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THE LAW OF REAL PROPERTY



Michael P. Kearns

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Cover design by John Orozco

Cover photo by Mike Gallitelli

Chapter opener illustrations courtesy of Home Planners, Inc.

Delmar staff:

Administrative Editor: Jay Whitney

Developmental Editor: Christopher Anzalone

Project Editor: Judith Boyd Nelson

Production Supervisor: Larry Main

Design Supervisor: Karen Kunz Kemp

For information, address Delmar Publishers Inc.

2 Computer Drive, West, Box 15-015,
Albany, NY 12212-9985

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Printed in the United States of America

Published simultaneously in Canada

by Nelson Canada,

a division of The Thomson Corporation

1 2 3 4 5 6 7 8 9 10 XXX 99 98 97 96 95 94 93

Library of Congress Cataloging-in-Publication Data

Kearns, Michael P.

The law of real property/Michael P. Kearns.

p. cm.

Includes index.

ISBN 0-8273-4878-9

1. Real property—United States. 2. Legal assistants—United States—

Handbooks, manuals, etc.

KF570.Z9K4 1993

346.7304'3—dc20

[347.30643]

92-47071

CIP

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DEDICATION

For my sons, Steven and Scott:
Amor vincit omnia
(Love conquers all).

PREFACE

This book deals with real property law. It is designed to be as straightforward and clear as possible. Although it was written for paralegal students, it could also be used with equal ease in any undergraduate class about real estate. Nevertheless, there is always the problem of learning a new field; at first, the terms and language of that field are confusing. To alleviate that problem, this book has definitions in the margins next to the text, a glossary at the end of the book, and a textual explanation of each new term where it first appears.

The selection of topics is intended to cover as much as possible, while recognizing that the paralegal's knowledge needs do not compare to those of an attorney. Some topics, however, have been treated with extra depth when they are of particular importance to someone who will be working with real estate transactions. In addition, the financial aspects of the real estate business are covered extensively, because much real estate work is intimately connected with finance. Indeed, much of the actual structuring of the "deal" often reflects the requirements of the financing. It was felt, therefore, that this area needed explanation, because a failure to understand it could lead to difficulties on the job.

This book covers the most important areas of real property. It begins with an overview. Afterwards, the chapters deal with the following material and questions:

- Chapter 2—How can this property be located? A chapter on legal descriptions.
- Chapter 3—How can one own this property? A chapter on the ownership of real property.
- Chapter 4—Who has or had interests in this parcel of property? A chapter on title searches.
- Chapter 5—How does one transfer an interest in real property? A chapter on acquiring and transferring real property.
- Chapter 6—How can the value of this property be determined? A chapter on appraising real estate.

Chapter 7—How is the buying and selling of real estate financed? A chapter on real estate financing.

Chapter 8—What is involved in a closing? A chapter on closing real estate sales, with emphasis on residential home closings.

Chapter 9—What is involved in renting real property? A chapter on leasing real property.

Chapter 10—What is special about condominiums and cooperatives? A chapter on condominiums and cooperatives.

Chapter 11—What environmental laws and concerns must be addressed? A chapter on environmental laws.

Chapter 12—How is real estate taxed, by whom, and for what purposes? A chapter on real estate taxation.

Chapter 13—What kinds of ethical problems arise in real estate transactions? A chapter on ethics.

Finally, there is an appendix which addresses how a student should approach reading cases; it is entitled “How to Analyze a Case.”

A complaint about some texts has been that the text lacks case material. Many teachers believe that cases both illustrate points of law and allow the student to see what actually happened in a real situation. Therefore, a number of case excerpts have been included in this text. These cases range from very recent cases to one more than 50 years old. The older cases were included to indicate the precedent established by common law and passed on from one generation to the next. All were included because they illustrate a particular point of law well. The cases may be used as the instructor desires; they are intended only as illustrations, rather than as the basis for acquiring factual information. The text covers the topics discussed in the cases.

A major and continuing student complaint concerns “legalese” and the difficulty in understanding it. To the greatest extent possible, legalese has been removed and simple direct English has been employed. Nevertheless, there will be a barrier between the material and the student until the student has mastered the terminology of the topic. I have tried to make the student’s task less burdensome so that acquiring the knowledge and terms will not overwhelm the student.

Several questions and problems appear at the end of each chapter. After discussion with my editor, we decided to leave both the questions and their answers in the text; the answers are in Appendix B, available but not obtrusive. With a topic as complex as real property, it was thought that these would provide a basis for discussion and learning. Additional materials are provided in the accompanying handbook to assist the instructor in preparing examination questions.

I have also included a number of checklists for various topics in the text. These checklists are not guaranteed to be complete for any particular situation, because local law will, of course, have its own variations that must be reflected in an actual checklist for job use. I have inserted these checklists for three reasons. First, understanding a checklist gives students

a sense of control over the material and that leads to self-confidence, a definite aid to learning. Second, this kind of list gives students a start on organizing the work they will be doing in the future. Third, students may want to use the checklists to review and determine what they know and what they are missing. Checklists may serve multiple purposes but, basically, they identify important elements and help students maintain control over the immense amount of material that may be involved in a real estate transaction.

Focusing the text has required careful selection and consideration of what will be useful for the paralegal to know. This focus has been based on the situations and transactions in which the paralegal will most likely be involved. Obviously, the selection of relevant information is personal from my experiences, but the risk is always that too much material will overwhelm the student. I have sought to avoid that result (1) by sticking to the basic patterns of the law of real estate and (2) by trying to provide enough material about the context in which the law operates so that the student can understand and make connections, rather than merely memorize a set of rules. Memorization is often important, but mastery occurs when students understand the context so that the pieces fit together. My students have found that they learn more about the law by learning its context along with its rules.

Another method for helping the student is having more than one discussion of the same topic in the text. Most students do not learn everything the first time through. My experience as an instructor has been that the very best students learn somewhat more than half of the topic the first time through; most students learn considerably less. This learning difficulty is particularly acute when there is a constant need to master a new vocabulary and be certain that the terms are both understood and used properly. Surely, learning real estate law for the first time must be a prime example of this learning problem. Many chapters (compare, for instance, legal title concepts with appraisal concepts) appear with an entirely new vocabulary and approach. Some topics that may be particularly difficult to understand, such as fixtures and financing devices, get repeated coverage in a different way, or with additional material, in different chapters of the book. My purpose is to reinforce and add to what the student has already learned so that the student will learn more.

I must thank Jay Whitney, my Delmar editor, because without his remarkable patience, wise encouragement, and consistent support, I would have been unable to complete this book as I have; I remain truly grateful to him. I also wish to thank Glenna Stanfield for helping me by answering a number of idiot questions that I asked as I was learning to use Word Perfect. Finally, I greatly appreciate the consistent support, encouragement, and tactful nudging of two outstanding personal friends, Teresa Carr King and Ronald Liebman. The persons who spent their time to read, criticize, and edit portions of this book as it emerged from my printer were helpful to me beyond any expression of my gratitude. I have

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used many of their suggestions and their contributions have significantly improved this text. Any errors or faults, of course, are mine alone. My heartfelt thanks to these professional companions through this journey:

Kathleen Mercer Reed
University of Toledo Community and Technical College
(Ohio)

Paul M. Klein
Duquesne University
(Pennsylvania)

Henry Schildknecht
University of Louisville
(Kentucky)

Jack Owen
West Texas State University
(Texas)

Ray W. Sherman, Jr.
St. Mary's College
(California)

John L. Frank
Chippewa Valley Technical College
(Wisconsin)

Mattha E. Licke
Itasca Community College
(Minnesota).

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