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An Introduction to Torrens Title for Surveyors.

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These materials are intended to acquaint surveyors with the Torrens land record system in use in Minnesota and identify several situations where that might affect their work. Finally, these materials will identify several situations where registering title (the way property becomes “Torrens” property) may offer the best way to resolve several issues that surveyors commonly encounter.

A. What is Torrens Property?

Minnesota has two systems for filing documents that affect title to real estate, such as deeds and mortgages. One is commonly known as “abstract.” The other is commonly known as “Torrens.” They run parallel with each other but operate on distinctly different principles.

You might ask why documents are filed at all. It is difficult to know who owns real estate or an interest in real estate just by looking at it. Filing the documents affecting title in a central place allows people, including most importantly, potential buyers and lenders, to see whether their seller or borrower owns a particular piece of real estate. Filing also gives the parties some protections against others who might claim an interest in the property.

All property starts as abstract property. A parcel can then become Torrens property through a process called registration.

1. What is “Abstract” Property?

Many countries have faced the problem of keeping track of the ownership of property for a long time. In the U.S., beginning in colonial times, states developed systems to record or file documents dealing with title to real estate in a central place, typically in an office in the county seat of the county where the real estate is located. In these systems, a recording officer accepts documents affecting the title, but makes no determination of their effect or the state of title.

Instead, the recording officer receives the document, copies it, returns the original, and maintains indexes of the filed documents. In Minnesota, that recording officer is called the County Recorder. The two main indices are one maintained by the names of the parties involved, commonly called the grantor/grantee index, and one maintained by the property involved, commonly called the tract index.

The filed documents do not, by themselves, determine ownership. In the abstract system, title is not a specific document. Let’s assume the IDS Center is abstract property. In this system, I could give someone in this room a deed to the IDS Center. In fact, I could give a deed to the IDS Center to more than one of you. Any or all the people to whom I gave a deed may be able to record it, but that does not mean the person now owns the IDS Center. Instead, that person has a claim to title that may or may not mean anything. The first person to file my deed probably has a little better claim to title than the others to whom I gave a deed. That’s one of the benefits of

recording. In my example, though, the deeds I gave are basically worthless because, believe it or not, I do not own the IDS Center.

Instead, this system operates as a “library” of documents related to a particular parcel.¹ The library consists of all the documents filed and the indices enable someone looking to see who owns a particular parcel to narrow the search of the materials in the library.

When property in the abstract system is bought or sold, someone, usually a professional with experience and familiarity with the county’s records, identifies and reviews all the records maintained by the county for the parcel involved. To avoid the time and expense of going back through all the county’s records every time a parcel is transferred, “abstracts” were developed.

An abstract is a synopsis of all the documents affecting a parcel through a certain date. When the next transaction occurs, the abstract is brought forward by looking for documents filed since the last transaction and adding a synopsis of the new documents to the abstract. “Abstract” property gets its name from this document.

Then, someone, again usually someone with training, and often an attorney, examines the report and gives an opinion, hopefully educated, on the status of title. In recent times, title insurance has largely replaced an attorney’s title opinion. This trend is mostly driven by the expansion of mortgage lending beyond local markets. A lender in New York or California doesn’t necessarily know whether any particular attorney in Minnesota is competent or has adequate malpractice insurance that would allow the lender to recover damages it suffers in case the attorney made an error in the opinion. I am sure many of you have seen a title insurance commitment or title insurance policy. In many respects, a title insurance commitment is a more standardized equivalent of a title opinion, and a title insurance policy is a basically a more standardized and targeted replacement for an attorney’s malpractice policy.

2. Torrens Property

“Abstract” title suffers from several weaknesses. Abstracts, even though they are just a brief description of the recorded documents, become bulky and cumbersome over time. You may have seen examples that are thick, with some parts falling apart or unreadable because of age. People often lose the abstract to their property, and it is expensive and time-consuming to replace the abstract. Most importantly, updating the abstract and examining and reexamining title every time can be duplicative, and expensive.

“Torrens” property developed as an effort to address these weaknesses. The terms abstract and Torrens property have nothing to do with the land itself. Instead, the terms refer to how the documents filed are indexed and the records maintained in the county.

The system is named for Sir Robert Richard Torrens. He was a civil servant in Australia in the 1800s. One of the posts he held there was the Registrar-General, the equivalent of the County

¹ Anh T. Le, *Property-the Effect of the Hersh Decision on the Torrens Act: Getting to the Root of the Problem Hersh Properties, LLC v. McDonald's Corp.*, 588 N.W.2d 728 (Minn. 1999), 26 Wm. Mitchell L. Rev. 601, 603 (2000) (citations omitted)

Recorder. He saw the problems with abstract property. Some literature suggests that he had a distaste for lawyers.²

In the mid-1800s, Sir Torrens developed a system to “register” title to property, taking his inspiration from Australia’s method of registering title to ships. Variations of his system are used in many countries.

Minnesota adopted its version of the Torrens system in 1901. It is codified in Minn. Stat. Ch. 508. The Minnesota Supreme Court described its purpose in *Hersh Properties, LLC v. McDonald's Corp.*, 588 N.W.2d 728, 733 (Minn. 1999) (emphasis added):

The purpose of the Torrens system was to create a title registration procedure intended to simplify conveyancing by eliminating the need to examine extensive abstracts of title by issuance of a single certificate of title, free from “any and all rights or claims not registered with the registrar of titles * * *” [citing] *In re Juran*, 178 Minn. 55, 58, 226 N.W. 201, 202 (1929).

The Registrar of Titles is the person who registers documents concerning Torrens property in Minnesota. See Minn. Stat. §508.34. The County Recorder wears two hats and also serves as the Registrar. Minn. Stat. §508.30. In the counties where you work, the County Recorder and Registrar’s office are probably in the same place. They may have different desks.

Unlike the Recorder, the Registrar is actually supervised by the court. Minn. Stat. §508.32. The district court for the particular county appoints an Examiner of Titles. Minn. Stat. §508.12. The Examiner, in general, acts as the Registrar’s legal advisor, and performs other duties that I will describe.

Not many other states, however, adopted Sir Torrens’ system. One observer noted in 2000 that Minnesota was one of only five states with a fully implemented and well-functioning land registration system.³ Since the time of that observation, one of the states, Illinois, repealed its Torrens act.⁴ It is only used extensively in Minnesota, Hawaii, and Massachusetts.⁵ The Torrens system in Minnesota, however, thrives.⁶

In Hennepin County, it was estimated that more than 42% of the property was Torrens property in 2010.⁷ Ramsey, Anoka, and St. Louis Counties have a significant number of Torrens parcels. Those counties also employ full time Examiners of Title. Many other counties also have a significant number of parcels. Some have very little Torrens property. Some have no Torrens property. Since Torrens property is more prevalent in some parts of the state than others, we’re going to talk about some basic principles underlying the Torrens system.

² Lucas, Scott M.; Redford, Shaun D.; Rubi, Jackie (2 Dec. 2015) “A Torrens Law Primer” (a presentation to the Minnesota Society of Professional Surveyors) (citations omitted).

³ Anh T. Le, (*supra*), 26 Wm. Mitchell L. Rev. at 608.

⁴ 765 Ill. Comp. Stat. Ann. 40/1 (West 2011).

⁵ Kimball Foster, *Certificates of Possessory Title: A Sensible Addition to Minnesota's Successful Torrens System*, 40 Wm. Mitchell L. Rev. 112, 112–13 (2013)

⁶ Lucas, Scott M., et. al (*supra*). See *In re Collier*, 726 N.W.2d 799, 808 (Minn. 2007).

⁷ Foster (*supra*) 40 Wm. Mitchell L. Rev. at 112.

B. How does property become Torrens property?

1. Initial registration.

Torrens property is also called “registered” property. It is called registered property because abstract property becomes Torrens property through a legal action called an initial registration. I think of it like an action to determine adverse claims (quiet title) on steroids. I say that because the decree of registration entered at the end of the proceeding cuts off virtually all claims that arose prior to the registration action.

Someone with an interest or claim to the property submits an application addressed to the court to start the action. Once an application is filed, the court administrator refers the file to the Examiner of Titles. The applicant must also file an abstract. Most Examiners are a little flexible in what the Examiner will accept as an abstract.

The Examiner examines the abstract, the County Recorder’s records and otherwise investigates the status of title. The Examiner is also charged by statute with determining who occupies the property. In Hennepin County, the County Surveyor’s office actually inspects the property and files a report. The Examiner then issues a report addressed to the court. The report typically describes the outstanding interests, any potential defects in title, and recommends who should be named as a party to determine whether they might hold an interest and to determine what interest they might hold.

After the Examiner issues the report, the applicant files a petition asking the court administrator to issue a summons naming the parties who might hold an interest in the land.

While the court issues the summons, the applicant arranges to serve the summons on the named parties. After that, the registration action proceeds much like any other regular civil action. If no one answers, a Decree of Registration is usually issued by default. If someone answers asserting an interest, or disputing, for example, the extent of the interest, a trial occurs. At the end of the action, usually, a Decree of Registration is issued that tells the Registrar of Titles to issue the first Certificate of Title for that parcel.

The Decree quiets title to the land and is binding on all persons, even if they were not identified in the application, report or summons. It is for all intents and purposes final and conclusive against all persons who might have claimed an interest in the land before the Decree was issued after the expiration of all periods allowed to appeal.

2. Certificates of Possessory Title (CPT).

As you might have guessed from the description of the process, converting property from abstract to Torrens property can involve significant time and expense. Minn. Stat. 508A allows for Certificates of Possessory Title. It was adopted to provide a cheaper and less time consuming alternative to initial registration. See Minn. Stat 508A.01. Not all counties allow use of this procedure. The county board must authorize it. *Id.*

In general, anybody that can apply to register title in an initial registration can apply for a CPT. The most significant difference is that the applicant must be in possession of the property. If the applicant is not a resident of Minnesota, the applicant must appoint a resident agent. The CPT procedure cannot, however, be used to resolve title defects. The only encumbrances permitted are those that the applicant admits affect the property, such as a mortgage.

Like an initial registration, the applicant prepares an application. Unlike a registration proceeding, however, the application is not filed with the court, it is submitted to the Examiner of Titles. The applicant must also provide an abstract of title to the Examiner. In general, Examiners have become more flexible in what kind of abstracting is acceptable.

Then, much like an initial registration proceeding, the Examiner of Titles prepares a report that describes the interests and liens that affect the property. The Examiner of Titles then mails notice of the pending CPT application to the parties with an interest in the property. If no one objects, the Examiner tells the Registrar to issue a CPT. If someone objects, the CPT will not issue. The applicant must do a full registration action then to register title.

The CPT issued will be subject to the encumbrances contained in the Examiner's report, rights of persons in possession, and rights that would be disclosed by a survey. Otherwise, the CPT looks very similar to a regular Certificate of Title, and the property is otherwise treated as registered property.

A claim affecting possession of, or title to, land that is based on a document, event or transaction that occurred prior to the first CPT and not shown as a memorial on the CPT is barred unless an action to assert it is started within 5 years of the first CPT. After that five year period expires, the owner shown on the CPT may ask the Registrar to change over the CPT to a regular certificate of title. Even if the owner does not ask, the Registrar will change the CPT to a regular certificate when the ownership transfers after the five year period.

3. The Certificate of Title.

The central idea behind registration is that it provides a means to determine the state of title through the inspection of a single document, the certificate of title.⁸ To make the system viable, the person investigating title must be able to rely the certificate of title. To that end, Minn. Stat. § 508.25 provides that:

Every person receiving a certificate of title pursuant to a decree of registration and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration shall hold it free from all encumbrances and adverse claims, excepting only the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the office of the registrar ... Minn. Stat. § 508.25 (emphasis added)

Interests appear on the Certificate of Title as either memorials or recitals. Memorials are in the boxes. Recitals are located right below the legal description. While memorials and recitals are technically different, their effect is largely the same. Recitals often show instruments that affected title when the property was initially registered. Both note interests that affect title.

In the Torrens system, the Registrar plays a more active role than the Recorder does with abstract property. The Recorder acts as a "librarian" compiling records of documents recorded. The Registrar and Examiner act more like "gatekeepers" by, in effect, determining that the deed or other conveyance is sufficient to justify canceling the current certificate and issuing a new one. In addition to examining title and reporting to the court when title is registered initially, the Examiner also acts as legal advisor to the Registrar assisting the Registrar in performing as a gatekeeper. The Examiner also is responsible for issuing certifications on the sufficiency of

⁸ See *Mill City Heating & Air Cond. Co. v. Nelson*, 351 N.W.2d 362, 364–65 (Minn.1984).

certain documents to transfer title, and issuing directives to the Registrar for deletions and corrections.

As a result, you can think of Torrens title as “adjudicated” title even as transfers occur after the initial court proceeding. A person who suffers a loss as the result of a mistake, omission or misfeasance by the Registrar, the Examiner of Titles, or the Court Administrator can recover from the State’s general fund. Minn. Stat. §508.76. You may have heard that dealing with Torrens property is “pickier” than with abstract. The reason is that the parties involved have different roles, and, further, with Torrens property, the State might have to answer for their mistakes.

C. What happens when things change?

The same person usually does not own the same property forever. Now we are going to talk about what happens when things change.

1. Voluntary transfer.

The Torrens act provides that no change to the certificate can occur without a court order. Minn. Stat. § 508.71, Subd. 1. You might wonder whether an owner who wants to sell or give a mortgage or an easement needs to obtain a court order to do so. In most cases, however, that is not the case. Nothing is really much different than if the owner wanted to sell or encumber abstract property. That owner gives a deed, mortgage, an easement, or a similar instrument.

Minn. Stat. §508.47 says that:

“An owner of registered land may convey, mortgage...or otherwise deal with the same as fully as if it had not been registered....” Minn. Stat. §508.47

Minn. Stat. 508.48 says that,

“Every conveyance, lien ...or other instrument or proceeding, which would affect the title to unregistered land...if recorded or filed with the county recorder shall, in like manner, affect the title to registered land if filed and registered with the registrar.” Minn. Stat. 508.48

Minn. Stat. 508.47 goes on to say:

“...No voluntary instrument of conveyance...shall take effect as a conveyance, or bind or affect the land, but operates only as a contract between the parties, and as authority to the registrar to make registration. The act of registration shall be the operative act to convey or affect the land. That is different from abstract property where “delivery” of the document effects transfer. Minn. Stat. 508.47 (emphasis added).

When a deed is recorded with the Registrar, the Registrar makes a note of it on the outstanding Certificate. It will appear as a memorial. Then, the Registrar cancels that certificate and issues a new one to the new owner. When a mortgage is recorded, a memorial for the new mortgage is added to the Certificate. Minn. Stat. §§ 508.51 and 508.52. Memorials on the old certificate like easements or unsatisfied mortgages that continue to affect the property are “carried over” and put on a new Certificate issued to the new owner.

The main difference between abstract and Torrens property in a voluntary transfer is, in general, that the instrument does not take effect until it is filed with the Registrar, except as a contract between the parties.

The act allows the Registrar to correct clerical errors or omissions without a court order. If that correction would, however, adversely affect a party's interest, the Registrar must refer the correction to the Examiner of Titles. Minn. Stat. § 508.71, Subd. 1a Minn. Stat (2021).

2. Proceedings Subsequent.

In general, a court order to change the certificate is obtained through a "proceeding subsequent." It is called a proceeding subsequent because it is an action brought after (subsequent to) the initial registration usually to determine the validity and effect of instruments affecting the title or to settle disputes involving title to Torrens property. One of the most common reasons for bringing a proceeding subsequent is to cancel a certificate and issue a new certificate to the purchaser at the sheriff's sale after a foreclosure by advertisement. A foreclosure by advertisement is a non-judicial form of foreclosure. Since it is a non-judicial proceeding, allowing the registrar to issue a new certificate to the purchaser would upset the nature of the certificate as "adjudicated" title. In a proceeding subsequent brought after a mortgage foreclosure, the applicant, who is usually the purchaser at the sheriff's sale, asks the court to issue an order directing the Registrar to cancel the old certificate and issue a new certificate in the name of the new owner.

3. Certifications.

Sometimes, involuntary proceedings affect title to the real estate. Common examples include probates, marriage dissolutions, condemnation actions, tax forfeitures, and mortgage foreclosures by action. Minn. Stat. §§508.58, 508.59, 508.67 and 508.73. We talked about a foreclosure by advertisement earlier. It is a non-judicial proceeding. Therefore, a judicial proceeding, the proceeding subsequent is required to obtain a new certificate. A mortgage foreclosure by action is a judicial proceeding brought to foreclose a mortgage. Mortgage foreclosures by action, condemnations, dissolutions etc. already involve a judicial proceeding. Tax forfeitures are not judicial, but involve governmental action. In those cases, no court order is required, but the Registrar may not issue a new certificate unless the Examiner of Titles certifies they are sufficient. If the Examiner cannot make that determination, the party seeking a new certificate can obtain a court order in a proceeding subsequent that determines the sufficiency.

The Examiner of Titles must also certify that deeds of sale by a personal representative and deeds made by guardians, conservators and trustees are sufficient. Minn. Stat. §§508.62, 508.68, 508.69.

4. Deletions and Directives.

The Examiner of Titles may also tell the Registrar to delete easements or other interests (other than ownership) that have terminated by their terms (such as the expiration of a lease). The Examiner may also instruct the Registrar to delete interests that are barred, such as by application of an applicable statute of limitations. A common example of this is a mortgage that has not been released. That mortgage cannot be foreclosed after the expiration of 15 years after it is due.

The Examiner may also instruct the Registrar to correct the name or designation of a party. Common examples are obvious spelling errors or the designation of a person as married when the person is not married.

The Examiner does this through a document, appropriately called a directive because they direct the Registrar to do something. Directives are usually addressed to situations that do not require a factual determination or involve documents that are unambiguous. Otherwise, a proceeding subsequent is necessary. In a proceeding subsequent, the party whose interest might be terminated gets notice and an opportunity to contest the removal.

If you encounter an interest shown on the certificate that no longer affects the property, the owner may be able to obtain a directive to delete it. An example of something you would see might be a temporary construction easement that has expired.

D. How is your work is affected if the property is Torrens?

Again, you might wonder how Torrens affects your work. After all whether a property is abstract or Torrens does not affect the property, only the way records concerning ownership are kept. Most of the documents you would be involved in recording, like plats, are voluntary. When instruments are voluntary, the two systems act much the same.

1. Trusts.

Not all transfers are, however, as simple as A conveys to B, even though they might be voluntary. A prime example is property that is held in trust. In my example, A might hold the property in trust for C. A might die if A is an individual or might go out of business if A is a company, and a new trustee is serving. Since this is a little more complicated transaction, the Examiner of Titles must approve deeds from a trust and plats where a trustee is signing. .

2. Condominiums.

Condominiums are basically formed by recording a plat along with a declaration that defines the boundaries of the units and establishes easements and other rights between the owners. In a condominium, the owners own their unit and an undivided interest in all of the common elements. If the property underlying the condominium is both abstract and Torrens, creating a condominium produces a nightmare for indexing documents filed for the units created. Both the units and the common elements would be both abstract and Torrens. Rule 222 of the Minnesota Rules of General Practice requires that condominiums must either include either all abstract or all Torrens property, not both. Please note, however, that land on a Certificate of Title can be included with land on a CPT. They are both “Torrens” land.

The Examiner of Titles must approve the declaration and plat organizing a condominium involving Torrens property before they can be recorded. The Examiner then issues a directive indicating that the documents comply with applicable statutes, and instructing the Registrar to accept them. Minn. Stat. §508.351. This requirement serves as an additional check that hopefully catches errors before the documents go of record.

3. Vacated Streets/Alleys.

If a street or alley is vacated after the land is registered the resolution vacating the street or alley typically appears as a memorial on the Certificate of Title. The portion of the vacated street

or alley that accrues to the parcel may be added to the land described on the Certificate of Title by a district court order in a proceeding subsequent, or through an Examiner's directive. Minn. Stat. §508.73, Subd. 2. In Hennepin County, the County Surveyor will require that the vacated street or alley be added to the legal description on the Certificate if the property is being platted.

If the Examiner cannot make that determination, then a proceeding subsequent is necessary. Common situations where the Examiner might not be able to determine what accrues to a particular parcel is vacation of a cul-de-sac, or along a curve in the vacated street. This process will give a better description of what portion of the vacated street or alley that the owner owns than simply saying "together with that portion..." For example, it might say something like, "The west one half of the vacated alley lying southerly of the extension of the (north boundary line) and northerly extension of the (southerly boundary line)."

If you are working on a plat that includes a vacated street or alley, to avoid any delays, you should consider whether the vacated portion must be added to the legal description on the Certificate of Title.

4. Condemnation.

You might encounter a situation where a Certificate of Title has a memorial for a Final Certificate showing that the condemning authority took fee title to a part of the property shown on the Certificate of Title. If a Final Certificate like that is recorded, the Registrar cannot just issue a new Certificate of Title to the condemning authority until a court orders the Registrar to issue a new Certificate in a proceeding subsequent or the Examiner certifies that the condemnation is legally sufficient. Often this last step, the proceeding subsequent or Examiner's certification, is overlooked. The owner of the remainder of the property might be trying to plat the property, and the legal description on the Certificate does not match what the owner still owns. The owner will want to request a directive so the legal description on the Certificate of Title describes what the owner actually owns.

5. Plat correction.

Unlike abstract property, surveyors cannot just file a Certificate of Plat Correction for Torrens property. The certificate must be approved for filing through a proceeding subsequent. The court order in that proceeding will direct the Registrar to accept the certificate of plat correction on the certificates of title involved.

E. What are the exceptions to the General Rule?

As soon as lawyers tell you a rule, in the next breath, they often immediately start talking about the exceptions to the rule. I have told you basically that the Certificate of Title is golden. I am going to talk about three main exceptions to that rule.

1. Statutory exceptions.

I direct your attention to the bold writing just above the memorials. These seven statements are exceptions to the general rule. They are required by Minn. Stat. 508.35. The seven exceptions are interests that may be valid even if they do not appear on the Certificate of Title. The seven statutory exceptions can be categorized as:

- a. Governmental interests:
 - i) Taxes-Impose a significant burden on the county or city if every year they had to file a statement of taxes or assessments owed against every Torrens certificate in the county.
 - ii) Public highways-Again, it would impose a significant burden to require a governmental entity to file evidence of all roads. This exception does not necessarily help surveyors though. It would be nice if you could just look at the Certificate to know where all the roads are located.
 - iii) Rights arising under the laws or U.S. Constitution-Best example of the application of this exception are Federal Tax Liens. They do not have to appear on the Certificate of Title to encumber the property. The Constitution's supremacy clause requires this exception. If the federal government's claim was not effective unless it was filed on the Certificate, the Torrens Act might not be constitutional.
 - b. Leases of less than 3 years-Once again, it would impose a significant burden and cause an unbelievably complex certificate for something like an apartment building if all leases had to be recorded.
 - c. Rights of Appeal- This exception is pretty logical. This involves the right of appeal from a Decree of Registration. Minn. Stat. §508.26 allows someone who had no notice of the registration to file a petition asking to contest the registration within 60 days after entering the decree. Those who were named as defendants also have a right to appeal from an adverse decision. The Decree of Registration does not cut off an interest of a person who could appeal from its entry, even though that interest does not appear on the certificate.
 - d. Rights of parties in possession under a deed or contract from an owner-This is largely self-explanatory, but very important. When someone is buying property, they cannot ignore the possible interest held by a person that answers the door.
 - e. Mechanic's liens-The mechanic's liens statute, Minn. Stat. Ch. 514 provides that a claimant can assert a valid lien if its statement is filed within 120 days of supplying its last item of labor and materials. A claimant can have a perfectly valid claim, even if its statement does not appear on the certificate yet. This exception harmonizes the registration with the terms of Chapter 514.
2. Actual knowledge.

As we have discussed, a purchaser of Torrens property "in good faith and for a valuable consideration" takes title free of encumbrances and adverse claims except those noted on the certificate of title. Minn. Stat. § 508.25. I highlighted the phrase "in good faith and for a valuable consideration" in Minn. Stat. § 508.25 earlier because it forms the basis for another of the exceptions to the concept that the Certificate of Title is the current expression of the status of title. This exception generally applies if the person acquiring an interest in the property had actual

knowledge of an outstanding interest that is not shown on the Certificate of Title (whether or not it is based on a deed or contract with the owner). I am going to briefly tell you about one of case that illustrates this exception. It is *In re Collier*, 726 N.W.2d 799, 804 (Minn. 2007).

In that case, a lender held a mortgage encumbering Torrens property. The mortgage was, however, mistakenly filed with the County Recorder where it should have been filed if the property was abstract property. Since the mortgage was filed with the Recorder, not the Registrar of Titles, it did not appear on the Certificate of Title. The loan went into default. The lender foreclosed. The foreclosure documents were also filed with the County Recorder. Mr. Collier saw the published foreclosure notice. He then contacted the lender and offered to buy the lender's interest. The lender declined. Mr. Collier was still interested in obtaining the property. He investigated the status of title and saw the lender's error. Knowing the general rule that a mortgage must be noted on the certificate of title, he obtained a deed from the owner named on the certificate of title, filed it and a new certificate was issued to him.

Collier then brought a proceeding subsequent to determine that the lender had no interest. The Minnesota Supreme Court rejected Collier's claim. It said that Collier did not acquire his interest "in good faith" since he actually knew the lender claimed an interest. There are other types of notice. For example, purchasers of property are generally presumed to have notice of documents filed with the county. That is called "constructive" notice because the documents were filed properly and Collier should have looked. Collier did not have "constructive" notice because the documents were filed with the Recorder. The type of notice was important to the court. In this case, he actually knew of the lender's interest. Underlying this decision is also an element of equity. The court thought it unfair that Collier knowingly could use the system to capitalize on the lender's error.

I have simplified the analysis the court followed in *Collier*, but it illustrates one other exception to the general rule that the Certificate of Title is golden.

3. Adverse possession v. practical location.

One of the important features of Torrens title is that once the property is registered, title to it cannot be acquired by adverse possession or prescription. Minn. Stat. §508.02. Prescription in this context is not something you give the pharmacist; it means acquiring something less than fee title by adverse possession. One illustration of this is an easement acquired by continuous use.

This prohibition is consistent with the principle that someone looking into the status of title to the property need only look at the Certificate of Title. That means the owner of Torrens property has, for example, substantial protections against a neighbor acquiring a driveway easement over the property simply by use. The owner of Torrens property also has substantial protections against "losing" a portion of the property by adverse possession. The protection against adverse possession assists surveyors and, especially, owners "defend" their property against persons who claim unrecorded interests.

One of the biggest exceptions to the general rule that title cannot be acquired through use involves a principle called "practical location." It is not really a true exception to adverse possession because they are distinct concepts, although similar. Adverse possession is rooted in a concept of "hostility." A person claiming title through adverse possession generally must show

that the person, or predecessors possessed the property in an actual, open, exclusive and hostile manner for a period of 15 years.⁹ In some circumstances, the person claiming title by adverse possession must also pay taxes levied against the property claimed.

My mental picture of adverse possession is an explorer trudging through the waves, or climbing a mountain, planting the flag and claiming the property, and then continuing to operate as if the land belonged to the explorer for 15 years. Planting the flag illustrates the hostility and openness required. A person claiming through adverse possession must have acted to the world as if he or she owned it. If the land the explorer claimed was Torrens land, however, the explorer could not acquire title in that manner.

The cautionary tale is that the doctrine of “practical location,” still applies to Torrens property, even though adverse possession does not. In general, the doctrine says that if parties act as if a particular boundary is the boundary between their two parcels for an extended period, at least 15 years, that line will become the boundary, even if the legal descriptions of the parcels put the boundary elsewhere. It is meant to apply to boundary line disputes not substantial parcels. It is similar to the doctrine of adverse possession in that they are both a product of extended use. Practical location is, however, grounded in a different concept, that of some kind of agreement. A boundary by practical location can be established by express agreement, by acquiescence, or by estoppel.¹⁰

My mental picture illustrating the doctrine of practical location involves farmers with adjoining quarters. They talk one day. They decide to put a fence along the boundary line between their parcels. They agree where the fence should be constructed. The fence encroaches on one of the parcels or wanders between the two, encroaching on one in one place and on the other in another place. If the fence line is built where they agreed and they treat that as the boundary for 15 years, the court will determine that fence line becomes the boundary, even though it might vary a little from the described boundary.

Let’s change the example a bit. Instead of agreeing on a particular line, one farmer tells the other that he or she thinks the line runs in a particular spot, and builds the fence there. The other farmer doesn’t dispute that is the line, and acquiesces to it, and they use it that way, again for a period of 15 years. Then, that line becomes the boundary. Just passive conduct is insufficient. Affirmative conduct from which the record owner’s assent can be inferred is necessary. The court finds the parties’ agreement in the acquiescence of one party to the actions of another.

Let’s change the example just one more time. In this case, the farmer that is the record owner knows the other farmer intends to build the fence on the boundary, knows where the real boundary is, but the farmer building the fence doesn’t. The owner watches the other farmer build the fence. Then, they operate as if it were the boundary. It turns out the fence extends on the record owner’s property. Since it would be inequitable to allow the record owner to sit idly by and watch the construction, a court will determine the fence is the boundary, implying an agreement between the parties.

⁹ See *Ehle v. Prosser*, 293 Minn. 183, 189, 197 N.W. 2d 458, 462 (1972). Minn. Stat. 541.02.

¹⁰ *Pratt Inv. Co. v. Kennedy*, 636 N.W.2d 844, 849 (Minn. Ct. App. 2001).

Many times, the differences between adverse possession and practical location are very subtle. Obviously, these examples are over-simplified, but they illustrate the basic concepts and the differences between adverse possession and practical location.

F. Boundary Line Disputes and other title problems.

I am going to describe some common situations where registering title may offer a way to resolve issues revealed by a survey.

1. Clear up title issues.

A registration action acts as a forum for determining all the interests in the property. It can be used to clear up title problems. For example, it can be used to determine whether the neighbor (and perhaps others) have a right to use a driveway or path that encroaches. The Decree of Registration is, after expiration of any rights to appeal, conclusive against all parties, even if they were not named. As a result it is better at cutting off claims than an action to determine adverse claims (quiet title), the equivalent for abstract property. The action to determine adverse claims only is effective against the parties named.

2. Resolve Boundary line disputes.

The location of boundary lines may be resolved in a registration action by setting “judicial landmarks.” In an initial registration, the applicant must state in the application that it wishes to have some or all of the boundaries determined and registered. The applicant must file a survey meeting specific requirements. For example it must be tied to government corners and show either the interior angles of the boundary corners or the bearings of the boundary lines. Hennepin County’s requirements are available on the Examiner’s web-page, [survey-requirements-boundary.pdf \(hennepin.us\)](#). If you are preparing a survey for such an action, I recommend contacting the Examiner and County Surveyor for the county where the property is located.

In general, a registration action where boundaries are registered proceeds as any other registration actions with two major exceptions. After the Examiner’s report and service of the Land Title Summons, the court enters an order that instruct the applicant’s surveyor to mark the location of the boundaries by placing judicial landmarks. A judicial landmark must be stone or iron and marked “judicial landmark.” Minn. Stat. 559.25. The landmark may be offset to avoid placement in roads or water. Hennepin County prefers cast iron 20 inch monuments with a cast iron cap marked “judicial landmark.” Then, the surveyor prepares a survey showing where the JLMs were set. The survey is filed with the court and the court then issues the Final Decree of Registration, approving the placement.

Boundary disputes involving previously registered property may be resolved in a proceeding subsequent that follows roughly the same process as for initially registering the boundaries.

Setting the boundaries in this manner judicially determines they are valid. Since the survey showing their placement is filed in the court file and is a public record, it is always available.

3. Resolve Ambiguous Legal Descriptions.

As part of the registration, whether or not the boundaries are registered, the legal description may be revised to, for example fit in with previously registered property in the area. The description can also be revised to cure any ambiguities. Since the court ultimately decides whether the applicant owns the land using the new legal description, the registration can be used to resolving that can kind of ambiguity.

Conclusion.

I hope that these materials have given you a better understanding of what “Torrens” title is, and how the system works, given you information about some common situations where your work might be affected if title to the property involved is Torrens, and ideas on how to address those situations.