

## Book Reviews

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### Recommended Citation

*Book Reviews*, 16 Md. L. Rev. 181 (1956)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol16/iss2/11>

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## Book Reviews

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**Contracts And Conveyances Of Real Property.** By Milton R. Friedman. Chicago. Callaghan & Company, 1954. Pp. 425. 1955 Cumulative Supplement. Pp. 61. \$10.00.

When one realizes the great volume of real estate transactions taking place today, most of them involving purchasing and mortgage financing in connection with home buying by the individual, a trend that gained momentum after the end of World War II, and was given life by Federal Government Housing Laws encouraging home building, it is surprising that so many lawyers are unfamiliar with the methods of preparation and handling of real estate cases and related phases of real estate. These lawyers will profit by reading this book and will surely find it very helpful as a practical guide to real estate practice.

The author has successfully compiled an amazing source of material and has presented it in a form that is simple to follow and easily understandable. Step by step, from a contract of sale to consummating settlement, Mr. Friedman skillfully guides the reader in his intimate but effective style. There is no wasting of words and although theory is discussed very lightly, the practical aspects of real estate practice are covered most completely. For the lawyer who wishes to make a further study of more of the theory, the author's complete footnotes, his many citations of reported cases from all the states, his frequent references to other treatises, texts, law review articles, notes and casenotes, brought to date by his 1955 Cumulative Supplement, provide an inexhaustible source.

Mr. Friedman has not attempted to make use of forms. Each jurisdiction has its own forms of deeds, mortgages and other instruments generally used in real estate practice and those in use in routine matters are available in legal stationers and there are form books accessible in all law libraries. Most lawyers extensively engaged in real estate have learned through experience, as Mr. Friedman points out, that the form of conveyance has to be drafted for every transaction with the exception of the usual run of the mill case.

The title to this book leads one to believe that it is a study of contracts and conveyances; on the contrary, little is said about either. However, Mr. Friedman has succeeded in bringing to the attention of the reader the importance

of the contract of sale and he does point out the many factors that must be considered in the preparation of the contract. Standard forms of contracts of sale adaptable to the routine transactions involving purchase and sale of homes are available in all jurisdictions. However, in more complicated matters, such as those concerning large tracts of land, multiple building sales, apartment houses and the like, the simple form of contract is hardly adequate and the attorneys involved should make a thorough study of all the requirements of their clients, both from the purchaser's and seller's viewpoints, before allowing the contract of sale to be executed.

To lawyers who are specialists in the examination of titles, the author's chapter on Examination of Titles may seem to be elementary, but his coverage of this phase of real estate practice is very complete and should prove to be a handy reference guide to any real estate lawyer; also, the lawyer who is about to engage in real estate practice and the law student who is interested in learning the art of title examining could very well attain a sound background on how to examine a title properly. Treatises on the examination of titles to real estate are few and far between. Mr. Friedman's inclusion in his book of a chapter on Examination of Titles is a tribute to his real appreciation of one of the important phases of real estate practice and surely he will be thanked for it by every one who reads his book. The lawyer who has had any experience in the examination of titles to real estate can really appreciate the author's informal discussion of the fine points of title examination. Mr. Friedman's discussion on personal inspection of the premises deserves some special consideration. He indicates that this phase of title examination is an essential part of title examination and is widely used in most jurisdictions. It is unfortunate that personal inspection is not practiced to a greater extent in Maryland; as a matter of fact, it is rarely taken advantage of here. Too much stress on the importance of personal inspection in the examination of titles to real estate cannot be made. Many facts can be ascertained by an inspection of the premises which can never be detected no matter how carefully the Land Records are examined; rights of way, common driveways, encroachments, the use to which premises are put, and adverse possession are only a few. "Examination of title involves careful, detailed and often drawn-out labor, plus highly specialized knowledge in many fields."<sup>1</sup> Lawyers

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<sup>1</sup> FRIEDMAN, 60.

who are not experienced in title examination have discovered this fact. The result is the use of title insurance companies and although Mr. Friedman indicates that title examination has been a lost art, title insurance companies have come to the rescue and the art of title examination is still being practiced wherever there is a title insurance company.

One problem arising in title examination not discussed by Mr. Friedman, and conspicuous in its absence, especially to those lawyers and title examiners who have had experience in Maryland, is that presented by the tax sale title. In this jurisdiction very few lawyers are willing to risk passing a title that comes through a tax sale. Maryland law sets forth the proceedings to be instituted to effectively foreclose the rights of redemption of the owner or owners of property sold for non-payment of taxes,<sup>2</sup> but for some reason, certainly not justified, the plaintiff or plaintiffs in these cases do not proceed in as careful a manner as they do in other equity proceedings. In many instances, basic jurisdictional facts are taken for granted and the requirements outlined in the statute are carried out in words only. Perhaps the statement made by the Court of Appeals of Maryland, in *Gathwright v. Mayor & City Council of Baltimore*,<sup>3</sup> that the proceeding for the foreclosure of the taxpayer's equity of redemption is an action *in rem*, has brought about the apparent lack of effort to secure personal service of resident defendants in tax sale cases. In any event, so long as there are tax sales, title companies will be called upon to insure titles devolving therefrom and each case will still be considered in its own light, and, in the meantime, the search by title companies for a magic formula that will solve all tax sale title problems will continue. While on the subject of tax sales, it should be noted that Mr. Friedman's statement that a tax foreclosure does not extinguish restrictions imposed on the property prior to the tax sale does not prevail in Maryland; here the rule is that a tax foreclosure, properly instituted, does extinguish such restrictions.

The author's chapter on Marketable Titles leaves little to be added; he touched on every point that could possibly affect the marketability of title — definition, adverse possession, encumbrances, assessments, dower (an important factor never to be overlooked), judgments, mechanics' liens, outstanding contracts of sale, easements, rights of way (both

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<sup>2</sup> Md. Code (1951) and Supp. (1955), Art. 81, Secs. 69-119, inclusive.

<sup>3</sup> 181 Md. 362, 30 A. 2d 252 (1943).

public and private), sewers, water pipes and many others. Volumes could be written on the subject of marketability of title, but when one has read this chapter and considers the excellent footnotes contained therein, there can be no doubt left in the mind of the reader that the author has accomplished, in a few well chosen words, a good summarization of what to look for in determining whether or not a title is marketable.

The discussion of mortgages and deeds is general and perhaps will not impress the experienced real estate lawyer, but for the young lawyers and the law student, it could prove to be a good starting point. The fundamentals of both are clearly presented. It should be noted that Deeds of Trust in the form of a mortgage are generally used in the District of Columbia and are now being used by money lending institutions in Maryland.

All real estate transactions culminate in a closing or settlement and Mr. Friedman appropriately concludes his book with a section on this phase. When this stage is reached the legal aspect of the case has been completed, however, the ability to properly handle a settlement should be one of the real estate lawyers' attributes and Mr. Friedman's decision to make this subject a part of his book should be appreciated by every lawyer who has had to take part in final settlement of a real estate transaction.

Under one cover Mr. Friedman has succeeded in touching on nearly every element of real estate practice. No attempt has been made to make his book a treatise on every aspect of the law relating to real estate; this would take volumes and volumes. The author has compiled, in a few pages, a wealth of practical information and the book should be a valuable addition to any law library and should be read by every law student as a complement to his education in the field of real estate law and practice.

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