



1958

Real Property--Promoting the Marketability of Land Titles

Robert E. Adams
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Property Law and Real Estate Commons](#)

Click here to let us know how access to this document benefits you.

Recommended Citation

Adams, Robert E. (1958) "Real Property--Promoting the Marketability of Land Titles," *Kentucky Law Journal*: Vol. 46 : Iss. 4 , Article 6.

Available at: <https://uknowledge.uky.edu/klj/vol46/iss4/6>

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@sv.uky.edu.

contractor. The relationship of the distribution of papers to the publication of the paper is so closely allied that any risk of injury by or to the carrier should be placed on the publisher. Any economic loss to the publisher occasioned by this policy can be distributed among the readers in the form of a slightly higher subscription price or daily rate. This would comport with one of the most widely recognized justifications for vicarious liability, the distribution of risk theory, which is based on the belief that it is better to spread inevitable losses among a group than to let such losses fall on a few.³⁵

Fred F. Bradley

REAL PROPERTY—PROMOTING THE MARKETABILITY OF LAND TITLES

The absence of defects in the record chain of title, freedom from incumbrances, and title in the vendor are the three factors upon which the marketability of a land title is generally considered to depend.¹ In order to determine whether these factors exist, the lawyer-conveyancer must examine the public record of countless transactions affecting the particular land. He must, theoretically at least, verify title back to the state or federal government. Since a lawyer will seldom certify a title which is subject to conditions or restrictions or which contains an apparently fatal record defect, such incumbrances and defects remain a clog on the title and an impediment to its marketability. Such titles remain unmarketable so long as such incumbrances and defects are valid of record, even though the person having the right of enforcement may be totally ignorant of the existence of such right.

In an effort to solve the problem of old title incumbrances and defects, to establish a reasonable period for title search, and to give the conveyancer some yardstick by which to appraise a title, the legislatures of most of the states have, with varying degrees of success, enacted four principal types of legislation: statutes of limitations, curative acts, statutes limiting the duration of conditions and restrictions, and marketable title acts. In addition, several of the state bar associations have adopted title standards. Each of the four types of

³⁵ Smith, "Frolic and Detour," 23 Colum. L. Rev. 444 (1923); also see Baty, Vicarious Liability 34 (1916) for a discussion of the theory that the employer is liable because of his "deep pocket."; Harper, "The Basis of the Immunity of an Employer of an Independent Contractor," 10 Ind. L. J. 494 (1935); Laski, "The Basis of Vicarious Liability," 26 Yale L. J. 105 (1916); Morris, "The Torts of an Independent Contractor," 29 Ill. L. Rev. 339 (1934).

¹ 3 American Law of Property 130 (Casner ed. 1952).

legislation can be, and often has been, extremely beneficial; nevertheless in some areas such legislation has often fallen short of expectations. This has been due more to the failure of legislatures to recognize the limitations of the particular legislation than to any inherent weaknesses of the legislation itself. Each of these four types of legislation is ideally suited to accomplish a desirable result, but no one of them alone can adequately satisfy the need for improvement in our conveyancing laws. In proper combination, however, such legislation can bring an antiquated conveyancing procedure up to date and materially contribute to the marketability of land titles.

It is proposed here to examine separately these four types of legislation, as well as title standards, in order to determine their capabilities and limitations, and to suggest a possible combination of three of these four types of legislation which it is believed would provide Kentucky with an excellent program designed to promote the marketability of land titles.

Statutes of Limitations

The earliest type of legislation which has proved beneficial in promoting the marketability of land titles took the form of statutes of limitations. The usual operation of the statute is to bar the claimant to a matured interest from the assertion of his remedy after the lapse of a stated period of time. Thus an adverse possessor becomes the owner of land by the title holder's failure to assert his possessory right within the statutory period.

On the surface, it might be supposed that these statutes would be very useful in providing a good record title. This is true in some cases. But it is equally true that it cannot always be determined from an examination of the land records whether a statute of limitations has operated in fact. Thus, since a new promise to pay an old mortgage debt may revive the debt and the mortgage, and since such events do not necessarily appear of record, a mortgage which appears to have been barred by a statute of limitations may, in reality, constitute a valid incumbrance on the land. Too, most statutes of limitations do not run against owners of future interests, persons under disability, state or governmental units, or charitable uses.² Such exemptions from the operation of these statutes, coupled with their essentially negative nature, account for the failure of statutes of limitations to solve effectively the problems of the marketability of land titles.³

² Basye, *Clearing Land Titles* 108 (1953).

³ *Ibid.*

Curative Statutes

Curative statutes have been used in some jurisdictions with good effect in improving the marketability of titles. Generally, the function of these acts is limited to establishing certain documents of record as prima facie effective in accomplishing that which they purport to do.⁴ Thus a deed which was for some technical reason defective when recorded would, by operation of the statute, be validated *ab initio*.

As contrasted with statutes of limitations, curative acts are active and positive in their operation and, within the limited area of their operation, may render a technically invalid title marketable. But such statutes do not affect the necessity for the conveyancer to search the records over an unjustifiably long period. Nor do they affect the old interests themselves, except perhaps to perfect them, even though such interests may have been abandoned or have outlived their social usefulness.

Still, when used in conjunction with other legislation, such statutes can contribute materially to the marketability of titles.⁵

Statutes Limiting the Duration of Conditions

Some states have passed legislation which limits the time within which a condition may work a forfeiture. Others limit the duration of conditions and restrictions to a maximum specified number of years.⁶ Such limitations are absolute as to all conditions and restrictions imposed subsequent to the enactment of the statute.

Probably the most effective, clearly constitutional, legislation of this type is that of Minnesota which operates prospectively as to all conditions and restrictions and retroactively as to such conditions and restrictions as are, or "shall become," merely nominal.⁷

Legislation of this type is undoubtedly useful in improving the marketability of land titles within the limited area of its operation, but at best it is only a partial remedy. It does not purport to deal with such problems as unreleased mortgages or the period over which a title must be free from serious defects in order to be marketable. Nor does it affect presently existing conditions and restrictions which

⁴ An effective statute of this type is that of Nebraska. See Neb. Rev. Stat. sec. 76-258 (1950).

⁵ Basye, *op. cit.* supra note 2 at 547-48 (1953).

⁶ 1 American Law of Property 108 (Casner ed. 1952).

⁷ Minn. Stat. sec. 500.20 (1953). See Goldstein, "Rights of Entry and Possibilities of Reverter as Devices to Restrict the Use of Land," 54 Harv. L. Rev. 284 (1940). Such legislation has been held unconstitutional when applied retroactively to reverter provisions, despite the inclusion of a saving clause allowing one year in which to bring an action thereon. *Biltmore Village v. Royal*, 71 So. 2d 727 (Fla. 1954).

appear substantial of record but which may, in fact, have been long since abandoned or forgotten.

It is believed that the Kentucky Court of Appeals had such legislation as this in mind when, in an opinion handed down in 1953, it suggested discussion by the bar of the problems presented by clauses of forfeiture and reversion and "possible remedial legislation."⁸ Kentucky undoubtedly needs remedial legislation, but such legislation must accomplish more than does any one of the specialized statutes thus far discussed if it is to materially improve the marketability of land titles.

Kentucky has not been alone in feeling the effects of the mounting volume of land records and an increasing number of unmarketable titles. But while Kentucky's efforts at remedial legislation have been almost nil, the majority of states have at least tried to do something to improve the situation. Unfortunately, however, most of their efforts have been in the area of limitation and curative statutes, which most authorities agree are not the complete answer to the problem of marketability.⁹ Such statutes leave the conveyancer with no criteria by which to determine whether a specific title is marketable when it is subject to ascertained enforceable interests of record at any point in the chain of title from its inception to the present.

This problem of title evaluation has prompted the bar associations of some of the states to adopt recommended standards on which to base a title appraisal.

Title Standards

Title standards are recognized standards of appraisal to be applied to the real estate title in determining its marketability. They contribute to uniformity in the evaluation of titles and tend to dispel the fear of the conveyancer that future opinion might be at variance with his own.

Connecticut was the first state to adopt title standards on a state-wide basis. In 1938 the Connecticut Bar Association, after much study and discussion by the bar, published a statement of 57 frequently recurring problems of title practice with a recommendation as to whether each problem should be treated as a defect or could be ignored, and a discussion of the basis of the recommendation.¹⁰

In 1939 the American Bar Association sponsored a movement for the adoption of such standards in all states where the title opinion

⁸ *Hoskins v. Walker*, 255 S.W. 2d 480, 482 (Ky. 1953).

⁹ Basye, "Streamlining Conveyancing Procedure," 47 Mich. L. Rev. 935, 942 (1949); note, 55 Harv. L. Rev. 886, 887 (1942); Payne, "The Crisis in Conveyancing," 19 Mo. L. Rev. 214, 221-222 (1954).

¹⁰ 12 Conn. S.B.J. 100 (1938).

method is employed.¹¹ Nebraska adopted such standards in 1939, and a dozen or more other states have since been added to the growing list. In 1947 the Nebraska legislature adopted as law the entire set of standards as promulgated by the Nebraska Bar Association, giving the Nebraska conveyancer reliable criteria for the appraisal of a title.¹² He knows, for example, that "Where a mortgage in the chain of title has been properly foreclosed, the lack of a clerk's certificate of satisfaction of such mortgage should not be treated as a defect in title."¹³

Such legislatively adopted title standards can be a potent force in simplifying the problem of title appraisal, and would be highly desirable in any jurisdiction where more comprehensive legislation cannot be had.

Marketable Title Acts

In recent years, several of the midwestern states have undertaken a comprehensive legislative overhaul of their conveyancing law. The backbone of such reform has, in each instance, been a "marketable title act." Such an act is based on the idea that public policy does not demand that every outstanding interest, once it appears of record, should remain as a permanent clog on the title, and that a complete appraisal of a title should be possible from an examination of its recent history. This means that claims or interests having an origin prior to that period of recent history, and not appearing in the record of that history, would be absolutely barred. To insure that a claim not be barred the claimant may, under such statutes, renew his claim of record by filing a simple notice of its existence and by periodic renewal, so that a search of the records for the stated period over which titles must be examined would disclose the notice and the existence of the claim. This is generally felt to be a reasonable requirement in the furtherance of the desirable social end of improving the marketability of land titles and simplifying the problem of title search and evaluation.

Iowa, in 1919, was the first state to adopt such legislation. In 1941 Illinois, Indiana, and Wisconsin passed similar acts. Minnesota followed in 1943 and Michigan in 1945. Indiana revised her statute in 1947, and in the same year South Dakota and Nebraska passed acts patterned after the Michigan legislation. North Dakota also took the

¹¹ Proc. Sec. of Real Prop., Prob. & Trust Law (A.B.A.), "Report of Committee on Standards for Title Opinions," 130 (1939).

¹² Neb. Rev. Stat. secs. 76-601, 76-644 (Reissue of 1950).

¹³ Id. sec. 76-621.

Michigan act as a model when her statute was passed in 1951.¹⁴ Some of these acts were not as carefully drafted as they might have been, and could very well be found to be unconstitutional.¹⁵

The Michigan act is typical of, and often has been the model for, the later and better legislation of this type. The statute, in effect, declares that one who has an unbroken chain of title of record to any interest in land for 40 years shall at the end of such period be deemed to have a marketable record title, subject only to such claims thereto and defects of title as are preserved by other provisions of the statute or are contained in the chain of record title during such 40 years. All outstanding interests more than 40 years old are extinguished by the statute unless a notice of the existence of such interest is recorded within the 40 year period, and a good record title for 40 years is declared to be a marketable one.¹⁶

The constitutionality of legislation such as that of Michigan would seem to be clearly sustainable. It is true that property interests are destroyed in some cases, but only when the owner of such interest has failed to comply with a reasonable requirement for preserving it, viz. the filing of a simple notice of its existence.

In holding the act of that state constitutional, the Supreme Court of Minnesota said:

It is apparent from the recordation provisions of the 40-year statute which we are considering that the legislature did not intend to arbitrarily wipe out old claims and interests without affording a means of preserving them and giving a reasonable period of time within which to take the necessary steps to accomplish that purpose. The recordation provisions of the act provide for a simple and easy method by which the owner of an old interest may preserve it. If he fails to take the step of filing the notice as provided, he has only himself to blame if his interest is extinguished.¹⁷

The court went on to say, with respect to the nine-month period between the passage of the act and the date of its effectiveness as a bar, during which period existing interests over 40 years old must

¹⁴ These statutes are: Burns Ind. Stat. secs. 2-628 to 2-637 (Supp. 1957); Ill. Rev. Stat. c. 83, sec. 10a (1957); Iowa Code secs. 614.17 to 614.20 (1954); Mich. Comp. Laws secs. 565.101-565.109 (1948), as amended Mich. Comp. Laws sec. 565.104 (Supp. 1954); Minn. Stat. sec. 541.023 (1953); Neb. Rev. Stat. secs. 76-288 to 76-293 (1950); N.D. Rev. Code secs. 47-19A01 to 47-19A11 (Supp. 1953); S.D. Code secs. 51.16B01-51.16B12 (Supp. 1952); Wis. Stat. sec. 330.15 (1955).

¹⁵ There would seem to be a real question as to the constitutionality of the present Indiana act which requires the commencement of an action within one year from the filing of the preserving notice. It is difficult to see how one could commence an action pursuant to a claim which has not become possessory or otherwise matured.

¹⁶ Mich. Comp. Laws secs. 565.101-565.109 (1948), as amended Mich. Comp. Laws sec. 565.104 (Supp. 1954).

¹⁷ *Wichelman v. Messner*, 83 N.W. 2d 800, 817 (Minn. 1957).

have been recorded, that "No one has a vested right in any particular remedy and the legislature may change or modify the existing remedies for the enforcement and protection of the contract rights as long as an adequate remedy remains."¹⁸

The Supreme Court of the United States held constitutional an amendment which reduced from 20 years to one year and nine months the time allowed for commencement of an action in the case of existing causes of action.¹⁹

Writers in this area of property law share the opinion of the Minnesota court as to the constitutionality of these acts so long as they do not commit the error of the Indiana legislation in requiring that an action be brought whether or not one has matured.²⁰

Some of the states have created undesirable exemptions in their marketable title acts in favor of certain persons or interests. To allow such exemptions is to require the conveyancer to search the entire history of the title to determine whether it is subject to such exempted interests or other claims by such exempted persons. Obviously, this is inconsistent with the whole purpose of such legislation, and seriously impairs its effectiveness. For these and other reasons, the later acts seem to be more desirable. Michigan would seem to have profited from the experience of the states which preceded her into this area, and is generally conceded to have the preferable statute. The authorities in the field are enthusiastic in their praise of the marketable title acts generally, and they often single out the Michigan statute as the ideal example of this type of legislation.²¹

Suggested Legislation for Kentucky

Few would take issue with the statement of the Kentucky Court to the effect that old claims present ". . . a troublesome and growing problem in real estate law as to what steps, if any, should be taken to clear titles. . . ." ²² However, most persons conversant with the problem would omit the "if any" and emphatically assert that something *must* be done. Professor Simes has stated that "it should be reasonably apparent that something more than case law is necessary to remove stale restrictions on the use of land." He went on to say,

¹⁸ *Id.* at 821.

¹⁹ *Terry v. Anderson*, 95 U.S. 628 (1877).

²⁰ See especially Aigler, "Constitutionality of Marketable Title Acts," 50 Mich. L. Rev. 185 (1951).

²¹ 4 American Law of Property 834 (Casner ed. 1952); Basye, "Streamlining Conveyancing Procedure," 47 Mich. L. Rev. 1097 (1949); 2 Patton on Titles sec. 563 (2d ed. 1957); Spies, "A Critique of Conveyancing," 38 Va. L. Rev. 245 (1952).

²² *Hoskins v. Walker*, 255 S.W. 2d 480, 482 (Ky. 1953).

"The elimination of stale restrictions on the use of land is a problem that becomes more acute with every passing year. And the only adequate solution is well-drawn legislation."²³

Statutory reform in Kentucky, when it comes, should accomplish four things: (1) It should define marketable title with such precision as will permit of just application by the courts and reliable predictability by the lawyer-conveyancer. (2) It should impose fixed limits of duration for which conditions and restrictions can be created, but it should not operate retroactively in this respect except as to those conditions and restrictions which are or shall become merely nominal. (3) It should, except for clearly observable easements, bar any action on any claim that depends upon any act or omission that occurred more than 40 years prior, unless some simple step has been taken to preserve such claim, and (4) It should effectively cure purely technical defects of record after the lapse of a stated period of time.

Conceding the need for legislation, and assuming the desirability of the foregoing objectives, what exactly, in terms should the Kentucky legislature enact?

In an area of the law so replete with possible adverse consequences as this, it is advisable to move carefully and to benefit by the experience of other jurisdictions. No one section of any legislation undertaken should purport to incorporate all of the assumed requisites. Rather, it should probably be set out in three new sections of the Kentucky Revised Statutes, which sections would operate independently of, yet complement, each other.

One section should deal with the limitation of the duration of which conditions and restrictions may be created. This statute is needed to preclude the possibility that restrictions, once created, could be perpetuated indefinitely as a clog on the title by keeping a current notice filed. The limitation would apply to grants involving conditions, restrictions, covenants, or servitudes of any description whatever.²⁴

In the accomplishment of this objective, it is believed that no legislature could do better than adopt the applicable Minnesota statute. This statute, with minor changes, is reproduced below, and as changed is suggested for enactment by the Kentucky legislature:

381.— Defeasible Estates. (1) Normal conditions and limitations. When any conditions annexed to a grant, devise or con-

²³ Simes, "Elimination of Stale Restrictions on the Use of Land," *Proc. Sec. of Real Prop., Prob. & Trust Law (A.B.A.)* 4 at 7, 12 (1954).

²⁴ It is felt that the application of such a statute to restrictive covenants and equitable servitudes, which the law favors, is justified in view of the universal acceptance and use of zoning laws which are a more desirable and more flexible method of controlling the use of land.

veyance of land are, or shall become, merely nominal, and of no actual and substantial benefit to the party or parties to whom or in whose favor they are to be performed, they may be wholly disregarded; and a failure to perform the same shall in no case operate as a basis of forfeiture of the lands subject thereto.

(2) Restriction of duration of condition. All covenants, conditions, (possibilities of reverter, servitudes,) or restrictions hereafter created by any other means, by which the title or use of real property is affected, shall cease to be valid and operative (40) years after the date of the deed, or other instrument, or the date of the probate of the will, creating them; and after such period of time they may be wholly disregarded.

(3) Time to assert power of termination. Hereafter any right to reenter or to repossess land on account of breach made in a condition subsequent shall be barred unless such right is asserted by entry or action within six years after the happening of the breach upon which such right is predicated.²⁵

A second section of the statutes should constitute a marketable title act which would be the real substance of the reform. It must be carefully drafted if it is to be both effective and constitutional.²⁶ Kentucky should avail herself of the experience of other states and of authorities in the field. That experience is crystallized in the Michigan statute which has all the desirable features and, as originally drafted, none of the undesirable features of similar legislation. Accordingly, it is suggested that the legislature should enact the *original* Michigan legislation of 1945,²⁷ with a slight modification of section 4 and no

²⁵ Minn. Stat. sec. 500.20 (1953). Those portions of subsection (2) within parentheses represent changes from the Minnesota act. Possibilities of reverter and servitudes are expressly included in order to rule out the possibility of their being excluded by construction. See Goldstein, *op. cit. supra* note 7. The duration for which the interests may be created is changed from 30 to 40 years to better accord with other proposed legislation.

²⁶ Illustrative of the need for care in drafting such legislation is the fact that the Nebraska act, *supra* note 14, was modeled after that of Michigan, *infra* note 27; yet, sec. 76-290 of the Nebraska act requires only that a notice of the claim be filed within 23 years *after* the instrument concerned is recorded in order for a subsequent action to be brought thereon. Thus a single recording of a notice would seem to preserve the interest indefinitely unless barred on some basis outside the act, though the basic idea behind such recording of notice is that it must have been recorded within the stated period *prior* to the assertion of the remedy therefor. Substantially the same undesirable feature was introduced into the Minnesota statute by a 1947 amendment. The feature in the Minnesota act is criticized in Basye, "Streamlining Conveyancing Procedure," 47 Mich. L. Rev. 1097, 1118 (1949).

²⁷ PUBLIC Act of Michigan, No. 200, approved May 17, 1945, provides:

AN ACT to define a marketable record title to an interest in land; to require the filing of notices of claim of interest in such land in certain cases within a definite period of time and to require the recording thereof; to make invalid and of no force or effect all claims with respect to the land affected thereby where no such notices of claim of interest are filed within the required period; to provide for certain penalties for filing slanderous notices of claim of interest, and to provide certain exceptions to the applicability and operation thereof.
The People of the State of Michigan enact:

(footnote continued on next page)

(footnote continued from preceding page)

Section 1. Any person, having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for 40 years, shall at the end of such period be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by application of the provisions of succeeding sections of this act and subject also to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed and which have been recorded during said 40 year period: *Provided, however*, That no one shall be deemed to have such a marketable record title by reason of the terms of this act, if the land in which such interest exists is in the hostile possession of another.

Sec. 2. A person shall be deemed to have the unbroken chain of title to an interest in land as such terms are used in the preceding section when the official public records disclose:

(a) A conveyance or other title transaction not less than 40 years in the past, which said conveyance or other title transaction purports to create such interest in such person, with nothing appearing of record purporting to divest such person of such purported interest; or,

(b) A conveyance or other title transaction not less than 40 years in the past, which said conveyance or other title transaction purports to create such interest in some other person and other conveyances or title transactions of record by which such purported interest has become vested in the person first referred to in this section, with nothing appearing of record purporting to divest the person first referred to in this section of such purported interest.

Sec. 3. Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all interests, claims, and charges whatsoever the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred prior to such 40 year period, and all such interest, claims, and charges are hereby declared to be null and void and of no effect whatever at law or in equity: *Provided, however*, That any such interest, claim, or charge may be preserved and kept effective by filing for record during such 40 year period, a notice in writing, duly verified by oath, setting forth the nature of the claims. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of said 40 year period. For the purpose of recording notices of claim for homestead interests the date from which the 40 year period shall run shall be the date of recording of the instrument, non-joinder in which is the basis for such claim. Such notice may be filed for record by the claimant or by any other person acting on behalf of any claimant who is:

- (a) Under a disability,
- (b) Unable to assert a claim on his own behalf,
- (c) One of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Sec. 4. This act shall not be applied to bar any lessor or his successor as reversioner of his right to possession on the expiration of any lease, (or to bar or extinguish any easement, or interest in the nature of an easement, the existence of which is clearly observable by physical evidences of its use,) by reason of failure to file the notice herein required. Nor shall this act be deemed to affect any right, title or interest in land owned by the United States.

Sec. 5. To be effective and to be entitled to record the notice above referred to shall contain an accurate and full description of all the land affected by such notice which description shall be set forth in particular terms and not by general inclusions. Such notice

(footnote continued on next page)

(footnote continued from preceding page)

shall be filed for record in the register of deeds office of the county or counties where the land described therein is situated. The register of deeds of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded and each register shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office each register shall enter such notices under the grantee indexes of deeds under the names of the claimants appearing in such notices.

Sec. 6. This act shall be construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons dealing with the record title owner, as defined herein, to rely on the record title covering a period of not more than 40 years prior to the date of such dealing and to that end to extinguish all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event or omission antedating such 40 year period, unless within such 40 year period a notice of claim as provided in section 3 hereof shall have been duly filed for record. The claims hereby extinguished shall mean any and all interests of any nature whatever, however denominated, and whether such claims are asserted by a person sui juris or under disability, whether such person is within or without the state, and whether such person is natural or corporate, or private or governmental.

Sec. 7. Nothing contained in this act shall be construed to extend the periods for the bringing of an action or for the doing of any other required act under any existing statutes of limitation nor to affect the operation of any existing acts governing the effect of the recording or of the failure to record any instruments affecting land nor to affect the operation of Act No. 216 of the Public Acts of 1929 nor of Act No. 58 of the Public Acts of 1917 as amended by Act No. 105 of the Public Acts of 1939.

Sec. 8. No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land, and in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason only, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and in addition, shall decree that the defendant asserting such claim shall pay to plaintiff all damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

Sec. 9. No interest, claim or charge shall be barred by the provisions of section 3 of this act until the lapse of 1 year from its effective date, and any interest, claim or charge that would otherwise be barred by said section 3 may be preserved and kept effective by the filing of a notice of claim as required by this act during the said 1 year period.

The foregoing is a reproduction of the statute as it was originally enacted and as it appears in Aigler, "Clearing of Land Titles—A Statutory Step," 44 Mich. L. Rev. 45 (1945). For the act in its present form, see supra note 16. The original legislation is preferred because subsequent amendments have introduced undesirable exceptions into section 4 and created a certain confusion of meaning therein. See Aigler, "Constitutionality of Marketable Title Acts," 50 Mich. L. Rev. 185 (1951). The above portion of section 4 within parentheses represents an addition to the original Michigan legislation. It is felt to be desirable to exclude from the operation of the act easements as to which there is no question of notice in order to avoid imposing on public utilities the tremendous burden of keeping innumerable preserving notices current. Sections 5 and 7 would require slight changes to compensate for jurisdictional differences.

other changes except as are necessary to compensate for jurisdictional differences.

A final suggested statute should consist of a curative act which would, after the lapse of perhaps ten (or even five) years, validate documents of record which fail, for some technical reason only, to carry into legal effect the intentions of the parties. Such a statute is needed to operate within the proposed 40 year period of the marketable title act to correct technical defects in the record chain of title on which marketability would depend. The statute should not operate immediately upon record defects, however, as this would be equivalent to offering an alternative method for making an effective conveyance, and its effect would be to condone if not to encourage the commission of errors.²⁸ A satisfactory curative act might be worded as follows:

When any instrument of writing, in any manner affecting or purporting to affect the title to real estate, has been, or may hereafter be recorded for a period of ten years in the office of the clerk of the county wherein such real estate is situated, and such instrument, or the record thereof, because of defect, irregularity or omission, fails to comply in any respect with any statutory requirement or requirements relating to the execution, attestation, acknowledgment, or recording, such instrument and the record thereof shall, notwithstanding any or all of such defects, irregularities and omissions, be fully legal, valid, binding and effectual for all purposes to the same extent as though such instrument had, in the first instance, been in all respects duly executed, attested, acknowledged and recorded.²⁹

Conclusion

It is readily admitted that there are other possible solutions to the problems here discussed. Some of those, such as the Torrens system of title registration³⁰ and tract index recording system, might even bring longer lasting and better results. They are not discussed here because adoption of either would necessitate the expenditure of public funds in amounts which many feel would not be justified by the added benefits produced, especially since much improvement can be made within the framework of the present recording system. Accordingly, the basic premise of this note has been that such reform as is undertaken must be attempted within the present recording system.

It is to be hoped that the legislature, through its Legislative Research Commission, will see fit to undertake a study of the very real

²⁸ Basye, "Streamlining Conveyancing Procedure," 47 Mich. L. Rev. 1097 (1949).

²⁹ This is, with minor variations, an exact reproduction of Neb. Rev. Stat. sec. 76-258 (1950).

³⁰ For an excellent discussion of the Torrens system and its operation, see Patton, "The Torrens System of Land Title Registration," 19 Minn. L. Rev. 519 (1935).

problems which have been touched upon above. These problems bear promise of becoming more real with each new year of legislative inactivity and the accompanying annual volume of new land records and newly imposed incumbrances.

The benefits to be derived from such a program of reform as is suggested in this note are apparent and numerous. They will inure to the advantage of the lawyer-conveyancer through simplified procedures, to the property owner in a more secure title, and to society at large in the reduction of litigation.

Robert E. Adams