**Unit 13 Outline**

**Title Records**

**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

1. 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.

2. Actual notice: not only is the information available, but also 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.

3. 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.

1. 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*.

II. 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.*

A. Marketable Title—To be marketable, a title must

1. disclose no serious defects and not depend on doubtful questions of law or fact to prove its validity;

2. not expose a purchaser to the hazard of litigation or threaten the quiet enjoyment of the property; and

3. convince a reasonably well informed and prudent purchaser, acting on business principles and with knowledge of the facts and their legal significance, that the purchaser could sell or mortgage the property at a later time.

B. Marketable Title vs. Insurable Title

C. Potential Title Issues and Remedies

III. Proof of Ownership

1. Certificate of Title
2. Abstract and Attorney’s Opinion of Title
3. Title Insurance
4. Premium
5. Subrogation
6. Coverage
7. Types of policies

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. Parties to a “contract for the sale of residential real property have the right to choose the title insurance company and title insurance agent that will provide the title insurance.”*

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