real Estate Settlement Procedures Act (RESPA).
163.	Duties of Purchaser's Attorney.
164.	Arranging a Closing Conference.
165.	A Closing Statement.
166.	Duties of Seller's Attorney.
167.	Preparing a Closing Statement.
168.	Proration of Real Estate Taxes.
169.	Proration of Special Assessments.

TABLE OF CONTENTS

- Sec.
170. Assignment of Insurance Policies and Proration of Premiums.
171. Proration of Rent.
172. Utility Charges.
173. Paying Encumbrance Out of Purchase Money.
174. Preparing Instruments.
175. The Closing Conference.
176. Writing Letter to Client.

CHAPTER 7. ESCROWS

181. Nature of Escrow Agreement.
182. Situation in Which Escrows are Commonly Used.
183. Escrow Agreement in General.
184. Who Acts as Escrow Holder.
185. Common Provisions in Escrow Agreements.
186. Form of Escrow Agreement.
187. — Another Form.

CHAPTER 8. TITLE INSURANCE AND ABSTRACTS OF TITLE

191. Purpose.
192. An Abstract of Title.
193. Title Insurance.
194. Examination of a Title to Real Estate.
195. Matters Which the Records will Not Cover.
196. Defects to be Noted.
197. Opinions of Title.
198. Obtaining Title Insurance.
199. Cost of Policy.
200. Conclusion.

CHAPTER 9. CURING DEFECTS IN TITLES

211. Introduction.
212. Affidavit of Identity.
213. Affidavit of Marital Status.
214. Affidavit Establishing Dates.
215. Affidavits Clarifying Descriptions.
216. Affidavits Showing Location of Easements.
217. Miscellaneous Uses of Affidavits.
218. Quitclaim Deeds.
219. — To Release Actual or Possible Outstanding Interests.
220. — To Correct or Clarify Descriptions.
221. — To Correct or Clarify Status or Names of Parties or Correct Improper Executions or Acknowledgments.
222. — To Release Easements, Privileges and the Like.
223. Satisfaction of Mortgages.
224. Curing Defects by Court Order.
225. Reformation of Instruments.
226. Form of Affidavit Establishing Identity and Age.

TABLE OF CONTENTS

CHAPTER 10. ACTIONS TO QUIET TITLE

Sec.	
241.	Nature of Action.
242.	Description of Property.
243.	Parties to the Action.
244.	Summons.
245.	Complaint.
246.	Lis Pendens.
247.	Appointment of Guardian ad Litem and Attorney for Persons in Military Service.
248.	Procedure for Determination of Inheritance Tax.
249.	Answer.
250.	Publication of Summons.
251.	Order of Default.
252.	Hearing the Action.
253.	Presenting Proofs in Court.
254.	Findings of Fact and Conclusions of Law.
255.	Judgment.
256.	Conclusion.
257.	Form of Summons.
258.	Form of Complaint.
259.	Form of Lis Pendens.
260.	Form of Sheriff's Return of Defendants Not Found.
261.	Form of Motion and Affidavit for Publication of Summons.
262.	Form of Order for Publication of Summons.
263.	Form of Summons by Publication.
264.	Form of Motion to Refer to Supervisor of Inheritance Tax.
265.	Form of Order of Reference to Supervisor.
266.	Form of Admission of Service and Notice of Appearance.
267.	Form of Release of Inheritance Tax.
268.	Form of Report of Supervisor of Inheritance Tax.
269.	Form of Motion and Affidavit for Default.
270.	Form of Order of Default.
271.	Form of Answer by Attorney (Guardian ad Litem).
272.	Form of Notice of Application for Judgment.
273.	Form of Findings of Fact and Conclusions of Law.
274.	Form of Judgment.

CHAPTER 11. LEASES

281.	Nature and Essentials of a Lease.
282.	Rental of Residential Property.
283.	Check List.
284.	Formal Requisites of Lease of Real Estate.
285.	Provisions to Consider in Designating Parties.
286.	Conditions of Landlord's Title.
287.	Description of the Property.
288.	Length of Term.
289.	Amount of Rent and Terms of Payment.
290.	Tenant's Intended Use.
291.	Repairs and Alterations.

TABLE OF CONTENTS

Sec.	
292.	Maintenance of Premises.
293.	Assignment or Subleasing.
294.	Destruction of Premises.
295.	Options to Renew Lease or to Purchase.
296.	Termination of Lease by Landlord.
297.	Termination of Lease by Tenant.
298.	Right of Landlord to Enter During Term.
299.	Notices to be Given by Tenant to Landlord.
300.	Notices to be Given by Landlord to Tenant.
301.	Other Provisions.
302.	A Farm Lease.
303.	— Rent.
304.	— Term and Provisions for Renewal.
305.	— Description.
306.	— Machinery and Livestock.
307.	— Seed, Planting and Summerfallow.
308.	— Improvements and Repairs.
309.	— Farming Methods.
310.	— Other Provisions.
311.	— Termination of the Lease Prior to Expiration.
312.	Equipment Leases, Leases of Machinery, Fixtures and Other Personal Property.
313.	Form of Lease—Rental Based on Gross Sales.
314.	— Cash Rental.
315.	Form of Farm Lease.
316.	Form of Equipment Lease.

CHAPTER 12. TERMINATION OF TENANCIES AND LEASES

331.	Types of Tenancies.
332.	Creation of Tenancy.
333.	Termination of Tenancies—Tenancy for Specified Time.
334.	— By Sufferance.
335.	— Tenancy from Month to Month.
336.	— Agricultural Leases.
337.	— Upon Failure to Pay Rent.
338.	Form of Notice.
339.	Service of Notice.
340.	Termination of Lease for Year or More.
341.	Holding Over after Lease of Year or More.
342.	Termination of Hold-Over Tenancy after Lease for a Year or More.
343.	Surrender of Premises by Lessee.
344.	Entry by Landlord—Peaceable Entry.
345.	Ejectment.
346.	Unlawful Detainer.
347.	Form of Notice Terminating Tenancy.
348.	Form of Notice to Pay Rent or Vacate.

TABLE OF CONTENTS

CHAPTER 13. UNLAWFUL DETAINER

- Sec.
- 361. Introduction.
 - 362. Forcible Entry.
 - 363. Forcible Detainer.
 - 364. Unlawful Entry and Detainer.
 - 365. Unlawful Detainer.
 - 366. Nature of Action of Unlawful Detainer.
 - 367. Where There is Forcible Entry or Forcible Detainer or Both.
 - 368. Where the Conventional Relationship of Landlord and Tenant Exists.
 - 369. Jurisdiction and Procedure.
 - 370. Notice Terminating Tenancy.
 - 371. Summons.
 - 372. Complaint.
 - 373. Writ of Restitution.
 - 374. Trial.
 - 375. Execution.
 - 376. Form of Summons.
 - 377. Form of Complaint.
 - 378. Form of Findings of Fact and Conclusions of Law.
 - 379. Form of Judgment.
 - 380. Form of Motion for Writ of Restitution.
 - 381. Form of Order for Writ of Restitution.
 - 382. Form of Writ of Restitution.
 - 383. Form of Sheriff's Return.

PART 2. SECURITY TRANSACTIONS

CHAPTER 14. UNIFORM COMMERCIAL CODE

- 401. Enactment and Effective Date.
- 402. The Code's Effect and Purpose.
- 403. The Code's General Policy.
- 404. Conflict of Laws—Where Parties Agree.
- 405. — Where Parties Do Not Agree.
- 406. Provisions for Damages.
- 407. Waiver of Rights under Code.
- 408. Definition of Terms.
- 409. Trade Usage.

CHAPTER 15. COMMERCIAL PAPER

- 421. Introduction.
- 422. Limitations on Coverage of Article 3.
- 423. Form of Negotiable Instruments.
- 424. Payable When.
- 425. Payable to Order.
- 426. Rules of Construction.
- 427. Accrual of Cause of Action.

TABLE OF CONTENTS

- Sec.
428. Transfer and Negotiation.
429. Special and Restrictive Indorsements.
430. Rights of a Holder.
431. Burden of Proof.
432. Liability of Parties and Signature.
433. Consideration.
434. Acceptance and Certification.
435. Accommodation Party.
436. Guarantor.
437. Presentment, Notice of Dishonor and Protest.
438. Discharge.

CHAPTER 16. PROMISSORY NOTES

451. Introduction.
452. Place of Payment.
453. Terms of Payment.
454. Joint or Several Liability.
455. Community Character of Liability.
456. Attorney Fees.
457. Execution.
458. Endorsing Payments.
459. Form of Promissory Note.
460. Form of Installment Note.
461. Another Form of Installment Note.
462. Combination Promissory Note and Disclosure Statement (Federal Truth in Lending Act).

CHAPTER 17. REAL ESTATE MORTGAGES

471. Scope of Chapter.
472. Federal Real Estate Settlement Procedure Act (RESPA).
473. Information to be Secured.
474. The Mortgage Note.
475. What Mortgage Form to Use.
476. Formalities of Execution.
477. Designating the Mortgagor or Mortgagors.
478. — If the Mortgagor is Married.
479. — If the Mortgagor has Separate Property.
480. — If the Mortgagor is Unmarried.
481. — If the Mortgagors are Tenants in Common.
482. — If the Mortgagor Acts in a Fiduciary Capacity.
483. — If the Mortgagor is a Corporation.
484. — If the Mortgagor is a Partnership.
485. — If the Mortgagor Uses Several Names.
486. — If the Mortgagor has Legally Changed His Name Since Acquiring Title.
487. Designating the Mortgagee.
488. — If Two or More Persons are Mortgagees.
489. — If the Mortgagee is a Fiduciary.

TABLE OF CONTENTS

Sec.	
490.	— If the Mortgagee is a Corporation.
491.	— If the Mortgagee is a Partnership.
492.	Expressing the Consideration.
493.	Terms of Payment.
494.	Description of Real Estate.
495.	Encumbrances.
496.	Insurance.
497.	Repairs Clause.
498.	Special Types of Mortgages—The Purchase Money Mortgage.
499.	— Refinancing Mortgage.
500.	— Second Mortgage.
501.	Estate and Interest of Parties.
502.	Assignment.
503.	Extension of Mortgage.
504.	Partial Release of Mortgage.
505.	Satisfaction of Real Estate Mortgage.
506.	Satisfaction by Marginal Entry.
507.	Conveying Mortgaged Property.
508.	Form of Real Estate Mortgage.
509.	Form of Assignment of Real Estate Mortgage.
510.	Form of Partial Release of Mortgage.
511.	Form of Satisfaction of Real Estate Mortgage.

CHAPTER 18. FORECLOSURE OF REAL ESTATE MORTGAGES

531.	Preliminary Matters—Secure Mortgage and Other Documents.
532.	Study the Terms of the Note and Mortgage.
533.	Determine the Amount of the Indebtedness.
534.	Examine the Title.
535.	Notify the Mortgagor.
536.	Insurance.
537.	Occupancy of Mortgaged Premises.
538.	View the Mortgaged Premises.
539.	Study the Statutes.
540.	Venue in a Mortgage Foreclosure Action.
541.	Summons.
542.	Complaint.
543.	Filing the Summons and Complaint.
544.	Lis Pendens.
545.	Service of Summons and Complaint.
546.	Examination of Title.
547.	Order to Show Cause for Appointment of Receiver.
548.	Setting Date for Hearing.
549.	Order of Default.
550.	Proof to be Made at the Hearing.
551.	Proofs in Special Cases.
552.	The Findings of Fact and Conclusions of Law.
553.	The Judgment.
554.	Declaration of Homestead.
555.	Order of Sale.
556.	Notice of Sale.

TABLE OF CONTENTS

Sec.	
557.	Conduct of Sale.
558.	Sheriff's Return of Sale.
559.	Confirmation of Sale.
560.	Redemption from Sale.
561.	Sheriff's Deed.
562.	Possession during Redemption.
563.	Restraining Waste during Redemption.
564.	Insurance.
565.	Representing the Mortgagor.
566.	Foreclosure of Second Mortgage.
567.	Form of Summons.
568.	Form of Complaint.
569.	Allegation Regarding Defaults in Installment Payments.
570.	Allegation Regarding Appointment of Receiver.
571.	Affidavit of Service.
572.	Form of Lis Pendens.
573.	Form for Affidavit of Non-military Service.
574.	Form of Findings of Fact and Conclusions of Law.
575.	Form of Judgment.
576.	Cost Bill.
577.	Order of Sale.
578.	Notice of Sale.
579.	Sheriff's Return.
580.	Order Confirming Sale.
581.	Sheriff's Certificate of Purchase.
582.	Sheriff's Deed.
583.	Notice of Intention to Redeem.
584.	Certificate of Redemption.

CHAPTER 19. DEEDS OF TRUST

601.	Introduction.
602.	Who may be Trustee.
603.	Recording.
604.	Prerequisites to Non-judicial Foreclosure.
605.	Foreclosure.
606.	Notices.
607.	Possession by Purchaser.
608.	Application of Proceeds of Sale.
609.	Payment Prior to Sale.
610.	No Deficiency Judgment.
611.	Form of Deed of Trust.
612.	Another Form of Deed of Trust.
613.	Form of Assignment of Deed of Trust.
614.	— Another Form.
615.	Form of Nomination of Successor Trustee.
616.	Form of Appointment of Successor Trustee.
617.	Form of Partial Release of Deed of Trust.
618.	Form of Release of Deed of Trust.
619.	Form of Request for Partial Reconveyance.
620.	Form of Partial Reconveyance.

TABLE OF CONTENTS

- Sec.
621. Form of Request for Full Reconveyance.
622. Form of Full Reconveyance.
623. Form of Notice of Default and Election to Foreclose Deed of Trust.
624. Form of Discontinuance of Foreclosure Proceedings and Reinstatement of the Deed of Trust.
625. Form of Notice of Default and Election to Sell.
626. Form of Rescission of Notice of Election to Sell.
627. Form of Notice of Trustee's Sale.
628. Notice of Foreclosure.
629. Form of Request for Notice.
630. Form of Affidavit of Mailing.
631. Form of Affidavit of Posting or Service of Notice of Trustee's Sale.
632. Form of Trustee's Deed.

CHAPTER 20. BULK SALES UNDER COMMERCIAL CODE

641. Introduction.
642. Businesses Covered.
643. Transfers Covered.
644. Transfers Excluded.
645. Requirements for Compliance.
646. Notice to Creditors.
647. Sales at Auction.
648. Remedies of a Creditor.
649. Limitations on Creditor's Remedies.
650. Form for List of Creditors.
651. Form for Schedule of Property.
652. Form for Notice of Bulk Transfer (Payment in Full to Creditors).
653. Form of Notice of Bulk Transfer (Payment in Full to Creditors Not Contemplated).

CHAPTER 21. SECURED TRANSACTIONS

671. Introduction.
672. Excluded Transactions.
673. Classification of Goods.
674. Definitions.
675. Security Interests—Validity.
676. Form of a Security Agreement.
677. — Another Form.
678. — Another Form.
679. When Security Interest Attaches—After Acquired Property—Future Advances.
680. Notice of Filing and the Financing Statement.
681. Form of Financing Statement.
682. Place of Filing.
683. What Constitutes Filing.
684. Duration of Filing.
685. Termination Statement.
686. Assignment of Security Interest.