CEB®

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Chain of Title in California

Issues and Solutions

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Mr. Chernin has been a licensed attorney in California for more than 50 years. During his career, he was a transactional commercial real estate counsel for the Prudential Realty Group and Hilton Hotels Corporation. He was also Underwriting Counsel for both First American Title Insurance Company and The Fidelity Group of Title Companies (Chicago Title, Commonwealth Land Title, Fidelity Title and Ticor Title).

Mr. Chernin earned a B.A. in International Relations from UCLA and a J.D. from Loyola Law School in Los Angeles, where he was elected to membership in the St. Thomas More Law Honor Society, and where he placed first in the School's Scott Moot Court competition.

Mr. Chernin has been a speaker at seminars on real estate and title insurance issues presented by the Los Angeles County Bar Association Real Property Section, the Los Angeles Escrow Association and other program sponsors. He has written extensively on these topics in preparing materials for these seminars.

Currently, Mr. Chernin limits his practice to acting as a legal consultant to attorneys and as an expert witness on title-related matters.

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Learning Objectives

- Explore the basics of chain of title in California
- Identify the impacts of title insurance
- Understand the steps to modify chain of title



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Agenda

1. Introduction
   A. What is a chain of title?
   B. Unrecorded liens
   C. Constructive v. actual knowledge
2. Impact of Title Insurance
   A. Title reports provide actual knowledge of matters outside the chain of title
   B. Endorsing over title defects
3. Modifying the Chain of Title
   A. Marketable Record Title Act
   B. Judicial actions
   C. Void and voidable documents
   D. Laches
4. Conclusions
   A. Accommodation recordings
   B. Title guarantees

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I. Introduction

1. What is a Chain of Title?
    - A. Ranchos v. Patents
    - B. Grantor-Grantee Index
        - i. Maintained by County Recorder
        - ii. First-in-time Sequence
            - a. Simultaneous Recordings at 8:00am
            - b. Multiple Transactions
        - iii. 2-step Process—Filing and Indexing
        - iv. General Index
    - C. Wild Documents
    - D. Impediments to Alienability
        - i. Death
        - ii. Bankruptcy

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I. Introduction (cont.)

3. Unrecorded Liens
    A. Estate Tax Liens
    B. Mechanic's Liens
4. Constructive v. Actual Knowledge

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Ranchos & Patents

- All California real property titles derive from either Ranchos or Patents
- Ranchos were created by grants from the King of Spain before California became a State.
    - They became subject to U.S. law as the result of the Treaty of Guadalupe Hidalgo in 1848.
- Patents were grants from the United States federal government to private parties.



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Types of Indexes

The creation and maintenance by County Recorders of all recorded documents is provided by Government Code § 27232 and § 27257(a) and (b)

There are two types of indexes:

- Grantor-Grantee
  - Records transfers of interest in specified parcels or real property
- General Index
  - Lists liens and other encumbrances that affect all property owner by a named party

A good description of how searching title in the indexes is undertaken is set forth in Vasquez v. LBS Financial Credit Union, 52 Cal.App. 5th 97 (2020).

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Role of County Recorder

The role of the County Recorder requires 2 steps:

1. Accepting documents as proper for recording
2. Properly indexing the document

Only after these two steps does the document provide constructive notice, if within the chain of title.

Even if these two steps are done property, if the document is not in the chain of title, it does not provide constructive knowledge.

A **wild deed** is a recorded deed that does not appear in the chain of title because the previous conveyance was either not recorded or improperly indexed. ("Wild Deed", Black's Law Dictionary (11th ed. 2019)).

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Multiple Transactions

First Bank v. East West Bank, 199 Cal.App.4th 1309, 132 Cal.Rptr. 267 (2011)

Where two deeds of trust secured by the same real property were simultaneously time-stamped for recording by the Los Angeles County Recorder's Office but were indexed at different times, the lenders have equal priority.

MTC Financial, Inc. v. Nationstar Mortgage, LLC, 19 Cal.App.5th 811, 228 Cal.Rptr.3d 238 (2018)

Where two deeds of trust in favor of the same lender were recorded simultaneously, one of which was a HELOC, the Court concluded that the HELOC was a second lien, notwithstanding that there was no notation to that effect on either document.

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Unrecorded Liens

- Notwithstanding the general requirement that a lien must be recorded and indexed in the Recorder's Office, there are a couple of instances where a lien can attach to real property even before recording of a document:
  - Estate tax liens attach at time of death of the property owner
    - Internal Revenue Code § 6324(a)(1)
  - Mechanic's liens attach upon commencement of work on the property
    - Civil Code § 8450

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Constructive Knowledge

Every person who has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he or she might have learned that fact.

Dyer v. Martinez, 147 Cal.App.4th 1240, 1242, 54 Cal.Rptr.3d 907 (2007)

A bona fide purchaser of real property has constructive notice of only those matters that could be located by a diligent title search of the indexes maintained by the County Recorder.

Marina Pacifica Homeowners Assoc. v. Southern California Financial Corp., 232 Cal.App.4th 494, 181 Cal.Rptr.3d 271 (2d Dist. 2014), rev. denied (Mar. 11, 2015)

When a recorded document refers to an unrecorded document, the recorded document provides constructive notice of the contents of the unrecorded document if a prudent inquiry would lead to the unrecorded document. Civ. Code § 19.

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II. Impact of Title Insurance

1. Title reports provide actual knowledge of matters outside the chain of title
    1. Based on title plant search
    2. Duty of defense is broader than duty of indemnification
2. Endorsing over title defects

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Impact of Title Insurance



- Title companies maintain their own title plants in which documents are indexed by legal description; therefore, title reports often give the recipient actual notice of recorded documents that are outside the chain of title because the duty of defense under a title policy is broader than the duty of indemnification.

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III. Modifying the Chain of Title

1. Marketable Record Title Act
    - A. Deeds of Trust
    - B. Mineral Rights
    - C. Powers of Termination
    - D. Contracts of Sale
    - E. Easements
2. Judicial Actions
    - A. Prescriptive Easements
    - B. Equitable Easements
    - C. Abstracts of Judgment

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III. Modifying the Chain of Title (cont.)

3. Void and Voidable Documents
    - A. Forged signature and/or forged notarization
    - B. Fraudulent Transfers
    - C. Failure of Consideration, Competency, etc.
    - D. Lack of Authority
4. Laches

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Marketable Record Title Act (Civil Code Secs. 880 et. seq.)

- Deeds of Trust (Sec. 882.020(a))
  - 10 year maturity stated on the face of the recorded document, otherwise…
  - 60 years from date of recording
- Mineral Rights (Sec. 883.220)
  - 20 year dormancy
- Powers of Termination (Sec. 885.030)
  - 30 years after recording
- Contracts of Sale (Sec. 886.030)
  - 5 years from satisfaction of conditions
- Easements (Sec. 887.050)
  - 20 years from abandonment

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Uniform Fraudulent Transfer Act

Active and Constructive Fraud

Creditor's Rights

- Entity Transfers
- Guaranties – Upstream and Downstream

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IV. Conclusions

1. Accommodation Recordings
2. Title Guarantees
    - A. Chain of Title
    - B. Recorded Document
    - C. Condition of Title

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CEB Resources to Check Out

- **CEB DailyNews**
  - Khanh Tran, *7 Tips for Recording a Real Property Interest* (Feb. 15, 2019)
- **CEB Practitioner**
  - Workflow: *Real Property Purchase and Sale Transactions*
  - Strategy Notes: *The Recording Act and Modern Use of Title Insurance*
- **CEB Publications**
  - *California Title Insurance Practice* (last updated June 2023)
  - *California Real Property Sales Transactions* (last updated Feb. 2023)
  - *California Easements and Boundaries: Law and Litigation* (last updated Aug. 2022)

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History

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§5.20 B. Understand Title Insurance Limitations

Often, both attorneys and clients hold numerous misconceptions about title insurance. The attorney should attempt to dispel such misconceptions by understanding the nature of title insurance and explaining to the client how it works. Some of the more common misconceptions about title insurance include the following:

- **That the preliminary report represents the current state of title to the property.** It does not. Neither the preliminary report nor the title policy contain representations of the state of title. The preliminary report is an offer to issue insurance subject to specific exclusions and exceptions. See **California Title Insurance Practice §§5.1**, **5.26**–**5.27 (2d ed Cal CEB)**.
- **That title insurance is similar to casualty insurance.** It is not. Rather, title insurance is "risk avoidance" insurance that provides indemnity coverage and defense to the insured for loss or damage directly incurred by the insured, or incurred as a result of a third party claim, from a covered risk that exists on the date of the policy. See **Title Ins §§2.23**, **6.3**–**6.4**, **6.29**.
- **That the term "public records" as currently defined in title policies is synonymous to the chain of title.** It is not. Public records include documents that provide constructive notice. Not every recorded document in the chain of title provides constructive notice. See **Title Ins §§4.7**–**4.8**.
- **That title insurance coverage is permanent and benefits subsequent parties.** It may not. Owner's policies generally only benefit the named insured, with minor exceptions (*e.g.*, trustees of a trust established for estate planning purposes). See **Title Ins §§6.79**, **7.29**. Although loan policies generally benefit assignees of the loan, coverage may be lost or impaired because of future loan modifications. See **Title Ins §6.78**.
- **That title insurance provides assurance of adequate water rights necessary for the use and enjoyment of the property.** It specifically excludes such coverage. See **Title Ins §§11.79**, **11.84**.