

## CHAPTER 507

## CONVEYANCING AND RECORDING

## 507.01 CONVEYANCE AND PURCHASER.

1. Generally
2. Contracts for sale
3. Deeds
4. Mortgages

## 1. Generally

Sale of vendor's land by real estate agent to himself cannot stand as against a vendor unless it appears that, with full knowledge of the facts, vendors either previously consented to or subsequently ratified such sale. *Magee v Odden*, 220 M 498, 20 NW(2d) 87.

Where the promise is in the alternative to do one or the other of certain things, the promisor in most instances has the right to elect which of the promises he will perform; but, if he disables himself from performing one of the alternatives, the other becomes a fixed obligation. *Meiners v Kennedy*, 221 M 6, 20 NW(2d) 539.

In a suit to have a deed of general warranty declared to be a mortgage and for an accounting by the grantee as mortgagee in possession, the true test is to determine the intention of the parties to the transaction, that is, whether they intended security or a sale. In applying the test, it is necessary to consider all relevant facts surrounding the transaction, the situation of the parties, as well as written memorials. *Hewitt v Baker*, 222 M 292, 24 NW(2d) 47.

Risk of loss between the date of contract to sell and date of transfer of title; equitable relief. 8 MLR 127.

Condition against assignment of lease. Rule in *Dumpror's case*. 9 MLR 60.

Effect of cancellation of contract on a judgment obtained for an unpaid installment. 17 MLR 110.

Re-entry and breach of condition. 17 MLR 227.

Material deficiency in acreage, rescission of sale. 17 MLR 347.

Unauthorized delivery by escrow agents; rights of bona fide purchaser from grantee. 18 MLR 83.

Leasehold interest in real estate. 19 MLR 712.

Synthesis of the law of misrepresentation. 22 MLR 939.

Attempts to pass contingent future interests. 23 MLR 94.

Rights of bona fide purchaser at execution sales; defects in title of the judgment debtor. 24 MLR 806.

Effect of statute of frauds on oral agreement to extend security of mortgage to debt not originally embraced therein. 26 MLR 279.

## 2. Contracts for sale

A vendor has good title justifying his entering into a contract for a deed when he holds a valid subsisting contract for deed from the fee owner. *Paynesville Land Co. v Grabow*, 160 M 414, 200 NW 481; *McKay v Ryan*, 204 M 480, 284 NW 57.

Where the earnest money contract for sale of real estate providing that, unless the title was good within 60 days, agreement should be void and down payment refunded, the purchaser's objection that the vendor held title only by contract was

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waived when not made within such reasonable time as to afford the vendor an opportunity to correct the defect within the time limited. *John v Timm*, 153 M 406, 190 NW 890; *McKay v Ryan*, 204 M 480, 284 NW 57.

Under an executory contract for conveyance of real estate the title remains in the vendor as security for the purchase price, the vendee becoming the equitable owner. *First & American Bank v Whiteside*, 207 M 537, 392 NW 770.

In an action to recover possession of certain real property and for an accounting of rents and profits the finding of the trial court that an assignment by the plaintiff-vendor of a contract for a deed was given to defendant's assignor as security for the payment is a debt which debt having been paid to defendant and defendant no longer possessed rights in the property. *Bishop v LaBree*, 207 M 330, 291 NW 297.

The assignment of an executory contract transfers to the assignee all of the assignor's rights thereunder. Where plaintiffs agreed with their grantors to assume and pay grantors personal indebtedness for balances for certain improvements on the property, sold the land under executory contract of sale and in turn bound their vendees to assume and pay the before named balances, and later conveyed the land to defendants subject to such balances, and assigned to defendants their interest under the contract with their grantor without any agreement on the part of the defendant to assume and pay the balances, the defendants take the property subject to the above stated balances but if they do not he shall assume and pay the balances that are not personally liable. *Pelsér v Gingold*, 214 M 281, 8 NW(2d) 36.

A claim to the value of the estate herein in lieu of specific performance is one for the recovery of damages for breach of an oral agreement to convey real estate. Assuming sufficient consideration for and part performance of such a contract, an action at law in damages for a breach thereof will not lie. The doctrine of part performance is purely an equitable doctrine, unrecognized at law, and will not sustain an action at law for damages based on a contract within the statute of frauds. *Hallock's Estate*, 221 M 30, 20 NW(2d) 884.

Tender of warranty deed conveying real estate to maker of note given for purchase price thereof was waived where the maker, for other reasons, refused to make payment thereof and it appeared that vendor, payee in note, was at all times ready, able, and willing to deliver deed upon its payment. *Kohagen, Mendenhall Co. v Joyce*, 221 M 83, 21 NW(2d) 232.

Where defendant made a misrepresentation to induce plaintiff to enter into a contract and whether plaintiff in so doing relied upon the alleged misrepresentation are questions of fact for the trier of fact, and not of law for the court, where, as here, the evidence with respect to those questions is in conflict. *Marshfield v Schmidler*, 221 M 486, 22 NW(2d) 553.

When there is a sale of real estate subject to a lien and the burden of such lien falls upon the purchaser the cost to him of releasing it is part of the purchase price. *U.S. v Consolidated Elevator Co.* 142 F(2d) 791.

A contract is a deed providing for certain annual payments and that vendee should receive credit on the purchase price of \$20 a month for each month vendee furnished room and board to a brother of the vendor was ambiguous, authorizing admission of evidence to determine whether the charges for board and room should be applied on the annual payments or to the unpaid balances only. *Zehnder v Michaud*, 145 F(2d) 713.

### 3. Deeds

Where the vendee under an executory contract has taken possession of land his interest for the purpose of taxation is the same as that of any other owner. *Petition v S.R.A. Inc.* 213 M 489, 7 NW(2d) 484; 219 M 517, 18 NW(2d) 455.

To sustain a charge of undue influence in the execution of a deed, plaintiff must prove that grantor was deprived of a free exercise of his will. In the instant case the evidence was insufficient to sustain a finding of undue influence. *Laabs v Hagen*, 221 M 89, 21 NW(2d) 91.

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As between grantor and grantee, reasonable building restrictions are covenants running with the land and will be enforced. Such restrictions being property rights, are not affected by a city zoning ordinance. OAG Aug. 28, 1946 (59-a-32).

Where title is registered, a state deed to tax-forfeited lands may be recorded in the office of the register of deds. OAG Oct. 9, 1946 (374-J).

### 4. Mortgages

The owner of property under a deed containing a condition subsequent is the owner for tax-exemption purposes. Village of Hibbing v Commissioner, 217 M 529, 14 NW(2d) 923.

Where an undivided debt secured by mortgage is owed to two or more creditors, it may, when due or thereafter, be paid to either or any one of such creditors, and the one or ones to whom it is paid may effectually discharge the debt and mortgage. Delaney v Fritz, 221 M 190, 21 NW(2d) 479.

Minnesota real estate taxes operate exclusively in rem, and the statutes impose no personal obligations upon anyone to pay them. U.S. v Consolidated Elevator Co. 141 F(2d) 791.

## 507.02 CONVEYANCES BY HUSBAND AND WIFE; POWERS OF ATTORNEY.

1. Property other than homestead
2. Homestead

### 1. Property other than homestead

Although an instrument in the form of a mortgage does not create a lien until registered, it does give rise to certain equitable duties, and even if the owner's spouse did not join the mortgage under the facts in the instant case may be registered after the death of the owner of the realty. In re Finnegan, 207 M 480, 292 NW 22.

In the absence of a specific appropriation of payments by the parties, the court will apply them to the unsecured or least secured debts in preference to those secured or more adequately secured. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

A note taken in renewal of a prior note secured by a mortgage is presumed to have been accepted as conditional payment only, and the burden is upon one who claims that it discharged and extinguished the original note to prove an expressed or implied agreement to that effect. The mere acceptance of a renewal note, even though it recites a settlement or payment, is only conditional, and does not effect an absolute discharge. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

This section authorizes a minor spouse of a minor veteran to contract for a loan under section 48.245. OAG April 9, 1946 (29-A-20).

This section authorizes a female minor under the age of 21 years to execute a conveyance. OAG May 20, 1946 (498-c).

Infant married woman's conveyance not voidable in Minnesota. 2 MLR 447.

Protection of the inchoate right of dower. 11 MLR 354.

Joinder of husband in deed of wife's separate property. 11 MLR 377.

Husband's gift of all his real and personal property to his wife is sustainable in equity becomes improvident. 12 MLR 302.

Conveyances under the probate code. 20 MLR 106.

### 2. Homestead

Where neither the creditor, nor the debtor, has seasonably exercised his power to apply a payment to one of several debts and where one of the debts that has matured is secured by a mortgage on the homestead, the court, as an exception to the general rule, will apply the payment to such mortgage debt on homestead in preference to an unsecured debt. Holden v Farwell, 223 M 550, 27 NW(2d) 641.

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Conveyance of homestead by husband or wife. 2 MLR 63.

Fraudulent conveyance; homestead in wife's name. 2 MLR 392.

Estoppel of mortgagor of homestead who represents himself to be unmarried when he mortgages the homestead. 6 MLR 326.

Effect of conveyance by owner of homestead. 25 MLR 71.

Validity of old age pension homestead lien law. 25 MLR 520.

## **507.03 PURCHASE-MONEY MORTGAGE; NON-JOINDER OF SPOUSE.**

Where a mutual agreement is made between a vendor in a contract to convey land the vendee therein, third party, that the vendee is to obtain money from such third party to in part to pay the purchase price securing the loan by a first mortgage upon the land and securing the vendor by giving a second mortgage for the remainder of the purchase price each of such mortgages are purchased money mortgages and are superior to the lien of the judgment obtained against the vendee prior to the delivery of the mortgages. *Marin v Knox*, 117 M 428, 136 NW 15.

Where the purchaser purchased land from an administratrix of an estate but the mortgage was made to the administratrix individually and not in her official capacity the said mortgage was a purchased money mortgage as respects priority. *O'Halloran v Marriage*, 167 M 443, 209 NW 271.

## **507.04 CONVEYANCE BY HUSBAND OR WIFE OF INSANE OR INCOMPETENT.**

Implied agency of wife during insanity of husband. 9 MLR 161.

## **507.06 QUITCLAIM DEED PASSES ALL ESTATE OF GRANTOR.**

The holder of a certificate of sale of state land is the equitable owner of the land; an assignment of such certificate is a conveyance of real estate within the statutory definition thereof; and the good faith purchaser who places his assignment on record is protected by the recording acts against a prior unrecorded assignment. A quit claim deed conveys such an equitable title. *Krelwitz v McDonald*, 135 M 408, 161 NW 156.

It being plainly against both interest and expressed intention of the holder of the two titles that there should be a merger when by quit claim deed the fee was conveyed to a mortgagee, the decision of the trial court that there was no merger is approved. *Long v Mutual Trust*, 197 M 623, 268 NW 195.

In the absence of fraud or undue influence mere weakness of intellect resulting from old age or sickness is not a ground for setting aside an executing instrument; and in the instant case a deed duly witnessed and acknowledged is proof that whatever title the grantor had and purported to convey vests in the grantee upon the delivery of the deed without any further testimony as to the mental condition of the grantor. *Trimbo v Trimbo*, 47 M 389, 50 NW 350; *Graham v Graham*, 84 M 325, 87 NW 923; *Butler v Badger*, 128 M 99, 150 NW 233; *Shaughnessy v Shaughnessy*, 135 M 262, 160 NW 769; *Trost v Brey*, 156 M 242, 194 NW 617; *Macklett v Temple*, 211 M 437, 1 NW(2d) 415.

## **507.061 WORDS OF INHERITANCE.**

A provision in a trust agreement for a gift in trust to named beneficiaries "and to their heirs at law by right of representation, in accordance with the then laws of descent of the state of Minnesota" and a similar provision in a will for a gift in trust to named beneficiaries "and to their heirs at law by right of representation" manifest an intention to pass absolute or fee interests in the trusts to the named beneficiaries in virtue of the rule that words of inheritance are not necessary to pass such interests, the words of inheritance being consistent with an intention to pass a fee or absolute interest and the superadded words being insufficient to cut it down to a lessor one. A beneficiary is not prevented from taking a vested interest in a trust by section 501.17 under which the whole trust estate, in law and

equity, vests in the trustee and the beneficiary takes no estate or interest in the lands but may enforce the performance of the trust in equity. *First and American Bank v Higgins*, 208 M 295, 293 NW 585.

#### 507.07 WARRANTY AND QUITCLAIM DEEDS; FORMS.

The blank space for the name of the grantee in a deed may be filled in the lifetime of the grantor under his parol authority, and when so filled the deed is a legal conveyance. The evidence sustains the finding that the name of the grantee in the deed involved in this action was inserted with the authority of the plaintiff. A deed designated as the subject of the conveyance an acre of land, "more particularly described as follows," upon a point of land extending into a meandered lake in a designated lot, section, township and range. No further description was inserted at the time. If the parties so contemplated, a description by metes and bounds, if the boundaries were defined and understood by them, might be inserted later, upon a survey being made, and when so inserted the deed would be a legal conveyance. *Johnson v Rost*, 164 M 154, 204 NW 642.

Where a deed placed in escrow is delivered by the escrow agent either in violation of or without compliance with the terms of the escrow agreement, no title passes by such delivery. *Merchants Bank v Olson*, 189 M 528, 250 NW 366.

Where a father, old in years, transferred valuable property to his daughter and son-in-law, part of the consideration being the care and support of the father by the children, where under such a contract differences arise between the parties and ill will develops to such an extent that both parties consider it unsafe to have the father continue to be a member of defendant's family, a sufficient breach of contract is shown to entitle the father, who has removed from the home, to such equitable relief as will compensate him for the loss sustained. *Briebe v Sette*, 197 M 453, 267 NW 376.

The return to the grantor of a delivered but unrecorded deed does not revest title in the grantor, but the circumstances in the instant case might constitute an estoppel preventing the parties from denying that the grantor is not thereafter the owner. *Exsted v Exsted*, 202 M 521, 279 NW 554.

As between the parties a deed is valid without any consideration. *Bowen v Willard*, 203 M 289, 281 NW 256.

The fact of undue influence having been established it should be deemed to void the conveyance not merely as to the grantee, who has procured it by undue influence, but also in the absence of valuable consideration paid as to innocent grantees not chargeable with such fault. *Claggett v Claggett*, 204 M 568, 284 NW 363.

Where the grantor recorded the deed without physical delivery to the grantee such recording is deemed a legal delivery. *Cloutier v Charest*, 208 M 453, 294 NW 457.

The return to the grantor of an unrecorded deed which was executed and delivered unconditionally to the grantee does not operate to revest title in the grantor, and unless by words or conduct the grantee has estopped himself from asserting title, he will prevail in an action to determine adverse claims against a subsequent grantee who first recorded but who had knowledge of the facts at the time that she accepted her deed. *Froslee v Sonju*, 209 M 522, 297 NW 1.

Even where a description in a deed is doubtful, the court will keep in mind the position of the contracting parties and the conditions under which they acted and interpret the language of the instrument in the light of these circumstances. A marketable title is one that is free from reasonable doubt; one that a prudent person with full knowledge of all the facts is willing to accept. *City of North Mankato v Carlstrom*, 212 M 32, 2 NW(2d) 130.

The law aims to protect the property and estate of one who is in fact incapable of doing so for himself. The test of competency to execute a deed is whether the grantor had sufficient mental capacity to know and understand the nature and effect of his act. Under the facts in the instant case a new trial should be granted on the issue of competency in the interest of justice. *Parish v Peoples*, 214 M 589, 9 NW(2d) 225.

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Three things are essential to create an easement by implication upon severance of unity of ownership: (1) a separation of title; (2) the use which gives rise to the easement which has been so long continued and apparent as to show that it was intended to be permanent; and (3) that the easement is necessary to the beneficial enjoyment of the land granted. *Romanchuk v Plotkin*, 215 M 160, 9 NW(2d) 421.

Where, as here, a permanent easement provides for travel "by foot or wagon," the word "wagon" is used in the generic sense and is broad enough to convey vehicular transportation at present in common use. *Giles v Luker*, 215 M 256, 9 NW(2d) 716.

An action to set aside a deed on ground of incompetency of the grantor should have been brought in the name of the incompetent by his legal guardian rather than in the name of the guardian as such for the incompetent. *Rebne v Rebne*, 216 M 379, 13 NW(2d) 18.

The owner of property under a deed containing a condition subsequent is the owner for tax-exemption purposes. *Village of Hibbing v Commissioner*, 217 M 529, 14 NW(2d) 923.

Where land is developed under a general plan reasonably restrictive covenants which appear in deeds to all the lots sold are enforceable alike by the vendor and by the purchasers and by their successors in title, and where the restriction reads "creation of one new residence building costing not less than \$4,000" the restriction covers the use of the lots as well as the construction of the buildings. *Strauss v Ginzberg*, 218 M 57, 15 NW(2d) 130.

Covenants for title, broken covenants, naked covenants, or covenants by a stranger to the title; right of remote grantee to sue. 7 MLR 489, 514.

Damages for breach of covenant against encumbrances. 14 MLR 180.

Covenants against encumbrances, assignability after breach. 21 MLR 597.

Deeds, repugnancy between granting and habendum clauses. 22 MLR 557.

Deeds; delivery; attempts to pass contingent future interests. 23 MLR 94.

## 507.09 FORMS APPROVED.

The double hazard of a note and mortgage. 16 MLR 123.

## 507.11 FEES FOR RECORDING.

When the standard form is not used the circumstances may warrant a recording fee larger than the ordinary. OAG Nov. 19, 1945 (373-B-17-d).

Our statutes relating to recording of deeds do not require as a prerequisite to the recordability of deeds or other instruments that there be attached thereto revenue stamps properly canceled. The matter of attaching stamps concerns the federal government. Where a farm is sold for \$12,000, the tax is based upon the amount of the sale value, even though there is a \$10,000 mortgage back. OAG March 31, 1947 (331-A-9).

## 507.15 UNIFORM SHORT FORM MORTGAGE.

The plaintiff William Stibal was indebted to defendant bank. A note secured by a mortgage upon their homestead, running from plaintiffs to one S, was, together with the mortgage, placed with defendant bank by plaintiffs to be delivered to S by the bank upon receipt of the consideration. S never paid the consideration but subsequently assigned the mortgage and note to the bank, which sought foreclosure. The note and mortgage were in effect placed in escrow with the bank and were never legally delivered and that consequently S could pass no title to the mortgage to the bank. Plaintiffs are entitled to cancellation of the note and mortgage and vacation of the sale thereunder. *Stibal v First Nat'l Bank*, 190 M 1, 250 NW 718.

Where a mortgagee knowing that the mortgagors have made a special deposit of money in the bank where the mortgage is payable to pay and satisfy in full, de-

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livers the satisfaction, and for his own convenience accepts the cashier's check instead of the money, the debt is paid, the mortgage is satisfied, and the bank is substituted as debtor of the mortgagee instead of the mortgagors. *Vogel v Zastrow*, 191 M 20, 252 NW 664.

Ordinarily "townsite" means a portion of the public domain segregated by public authority and procedure as the site for a town; but in the instant case the word "townsite" as used to except lands from the mortgage applies to the platted addition within the townsite rather than the townsite itself. Any other construction would render the grant nugatory. *Metropolitan Life v Keating*, 191 M 520, 254 NW 813.

If relief granted will not result prejudicially to a third person, equity will grant relief where the holder of a mortgage takes a new one in renewal or satisfaction for a former mortgage release in ignorance of an intervening lien. *Hirleman v Nickels*, 193 M 51, 258 NW 15.

Where the mortgaged premises are bid in for the amount of debt and expense and there is no redemption, any covenant in the mortgage to pay taxes levied during life of the mortgage will not survive the foreclosure. *Business Women's Co. v Farmers & Mechanics' Bank*, 194 M 171, 259 NW 812.

Where in addition to the mortgage security the debt was guaranteed and the trustee foreclosed and bid in the trust property without the consent of the plaintiff, a holder of a trust certificate, such holder could not sustain a claim for damages against the trustee because the guarantors who were released by the foreclosure were insolvent at the time their obligation matured. *Sneve v First National*, 195 M 77, 261 NW 700.

Where a deed absolute in form is alleged to have been given for the purpose of securing a loan the court will look through the form of the transaction to determine its character and will regard it merely as a mortgage, if the parties so intended. The purpose intended is the controlling factor. It will be ascertained from the written memorials of the transaction and by the attendant facts and circumstances, although the documents evidencing the transaction make a prima facie case for what they purport to be. In the instant case the conveyance is an absolute one and not a mortgage. *Nitkey v Ward*, 199 M 334, 271 NW 873.

Upon a showing that a subsequent encumbrancer has tendered to a prior encumbrancer the entire amount due on a mortgage, together with the costs, disbursements, and attorney's fees required by statute, the court may enjoin foreclosure of the mortgage until the disputed issues in the case are determined. Defendant was the owner of a mortgage covering three tracts of land. One constituted mortgagor's homestead. Plaintiff was the owner of one of the tracts and had an interest in another as a purchaser upon execution sale: It had no interest in the tract constituting the homestead. When upon request by plaintiff for a statement of the amount due on the prior encumbrance defendant demanded payment of the full amount of the mortgage and interest plus costs, disbursements, and attorney's fees and plaintiff tendered the amount so demanded, it became subrogated to all the rights of defendant in the prior encumbrance, and the trial court was justified in ordering an assignment of the mortgage to the plaintiff upon payment of the amount so tendered. *First National Bank v Schunk*, 201 M 359, 276 NW 290.

Whether a conveyance absolute in form is a mortgage in fact is a matter of intention. The determinative intention is that of both parties rather than that of one only. So where there is nothing to indicate that the grantee had any intention that the transaction should be a mortgage, a decision that it was not a mortgage is sustained. *Saxton v Campbell*, 210 M 39, 297 NW 348.

Where plaintiffs, the grantors of the land transferred, covenanted with their granddaughters to assume and pay the latter's personal indebtedness, the balance for certain improvements thereon, sold the land under executory contract of sale, binding the vendees to assume to pay the balance, and then conveyed to defendants subject to such balance, and assigned to defendants their interest as vendors under the contract for deed without an agreement on the part of the latter to assume and pay the balance, defendants are not personally liable under the deed because they

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took subject to and did not agree to assume and pay the balance. *Pelser v Gingold*, 214 M 281, 8 NW(2d) 36.

The doctrine of implied grant of easement is based upon the principle that where, during unity of title, the owner imposes an apparently permanent and obvious servitude on one tenement in favor of another, which at the time of severance of title is in use and is reasonably necessary for the fair employment of the tenement to which such use is beneficial, then, upon a severance of ownership, a grant of the dominant tenement includes by implication the right to continue such use. That right is an easement appurtenant to the estate granted to use the servient estate retained by the owner. Under the rule that a grant is to be construed most strongly against the grantor, all privileges and appurtenances that are obviously incident and necessary to the fair enjoyment of the property granted substantially in the condition in which it is enjoyed by the grantor are included in the grant. *Romanchuk v Plotkin*, 215 M 156, 9 NW(2d) 421.

Whether there was a consideration for the mortgage is a disputed fact. It rests on services, such as housework performed by plaintiff for defendant. A consideration is essential to the validity of a mortgage. The lower court properly held there was no consideration. *Turpin v Hayek*, 219 M 587, 18 NW(2d) 592.

The deed executed pursuant to the contract to purchase recited as consideration only the amount of the cash payment, but notwithstanding that fact other evidence supports the finding that the \$350 note and mortgage is valid, and was given as part of the purchase price of the realty. *Bishop v Filesworth*, 220 M 118, 18 NW(2d) 775.

Where the language of the statute is free from ambiguity there is no room for construction. *Hickok v Margolis*, 221 M 480, 22 NW(2d) 850; *State ex rel v Washburn*, 224 M 269, 28 NW(2d) 652.

## 507.16 NO COVENANTS IMPLIED.

"Naked covenants" or covenants by a stranger to the title. Right of remote grantee to sue. 7 MLR 489.

Implied conditions. 17 MLR 249.

## 507.17 CONVEYANCE INCLUDES ABUTTING VACATED PUBLIC RIGHT OF WAY.

The abutting fee owner owns to the center of a highway, subject only to the public easement giving the right to travel thereon, and where a party owns the fee on both sides of the road he may use such highway as his convenience and necessity may require unless and until such use unreasonably interferes with the public travel thereon. The presence of a properly constructed and maintained logging railroad across a highway is not incompatible with the travel on the highway. *Town v International Lumber*, 174 M 305, 219 NW 172.

## 507.18 CERTAIN RESTRICTIONS PROHIBITED.

Where the original owners of a certain addition to the city of Minneapolis incorporated into the instrument of conveyance of every lot in the addition, with a few exceptions, the restrictive covenant that "This conveyance is made upon the following conditions only: That when the premises herein contained are improved, it shall be by the erection of one new residence building costing not less than \$4,000" under the facts of case, the trial court properly enjoined the use for religious services by a religious organization of a residence building erected in conformity with such restriction in the deed and the remodeling of such building for such use. *Strauss v Ginzberg*, 218 M 57, 15 NW(2d) 130.

## 507.20 GRANTOR TO MAKE KNOWN ENCUMBRANCE.

Liability of grantee to agree to pay a mortgage not assumed by the grantor. 16 MLR 114.



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## **507.21 LIABILITY OF GRANTOR WHO COVENANTS AGAINST ENCUMBRANCES.**

An encumbrance upon land is a right or interest in some person other than the owner to the diminution of the owner's interest in the land. A private drainage contract was entered into between contiguous property owners. Under it a tile drain was constructed which is of great benefit to all the land involved. Neither the contract nor the drain constitutes a breach of covenant against encumbrances in a deed of a parcel of land so benefited. A right of other owners to enter for purpose of maintenance or repair of the improvement does not convert it into an encumbrance. *Carver v Lane*, 153 M 203, 190 NW 68.

## **507.22 EXECUTION OF CONVEYANCES.**

Amended by L. 1947 c. 566 s. 1.

## **507.24 RECORDABLE, WHEN.**

Amended by L. 1947 c. 566 s. 2.

The burden to overcome the presumption of validity, and establish the claim that the mortgage was not intended as a reality, but as a sham and pretense to deceive creditors, rests with the mortgagor or those claiming under him; and the evidence to establish such claim must be strong, clear and convincing, and amounting to more than a preponderance. *Summit Mercantile v Daigle*, 146 M 218, 178 NW 588.

The notice referred to in L. 1945, c. 363, s. 1 (section 582.14), may be filed with the register of deeds without recording. OAG Jan. 3, 1946 (373-B-16).

Unless the deed has been executed so as to conform to the laws of this state, such deed is not entitled to record unless the same was executed out of the state but in accordance with the laws of the place of execution and in accordance with section 358.26. OAG June 3, 1946 (382-B).

After a deed has been recorded and a change made in the description, or another description inserted in the recorded deed, the deed cannot be recorded. The remedy is to bring action to reform the deed. OAG Sept. 6, 1946 (373-B-9).

## **507.27 COPY OF WILL AND PROBATE.**

Amended by L. 1947 c. 307 s. 1.

Belated will; title acquired from heir of testatrix supposed to have died intestate. 10 MLR 168.

## **507.291 POWER OF ATTORNEY BY PERSON IN ARMED SERVICES.**

HISTORY. 1947 c. 319 s. 1.

## **507.292 AFFIDAVIT BY ATTORNEY-IN-FACT.**

HISTORY. 1947 c. 319 s. 2.

## **507.293 "MISSING IN ACTION" CONSTRUED.**

HISTORY. 1947 c. 319 s. 3.

## **507.294 CONSTRUCTION.**

HISTORY. 1947 c. 319 s. 4.

## **507.32 RECORD, WHEN NOTICE TO PARTIES; ASSIGNMENT OF MORTGAGE.**

1. Proper recording of instruments
2. Description of premises

3. Conditions in conveyances
4. Notice
5. Executory contracts
6. Assignment of mortgages
7. Federal land patents

**1. Proper recording of instruments**

Double hazard of note and mortgage. 16 MLR 123.

**3. Conditions in conveyances**

Assignee of recorded mortgage as taking free of latent equities. 12 MLR 667.

Circuity of lien; equities. 19 MLR 139.

**4. Notice**

The question of the respective rights of a lienor who has obtained a judgment for the foreclosure of a motor vehicle lien under sections 514.25 to 514.29, and a subsequent bona fide chattel mortgagee purchasing at the foreclosure sale under his mortgage does not by a sale to a third party of the automobile, which is subject to the lien and chattel mortgage, become moot so as to abate an action by the lienor for a declaratory judgment concerning the rights of parties. *Connor v Caldwell*, 208 M 502, 294 NW 650.

Constructive trusts, and analogous equitable remedies. 25 MLR 667.

**5. Executory contracts**

Negotiability of note impartial to mortgage security. 8 MLR 337.

Payment by mortgagor to mortgagee without actual notice of assignment. 13 MLR 622.

**6. Assignment of mortgages**

Assignment of farm lease whereby lessor assigned all his rights and interest thereunder did not constitute a chattel mortgage under section 511.01, in order to be valid against a creditor attaching lessor's interest subsequent to date of the assignment. *Federal Land Bank v Smaagaard*, 192 M 21, 256 NW 102.

A mechanic's lien, in proper form, filed with the register of titles, attaches to the land as of the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered under the Torrens act. *Armstrong v Lally*, 209 M 373, 296 NW 405.

Priority of mortgage not lost by renewal. 4 MLR 372.

Recorded assignment of mortgage as constructive notice to otherwise bona fide purchaser of note and mortgage. 8 MLR 347.

**507.332 RECITALS IN WRITTEN INSTRUMENTS NOT TO CONSTITUTE NOTICE IN CERTAIN CASES.**

Amended by L. 1947 c. 626 s. 1.

**507.34 UNRECORDED CONVEYANCES VOID IN CERTAIN CASES.**

1. Generally
2. Protection accorded
3. Good faith
4. Subsequent purchasers
5. Judgments and attachments

6. Assignees of insolvents
7. Mechanic's lien
8. Effect; procedure; construction

#### 1. Generally

Conclusiveness of a torrens certificate of title. 8 MLR 200.  
 Double hazard of note and mortgage. 16 MLR 123.  
 Fraudulent conveyances. 16 MLR 307.  
 Priorities; circuitry of lien. 19 MLR 139.  
 Leasehold interest as real estate. 19 MLR 713.

#### 2. Protection accorded

Actual possession of real property is notice to all the world of the title and rights of the person in possession and of the facts connected therewith which reasonable inquiry would disclose. Where a mortgagee neglects to make proper inquiry to ascertain the state of the title of the person in possession, he is not a mortgagee in good faith. *Hauger v Rodgers*, 156 M 45, 194 NW 95.

A real estate mortgage filed (like a chattel mortgage) in the office of the register of deeds but not recorded is not notice to those who do not have actual knowledge. *St. Paul Electric Co. v Baldwin*, 159 M 221, 199 NW 9.

Where a father conveys real estate to his son, both occupying the premises, and takes back a support agreement in the notice of a mortgage, and the son records his deed and borrows money on a mortgage to a third person, the father's unrecorded mortgage is, on the ground of estoppel, junior to that of the third party mortgagee. *Olson v Olson*, 203 M 199, 280 NW 640, 281 NW 367.

Possession by defendants of an area slightly exceeding that covered by a deed erroneously establishing a boundary line between defendants' realty and that of plaintiff's vendor before plaintiffs purchased the realty constituted notice to plaintiff of defendants' claim of right to the equitable title to the area in question and plaintiffs, in thereafter purchasing realty including the area in question, were not "innocent purchasers" so as to bar defendants' right to reformation of title deeds. *Flowers v Germann*, 211 M 142, 1 NW(2d) 424.

#### 4. Subsequent purchasers

Rights under recording acts of subsequent purchaser who records with notice; *lis pendens* as constructive notice. 24 MLR 597.

#### 5. Judgments and attachments

Garnishment is not an attachment within the meaning of section 507.34 which deals with real estate solely. *Watson v Goldstein*, 176 M 19, 222 NW 509.

As respects priority of claims, a docketed judgment is upon the same footing as a recorded conveyance. *Lowe v Reiersen*, 201 M 280, 276 NW 224.

Priority of judgment liens on after-acquired property. 23 MLR 97.

The legal position of bona fide purchasers at execution sales; defects in title of the judgment debtor. 24 MLR 806.

#### 6. Assignees of insolvents

Possession by vendor who occupied land jointly with vendee as notice to purchaser from vendee. 23 MLR 397.

#### 507.38 WHEN DEED NOT DEFEATED BY DEFEASANCE.

Where it is sought to make out a contract by resorting to two or more separate writings, the connection must appear from the writings themselves; without aid of

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extrinsic evidence. A deed and codicil, neither of which referred to the other, did not make a contract. In the instant case the evidence was insufficient to establish a legal oral contract to make a will. *LeBorius v Reynolds*, 224 M —, 28 NW(2d) —.

## 507.40 MORTGAGES, HOW DISCHARGED OF RECORD.

A mortgagee, holding a valid mortgage upon several parcels of real estate owned by an insolvent debtor, who, through mutual mistake, satisfies his mortgage of record as to certain of said parcels, does not subordinate his interest therein to those of a trustee in bankruptcy. *Brooks v American Lumber Co.* 162 M 220, 202 NW 818.

Upon taking possession of mortgaged property the mortgagee contracted, in the event of foreclosure, either to buy the property for the amount of the debt or to release any deficiency judgment procured pursuant to foreclosure. Upon foreclosure the whole debt would be discharged, either by purchase for the full amount or by force of the mortgagee's obligation to disclose any deficiency. *Wagner v Bankers Life Co.* 206 M 118, 288 NW 1.

Equitable estoppel; satisfaction of mortgage by attorney without authority. 3 MLR 267.