

Modern Real Estate Practice in Illinois, 6th Edition
Filmore W. Galaty, Wellington J. Allaway, Robert C. Kyle
Laurie MacDougal, Consulting Editor

Chapter 13: Title Records

Learning Objectives

After reading this chapter, students should be able to:

- Identify the various proofs of ownership.
- Describe recording, notice, and chain of title issues.
- Explain the process and purpose of a title search.
- Distinguish constructive and actual notice.
- Define the following key terms: abstract and attorney's opinion of title; abstract of title; actual notice; certificate of title; chain of title; constructive notice; marketable title; priority; recording; subrogation; suit to quiet title; title insurance; title search.

Why Learn About Title Records?

Public records are just that: records that are open to the public. This means that anyone interested in a particular property can review the records to learn about the documents, claims and other issues that affect its ownership. A prospective purchaser, for example, needs to be sure that the seller can convey title to the property. If the property is subject to any liens or other encumbrances, a prospective buyer or lender will want to know. Typically, the attorney or title company will perform a search of the public records to ensure that good title is being conveyed. Still, it is important for a professional in the real estate industry to understand what is in the public record, and what the searchers are likely to find. Your clients will want to know every step of the process, and you will need to explain to them what is being done on their behalf.

Suggested Items to Bring To Class

Copies of all of the following:

- Abstract of title
- Certificate of title
- Title insurance policy
- Preliminary title report

Lecture Outline

I. Public Records

Public records contain detailed information about each parcel of real estate in a city or county.

IN ILLINOIS . . . *the recorder of deeds, county clerk, county treasurer, city clerk and collector, and clerks of various courts maintain these records. In Illinois, a recorder of deeds must be elected in each county with a population of 60,000 or more. In counties with a population of fewer than 60,000, the county clerk serves as the recorder of deeds.*

A. Recording

Recording is the act of placing documents in the public record.

IN ILLINOIS . . . *state law does not require most documents to be filed or recorded within a specified period of time. However, when creditors and subsequent purchasers do not actually know the content of the documents affecting certain real estate interests, the courts will hold them responsible for discovering that information only as of the date on which the documents are recorded. Tax deeds, by law, must be recorded within one year after the redemption period expires. A tax deed that is not recorded or filed within this period becomes null and void.*

Deeds, mortgages and other instruments that affect title to real estate must be recorded in the Illinois county in which the real estate is located. No instrument affecting title to real property may include any provision prohibiting recording. Any such prohibiting provision is void as a matter of law.

The original document must be filed with the county recorder of deeds and must meet size and format requirements.

When the parcel of land being transferred is (1) a division of a larger parcel and (2) smaller than five acres, the recording provisions of the Illinois Plat Act apply. If the conveyance is exempt, an affidavit stating the reason for the exemption may be required by the recorder. In some municipalities, the water department must declare, by way of an endorsement stamp on the municipal transfer declaration that all outstanding water bills have been paid.

A deed in any language other than English, although valid between the parties, does not give constructive notice unless an official English translation of the document is attached at the time of recording. The translation must be prepared by a credible source, such as the local consulate of a country in which the language is used.

B. Notice

- *Constructive notice*: the legal presumption that information may be obtained by an individual through diligent inquiry. Properly recording documents in the public record serves as constructive notice to the world of an individual's rights or interest. So does the physical possession of a property.
 - *Actual notice*: not only is the information available, but someone has been given the information and actually knows it. An individual who has searched the public records and inspected the property has actual notice. Actual notice is also known as direct knowledge.
1. **Priority**: the order of rights in time, or which party filed or received notice first.

C. Unrecorded Documents

Certain types of liens are not recorded. Notice of these liens must be gained from sources other than the recorder's office.

IN ILLINOIS . . . *a mechanic's lien that has not been recorded may still have priority over other liens that have been recorded.*

D. Chain of Title

Chain of title is the record of a property's ownership. An unbroken chain of title can be traced through linking conveyances from the present owner back to the earliest recorded owner.

- If ownership cannot be traced through an unbroken chain, there is a gap in the chain, and the cloud on the title makes it necessary to establish ownership by a court action called a *suit to quiet title*.

E. Title Search and Abstract of Title

An examination of all of the public records to determine whether any defects exists in the chain of title.

IN ILLINOIS . . . *For normal title searches in Illinois, the search goes back 40 years. When the possibility of litigation exists, the search must go back 75 years.*

F. Marketable Title

To be marketable, a title must:

- disclose no serious defects and not depend on doubtful questions of law or fact to prove its validity.
- not expose a purchaser to the hazard of litigation or threaten the quiet enjoyment of the property.
- convince a reasonably well informed and prudent purchaser, acting on business principles and with knowledge of the facts and their legal significance, that he or she could sell or mortgage the property at a later time.

II. Proof of Ownership

Evidence that title is marketable.

- A deed by itself is not considered sufficient evidence of ownership in Illinois.
- A certificate of title and title insurance are commonly used to prove ownership.
- A. **Certificate of Title:** a statement of opinion of the title's status on the date the certificate is issued usually prepared by an attorney.
 - A certificate of title is *not* a full guarantee of ownership.
- B. **An abstract and attorney's opinion of title**

A summary of all documents recorded against the property, which is then examined by an attorney. It is usually considered evidence of title.
- C. **Title Insurance:** a contract under which the policyholder is protected from losses arising from defects in the title.
 1. **Premium:** paid once, at closing.
 2. **Subrogation:** when a title company makes a payment to settle a claim covered by a policy, the company generally acquires the right to any remedy or damages available to the insured.

IN ILLINOIS . . . *a title insurance policy is the most commonly used evidence that an owner of Illinois real property tenders to a prospective purchaser or lender as proof of good title. The Illinois Title Insurance Act of 1990 requires that all producers of title insurance who own a part interest in a title company (including lawyers and real estate brokers and salespeople) disclose this fact to clients. Failure to comply with the disclosure rules can result in the loss of the privilege of do business in the state.*

3. **Coverage**
 - Standard coverage policy: normally insures the title as it is known from the public records and insures against hidden defects.
 - Extended coverage policy: includes the protections of a standard policy plus additional protections against defects that may be discovered by inspection of the property.
4. **Types of policies**
 - An owner's policy is issued for the benefit of the owner and his or her heirs or devisees.
 - A lender's policy is issued for the benefit of the mortgage company.

IN ILLINOIS . . . *an extended title insurance policy would offer buyer protection against secret liens such as the unrecorded mechanics' liens.*

Discussion Questions

1. What types of information are made public by recording? Why would it be important for such documents to be publicly available?
2. What is the beginning of a chain of title? What is its end?
3. For how long is a title insurance policy effective? How is it affected by the death of the owner? By the sale of the property by the owner? By foreclosure of the property?
4. What types of defects could render a title unmarketable? What are the implications of purchasing property with an unmarketable title?

Classroom Exercises

1. Have your students compare the four types of title evidence. Have them list the advantages and disadvantages of each one.
2. Arrange to have someone from a records office speak with your class about the types of information available through their office. Also arrange to have literature available that explains the work of an abstractor, the sources they use for their information, and the manner in which they process that information. Finally, arrange to have someone from a title insurance company speak with your class about their company's record-keeping division. Ask them to bring title rate sheets and other helpful information.
3. Allow the students to examine a sample of an abstract and a title policy.