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PRACTICAL  
**REAL ESTATE LAW**  
SECOND EDITION



**DANIEL F. HINKEL**

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# **Practical Real Estate Law**

SECOND EDITION

Daniel F. Hinkel

WEST PUBLISHING COMPANY

Minneapolis/St. Paul • New York • Los Angeles • San Francisco

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*Text Design:* Lois Stanfield, LightSource Images  
*Illustration:* Alice B. Thiede, CartoGraphics  
*Cover Design:* Roslyn Stendahl, Dapper Design  
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British Library Cataloguing-in-Publication Data. A catalogue record for this book is available from the British Library.

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WEST PUBLISHING CO.  
WEST PUBLISHING CO.  
610 Opperman Drive  
P.O. Box 64526  
St. Paul, MN 55164-0526

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Printed in the United States of America  
02 01 00 99 98 97 96 95 8 7 6 5 4 3 2 1 0  
Library of Congress Cataloging-in-Publication Data

Hinkel, Daniel F.

Practical real estate law / Daniel F. Hinkel. —2nd ed.

p. cm.

Includes index.

ISBN 0-314-04583-X (hard)

1. Vendors and purchasers—United States. 2. Real property—United States.

I. Title.

KF665.H53 1995

346.7304'3—dc20

[347.30643]

94-37593

CIP

*To John Henry*

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# Preface

As an instructor for The National Center for Paralegal Training, I have had the pleasure over the past two decades of teaching a real estate course to paralegal students. This textbook, a greatly expanded version of that course material, is directed toward the training and practice of legal assistants in the area of modern real estate transactions.

The book is designed to be used in two ways. It can be used as a classroom teaching source for the training of legal assistants. It also can be used as a reference work by legal assistants employed in a real estate legal practice. The book includes an explanation of legal principles, practical suggestions, and numerous forms. Using this text, the student, or practicing legal assistant, possesses in a single source a wealth of useful material.

The treatment of the subject assumes that the reader has no knowledge of real property law. The text introduces the reader to the basics of real property law and then proceeds step by step through all the areas of a modern real estate practice. A legal assistant cannot effectively assist a transactional real estate attorney unless the legal assistant is fully aware of all the substantive legal issues that are involved and has a good command of the various legal forms in use.

This text covers all the important issues that a real estate legal assistant will encounter in a modern real estate practice. I offer it to you with the sincere hope that you will find it useful.

## TEXT ORGANIZATION

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Based upon suggestions from various teachers, students, and reviewers of the first edition of this book, the format and content of the text has been revised. Chapter 1 introduces the student to the concept of property ownership, and the various types of ownership that can exist are discussed. Chapter 2 introduces the student to the situation in which real property is owned by more than one person and discusses all the forms of concurrent ownership. Chapter 3 is a new chapter and contains a discussion of condominiums, cooperatives, and time-shares. Chapter 4 is a discussion of the methods of describing real property and contains sample surveys and legal descriptions. Chapters 5 and 6 discuss the various encumbrances to the ownership of real property with a special emphasis on easements. Chapter 7 begins a discussion on contracts, and Chapter 8 is devoted to contract forms and the explanation of standard provisions found in real estate contracts. Chapter 9 is a discussion of deeds, complete with many examples and sample forms. Chapters 10, 11, and 12 discuss real estate finance. Chapter 10 discusses the business aspect of real estate lending and is designed to acquaint the student with the economic and practical needs of lender

and borrower clients. Chapter 11 is a discussion of the substantive law of notes, mortgages, and foreclosures. Chapter 12 explains the various note and mortgage forms, as well as other documents used by lenders to document and secure residential and commercial loans. Chapter 13 and 14 are devoted to title examinations and title insurance. Chapters 15, 16, and 17 are devoted to the real estate closing. Chapter 15 is a full discussion of the substantive issues of real estate closings. Chapter 16 is a discussion of the government regulations that affect a residential real estate closing. Chapter 17 is devoted to forms and examples of closing documents, including a sample of a residential real estate closing transaction. Chapter 18 is a discussion of leases, complete with residential and commercial lease forms.

## CHANGES TO THE SECOND EDITION ---

- **Forms.** Many of the forms in the first edition have been updated and new forms are included throughout the text.
- **Ethics.** The chapter on ethics, which was found in Chapter 18 of the first edition, has been replaced with an ethics comment in each chapter. Integrating the Ethical Considerations throughout the text allows for greater emphasis and comprehension.
- **Cases.** A number of teachers and students have requested that case decisions be added to the text. In the Second Edition, a number of edited cases have been introduced in many of the chapters to illustrate important points of law and to give students experience in reading and applying actual cases to chapter material.
- **State-Specific Editions.** State-specific editions of the text have been created for New York, Florida, Texas, and California. These versions contain margin annotations differentiating state specific material from the discussion in the main text. An appendix includes more extensive explanations and examples of state material.
- **Expanded Coverage.** Condominiums and Cooperatives is a new chapter (Chapter 3) including a brief history of the condominium/cooperative form of ownership, how a condominium is formed, the issues involved in representing a condominium unit purchaser or lender, the differences between condominiums and cooperatives, and time share ownership. A condominium declaration form, examples of various condominium statutes which regulate the formation and governance of a condominium, and copies of articles of incorporation and bylaws for condominium association are also included.

Discussion of computer applications have been added to many skills sections throughout the text. For example, new software available to assist in the preparation of closing documents is covered in Chapter 17.

## STUDENT LEARNING FEATURES ---

- **Chapter objectives** open each chapter to focus students' attention on the key concepts they will learn.
- **Checklists** are found in most chapters and include task-specific steps which students can apply to many aspects of a paralegal's work day. For example, Chapter 8 contains a Checklist for preparation and review of a commercial real estate contract and Chapter 17 includes a Checklist for a residential closing.

- **Terminology** is emphasized throughout each chapter. A glossary of new terms begins each chapter and provides brief definitions of the new legal terms which will be used in the chapter. Terms appear in boldface and are defined in context where they first appear. They are also listed at the end of each chapter for quick reference. Finally, a new comprehensive glossary ends the text.
- A **chapter-ending summary** provides an excellent review of the chapter's main points.
- **Review Questions, Case Problems, and Practical Assignments** at the end of each chapter have been updated, and in most chapters increased in number, providing your students with more exercises and opportunities to consider how they would handle specific tasks. For example, a practical assignment in Chapter 6 asks your students to draft an easement and a practical assignment in Chapter 11 asks your students to draft a note and a deed to secure debt based on hypothetical scenario.

## EXTENSIVE TEACHING PACKAGE

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- **Instructor's Manual and Test Bank** by the text author includes sample examinations, nutshell treatment of chapter material, sample homework, classroom assignments, and projects. The Test Bank includes approximately 30-40 true/false, multiple-choice, and essay questions.
- **Instructor's Manual and Test Bank on disk** The complete Instructor's Manual is available on disk for your convenience in testing and organizing.
- **Study Guide** by the text author includes review of chapter concepts, and additional application of concepts.
- **Strategies and Tips for Paralegal Educators** by Anita Tebbe of Johnson County Community College, provides teaching strategies specifically designed for the paralegal educator. It concentrates on how to teach and is organized in three parts of paralegal education: the Who—students and teachers, the What—goals and objectives; and the How—methods of instruction, evaluation, and other aspects of teaching. One copy of this pamphlet is available to qualified adopters.
- **WESTLAW** West's on-line computerized legal research system, offers students "hands-on" experience with a system commonly used in law offices. Qualified adopters can receive 10 free hours of WESTLAW. WESTLAW can be accessed with Macintosh and IBM PCs and compatibles. A modem is required.\*
- **Paralegal Video Library**®: "The Drama of the Law II: Paralegal Issues" Videotape. This series of five separate dramatizations is intended to stimulate classroom discussion about various issues and problems faced by paralegals on the job today. Each dramatization is approximately five to seven minutes. Topics include intake interview, human error, strategic information, client confidentiality, and unauthorized practice. The scripts were written by John Osborne, author of *The Paper Chase* and are professionally produced.

"I Never Said I Was a Lawyer" Paralegal Ethics Videotape uses a variety of scenarios to inspire discussion and give students experience dealing with ethical dilem-

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\* Please ask your West representative about qualifications for these supplements.

mas. Topics explored include the unauthorized practice of law, identification of paralegals as non-lawyers, waiver of client's rights through breaches of confidentiality, and lack of attorney supervision. "Situation analysis," how to evaluate an ethical situation and decide on the proper course of action, is also covered. The tape was created by the Colorado Bar Association Committee on Legal Assistants but is non-state specific and will be useful in all paralegal programs.

"The Making of a Case" Videotape is narrated by Richard Dysart, star of *L.A. Law*. In this introduction to law library materials and legal research, a case is followed from the court system to the law library shelf. This gives a better understanding of what case law is, why it is important, and how cases are published.

"West's Legal Research" Videotapes teach the basis and rationale for legal research. The three types of legal research tools—Primary Tools, Secondary Tools, and Finding Tools—are covered. Topics like case law reporters, digests, computer assistance, statutes, special searches, and CD-ROM libraries are included. The nine segments are contained on two tapes.

## ACKNOWLEDGMENTS \_\_\_\_\_

Acknowledgments are due Linda Selfridge who dedicated many hours to the typing of the manuscript and to the following individuals for their fine efforts in reviewing the manuscript.

## REVIEWERS OF THE FIRST EDITION \_\_\_\_\_

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