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Book Reviews

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BOOK REVIEWS

Contracts and Conveyances of Real Property, by Milton R. Friedman, Callaghan and Company, 1954, Pp. XL, 425, $10.00.

It has been said that the purpose of a book review is to afford "a swift and almost painless means of determining whether it is worth while to borrow the book." To accomplish this purpose it is necessary that a book review contain a brief exposition of the book's purposes and contents.

This book was written by a practitioner for the use of practitioners in the field of real estate conveyancing. It is primarily for the attorney who deals with urban property rather than with unimproved lands in rural areas. As indicated by the title, *Contracts and Conveyances of Real Property,* this is not a mere title searcher's guide setting out possible defects in title or the results thereof. This book is for the conveyancer who endeavors to advise his client (either the buyer or the seller) as to the negotiation of the contract or the supervision of its terms of inclusion and exclusion from the time of the contract's initiation through to the closing of the transaction and its ultimate conclusion. The interest of the lawyer who wishes to protect his client in the expedition of the contract of sale and to keep his client safe from the hazards of the law and from possible prolonged litigation is the interest of this work (whether the lawyer represents the buyer or the seller). It is not an advocate's book but a book for the counselor dealing in real property contracts.

The author gives greatest emphasis to the contract between the parties. This requires a consideration not only of what one should know in the field of conveyancing but also what one should do or not do, and why. Set out in keenly analytical method, "what one should know" is illustrated by the unhappy consequences which may result in various jurisdictions in contravention of the parties' intentions where the contract is silent or its terms inadequate. After the contract is drawn questions may arise between the parties. For what purposes can the property be used? Are there covenants or zoning restrictions which will prevent some use contemplated by the buyer? What if the premises are destroyed after execution but before the closing, rendering them unsuitable for the buyer's purposes? Do these intervening occurrences or circumstances render the title unmarketable? In the absence of contractual provision does the title remain marketable though the property is in fact rendered partially or totally unsuitable for the buyer's pur-

poses? It is apparent that these questions would be better asked prior to and answered in the contract. Judicial decisions are pointed to in various jurisdictions which reach varying conclusions as to the effect of these happenings and conditions on the marketability of the title to be conveyed. The existing law, in the absence of contractual provision, often reaches results unfavorable to one party or the other. To prevent these unfavorable results, it is necessary that there be a thorough knowledge of the law of property, that the occurrences and conditions be contemplated while the contract is being negotiated in order that as little as possible shall be left to the hazards of the law as it exists. The contract can be made "the law of marketability" for the parties. Practical experience, imagination, and a background of legal scholarship must be employed in the drawing of every realty contract. The author demonstrates that he possesses all of these tools and that the practical and the academic are inextricably interwoven in the field of conveyancing. The danger of the routine or form contract is manifest.

Mr. Friedman, in addition to stimulating realization of the danger spots in a real property transaction in the absence of adequate contract, undertakes to treat the steps in the examination of the title. The correlation of the status of the title of the property to the terms of the contract is the province of the title examinaion. The conventional title searcher's formulae for checking title to realty by way of record deeds are set out. Again, however, the red flag is waved that no title search (as in the case of the contract) is routine nor mechanical. Too often the lawyer's books and his law school impress upon the lawyer that defects of title or marketability are limited to dower or some outstanding future interest or some defect in recordation discoverable in the chain of deeds, such as faulty acknowledgment or otherwise. Friedman cautions that the status of a title depends often on other records which may disclose serious defects or conditions not apparent in a routine check of a chain of deeds. As most real estate attorneys know, there must be a search of the records of probate or administration proceedings. Judicial proceedings relative to incompetency, foreclosure, eminent domain, or partition must be checked because they may disclose facts which may make a title offered unmarketable. Departmental searches in government offices on the town, city, or county level may reveal tax liens, building codes, housing codes, or zoning ordinances which may affect the value of the property and render it marketable or not according to the terms of the contract. A correct survey of the premises is advised in order to determine if the premises correspond to the description included in the contract. The survey also is desirable for the disclosure of possible encroachments on adjoining property or the violation of any ordinance or set back restriction which may render the title's market-

ability questionable. Likewise a personal inspection of the property is required to safeguard against unrecorded conditions extant which may have created rights in persons which the examination of the records alone will not disclose. Easements acquired by prescription or title acquired by adverse possession in a third person will not appear on the records as such are not subject to the recordation statutes. They are, however, obstacles which may render the title unmarketable. The author covers many specific defects which may make title unmarketable, including encumbrances, easements, party walls, projections and encroachments which sometime do not occur to the title searcher.

The book is complete in 425 pages. The last chapter includes a thorough treatment of the actual closing of title to complete the sale transaction. Last minute defects in the title are guarded against by detailed check lists suggested by the author for attorneys of buyer and seller to follow in the closing.

The book is intensely practical. If adverse criticism can be justified at all, it is because of over-emphasis and over citation of New York law. Approximately one-half of the case citations are New York decisions. In the opinion of the reviewer, already expressed, this is a book for the counselor. It is to apprise the conveyancer of perils to avert by alert planning and contractual provisions. The purpose of the book is not to set out and delineate local law but to make the real estate conveyancer aware of problems which *may* occur in his jurisdiction of which he was not previously conscious. If New York cases point up these problems as well as or better than others, no criticism of their use by the author is justified.

To the query "is it worth while to borrow the book?" the answer must be in the affirmative. For the attorney who has only an occasional brush with conveyancing, borrowing of the book may be sufficient. The attorney engaged regularly in the field of real estate conveyancing, especially of urban realty, would do well to make Mr. Friedman's book a part of his own library.

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