Chain of Title

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I. CHAIN OF TITLE

A. Why the Chain is a Prerequisite for Ownership

1. Deed vs. chain of title

The casual observer unfamiliar with the process by which real property ownership is established may conceivably assume, wrongly, that a solitary deed in proper form and duly recorded in the public land records, standing alone, is sufficient to establish the real estate's undisputed ownership of the grantee. However, the owner is not necessarily the person whose name appears in the last recorded deed. A deed is of little value if the grantor himself was not the true owner of the real estate when he delivered the deed. As an experienced examiner knows, the true owner is the person whose name appears in the last recorded deed in a long sequence of deeds, each of which reflects a continuous succession of transfer of ownership for the same property. The sequence of deeds, known as the *chain of title*, is an unbroken line of conveyances for the period of time that is necessary under state law to assure that the title of the grantee in the last deed is free from claims. (Exhibit 35) The chain of title cannot contain any break, that is, any inexplicable lack of a deed or mesne conveyance from a past owner to a successor, for such a break may mean that someone may conceivably assert a claim ownership to the property as against the seller. The prospective purchaser who fails to heed the chain of title for intervening conveyances from a common grantor will be subject to the rights of others whose conveyance in the chain of title had first become of record. Zimmer v. Sundell, 237 Wis. 270, 296 N.W. 589 (1941); cf. Chergosky v. Crosstown Bell, Inc., 454 N.W.2d 654 (Minn. Ct. App. 1990). When a break in the chain of title has occurred, a curative deed will usually be required from the grantee, if living, of the last deed in the unbroken chain of title, and if not living, from her heirs or devisees, without which the title will be defective. In fact, breaks in the chain do occur, and as a result, evaluating the plausibility of claims by such heirs or devisees absorbs a not insignificant portion of the time of title examiners.

Not all real estate passes by voluntary conveyance between grantor and grantee; transfers of ownership also occur by operation of law, eminent domain, or by judgment of state and federal courts. The chain of title, therefore, consists not only of deeds recorded in the office of the register of deeds, but also of instruments, such as affidavits, and judgments of probate court and circuit court found in the office of the clerk of circuit court. Unless the abstractor searches the records of the probate register for probate proceedings, she may encounter what is perceived to be a break in the chain of title, when in fact had probate records been examined, a complete chain of title would be been found.

2. Break in the chain of title

When the searcher is unable to establish, because a deed is missing, a sequence of deeds from which it is established that title has passed between successive owners for a period of thirty years, a break in the chain has occurred.

Example:

May, 1967:	Warranty Deed from Ruben, grantor, to Edmund and Barbara, as grantees
May, 2009:	Quitclaim Deed from George and Rose, grantors, to John, their son, as grantee
July, 2017:	John proposes to sell

In this example, a deed from Edmund and Barbara to George and Rose is missing. Does this mean that Edmund and Barbara remain the owners? (After informing the seller of the title defect posed by the break in the chain of title, the original warranty deed dated 1969 and bearing the signatures of Edmund and Barbara was located after a search of John's personal papers, taken to the register of deeds and recorded. Its recordation, though not in the sequence one might expect, perfected the title of John. Had the deed never been found, a quiet title action establishing John's title would have been necessary, which would have been problematic given John's precarious financial condition.)

Example:

June, 1994:	Warranty Deed from Sam and Alice, grantors, to Dino, as grantee.
October, 2011:	Warranty Deed from Dino Properties, LLC, as grantor, to Vince, as grantee.
June, 2017:	Vince attempts to refinance his mortgage loan, but the lender claims that Dino has a co-ownership interest the property that must be relinquished.

In this example, Vince is unable to establish his ownership, because his grantor was Dino Properties, LLC, not Dino, individually. There is a missing deed from Dino, as grantor, to Dino Properties, LLC. Although Dino is the sole member of the LLC, a deed signed by Dino that lacks the name of "Dino Properties, LLC" as grantor, is not effective to convey the title of Dino Properties, LLC. There is a break in the chain of title.

Example:

July, 1977:	Warranty deed from Sam, grantor, to Head-Start of Kansas, Inc.
February, 2009:	Affidavit recorded by former director of Western Kansas Alliance, Inc. stating that Head-Start of Kansas, Inc. was dissolved.
February, 2009:	Quitclaim Deed by Western Kansas Alliance, Inc. to City of Whitelaw.
March, 2017:	City of Whitelaw proposes to sell the real estate.

In this example, there is a break in the chain of title: There is no deed from Head-Start of Kansas, Inc., as grantor, to Western Kansas Alliance, Inc., as grantee. The retired executive director indicated that he will not sign any deed because Head-Start became inactive many years ago, though the corporation has not been dissolved. Head-Start's attorney maintains that all of the assets passed to Western Kansas Alliance, Inc. pursuant to the terms of a settlement reached in connection with litigation between the two corporations, but no deed by Head-Start effectuating the transfer of title was ever recorded, and none will be offered to clear the title. The title of the City is defective as the result of a break in the chain of title. (A final comment on competitive conditions in the marketplace: The city ultimately persuaded a title agency to insure the transfer despite the defect.)

3. Conflicting interests in the chain of title

The chain of title must be free not only from breaks but also from conflicting claims that would be apparent from a proper and complete examination of the chain. In counties that do not have any tract index, the exacting nature of the examination of each link in the chain requires that the examiner verify that the grantor did not convey its interest to an earlier grantee, whose interest would be virtue of its superior preemptive interest defeat the subsequent grantee. Thus, a purchaser for value under the Race Notice statute is protected not when his deed is first recorded, but, where two conflicting chains of title are apparent, only when his *entire chain* of title is first recorded. Zimmer v. Sundell, 237 Wis. 279, 296 N.W. 589 (1941).

Example:

September, 1997:	Quitclaim deed by Sybil to Sybil's Revocable Trust.
April, 2003:	Warranty deed by Sybil, individually, to her 3 children Ruth Ann, Gail and Phillip.
January 2014:	Instrument signed by Sybil, age 97, revoking her trust.
March, 2014:	Sybil dies without probate.

September, 2015:	Ruth Ann, a resident of Texas, dies without probate, survived by spouse Richard and five adult children.
December, 2015:	Richard dies, survived by the same five adult children.
September, 2016:	Philip and Richard's five adult children quitclaim to Gail.
November, 2016:	Gail attempts to sell the property but is told she does not have title.

In the above example, the chain of title is impaired by Sybil's two deeds, the first to her revocable trust and the second to her three children. A question arises whether ownership is presently in: Gail, the estate of Ruth Ann, the estate of Sybil, Sybil's revocable trust, or all of the above. There is no clear answer, though the trust would have no ownership if Sybil was in fact competent when at age 97 she revoked the trust. Consequently, deeds from all may ultimately prove necessary if a dispute over ownership is to be avoided.

B. Marketable Record Title Acts

1. How long is the chain of title required to be?

Those who search and examine title must carefully evaluate the length of time spanning the history of the ownership to make certain they have identified all interests and potential interests, ownership and otherwise, that can be said to affect the title. The chain of title from owner to owner must, in order to be complete, cover a period of not less than the time period dictated by the state's statutes of limitation, curative title legislation and marketable title statutes that time-bar claims based upon old deeds, mortgages and other interests in real property. Thus, if the laws of the statute include a Thirty-Year statute of limitation or statute of repose, a chain of title that is less than thirty years in length will be subject to claims of ownership on the part of others, necessitating conveyances from such parties by which they relinquish their interests.

2. Title examination: A state-specific practice

Search procedures adopted and used by real estate counsel and title insurance examiners are dependent largely upon the statutes of the state, and in particular, upon any marketable title legislation and statutes of limitation that time-bar property rights and lien enforcement. For example, if state statute law bars the enforcement of mortgages after the passage of thirty (30) years from the recordation of the mortgage, then real estate counsel and title insurance providers will adhere to a standard that a search of the title extend to a minimum of a thirty-year time-span, so that all mortgages not time-barred are revealed by the title search. Marketable title laws, statutes of limitation and curative legislation of the states are non-uniform, resulting in title businesses that flourish statewide but only when technical or professional staff

proficient in procedures and laws of the jurisdiction is available. Title offices remote from the site of the real estate they insure put themselves and their insurers at risk of claims exposure when conducting business in jurisdictions with which they lack expertise. Application of appropriate state-specific, practical title examination standards are of critical importance in reviewing the chain of title, evaluating the property description, reconciling claims of owners, and determining the existence and possible enforceability of outstanding easements, restrictive covenants, mortgages, future interests and mineral estates.

3. Risk assumption by title insurers: Starter policies

When examining the title, it is likely the case that one title examiner would not rely upon the search an opinion of a previous title examiner in the absence of the decision by the title insurer with which the title examiner is affiliated to permit such reliance. The practice of title insurers, now widespread, of authorizing their agents to rely upon the policies of previous title agents known as "starter policies," in lieu of conducting a new search of the public land records spanning the same time period allows the title agent to expedite the issuance of title insurance. Occasionally, such reliance proves misplaced and results in the inadvertent omission of a lien or encumbrance, but for the most part, the practice of incorporating the use of starter policies as a part of title examination procedure, so long as it is used with discretion, has proven valuable to insurers and insureds alike.