

1936 Supplement  
To  
**Mason's Minnesota Statutes**  
1927

(1927 to 1936)  
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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CHAPTER 65  
Registration of Title

REGISTRATION

**8247. Registration.**

Adverse possession. 171M410, 214NW271. Torrens' system of land title registration. 19MinnLaw Rev519.

**8248. Registered land—Adverse possession.**

One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

**8249. Application, who may make.**

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

**8251. Application, how signed and verified.**—The application shall be in writing, and shall be signed and verified by the applicant, or by his agent thereunto lawfully authorized in writing. If the application is signed and verified by any agent except an officer of a corporation, the authority of such agent shall be executed and acknowledged in the manner required for the execution and acknowledgment of a deed and shall be recorded with the register of deeds for the county wherein the land is situated, before the filing of the application. If the application is made by a corporation, it shall be verified by some officer of the corporation. If the applicant is married, the husband or wife of the applicant may assent thereto in writing by a duly acknowledged indorsement thereon, or by a separate instrument duly acknowledged and filed with the application, but otherwise the spouse shall be made a defendant and served with summons. (R. L. '05, §3374; G. S. '13, §6872; Feb. 20, 1935, c. 16, §1.)

Sec. 2 of Act Feb. 20, 1935, cited, provides that the act shall take effect from its passage.

**8253. Non-resident applicant—Agent.**

On application for issue of a new Torrens certificate, as distinguished from an application to place land under the Registration Act, it is unnecessary for a nonresident to furnish a power of attorney. Rhode Island Hospital Trust Co. v. C., 191M354, 254NW466. See Dun. Dig. 8358.

**8258. Examiner of titles.**

Constitutional. 85M437, 446, 89NW175. Provision authorizing district court to appoint examiner of titles and deputy examiner of titles is constitutional. Op. Atty. Gen. (374j), Aug. 13, 1934.

**8261. Order for summons—parties defendant.**—If, in the opinion of the examiner, the applicant has a title to the land proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the applicant shall file with the clerk a verified petition praying that a summons may be issued in said proceeding. The court shall thereupon examine all the files and records of said proceeding, and shall, by its order, direct that a summons be issued therein. This order shall contain the name and address, so far as known, of every person who is to be joined as a party to said proceeding, including

all persons named in the application, or found by the report of the examiner to be in possession of the land, or as having any right, title, interest or estate therein, or any lien or incumbrance upon or against the same, together with the name and address of all other persons or parties whom the court in said order may direct to be joined therein. The parties thus named in the order of the court shall be, and shall be known as, defendants.

Whenever the description in the application includes land which, according to the plat of the United States Government Survey, forms part or all of the bed of a meandered stream or lake, the State of Minnesota shall be made a party defendant; provided, however, that in all cases where decree of registration has been heretofore entered for any such land without the State of Minnesota having been joined and served with summons, it shall be deemed that title had heretofore passed to the applicant by reliction or accretion. (R. L. '05, §3383; G. S. '13, §6882; Apr. 8, 1933, c. 164.)

**8262. Form of summons—service.**—The summons shall be subscribed by the clerk, and shall be directed to the defendants, and require them to appear and answer the application of the applicant, within twenty days after the service of the summons, exclusive of the day of such service. It shall be served in the manner now provided by law for the service of a summons in civil actions in the district court, except as herein otherwise provided. It shall be served upon the state by delivering a copy thereof to the attorney general, who shall transmit the same to the county attorney of the county in which the land described therein is situated, and thereupon such county attorney shall appear in such proceeding, and represent the state therein. It shall be served upon all persons who are not residents of the state or who cannot be found therein and upon "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein" by publishing the same in a newspaper printed and published in the county herein the application is filed, once each week for three consecutive weeks; provided if the order for summons or a supplemental order of the court, filed before, during or after the publication of the summons, shall so direct, the summons may be personally served without the state upon any one or more of the defendants who are non-residents of the state or who cannot be found therein, in like manner and with like effect as such service in a summons in a civil action in the district court. The clerk shall also at least twenty days before the entry of the decree which shall be entered in said matter, send a copy of the summons by mail to all defendants who are not residents of the state, and whose place of address is known to applicant or stated in the application, or in the order directing the issuance of the summons. The certificate of the clerk that he has mailed the summons, as herein provided, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant and proof of the service shall be made in the same manner as in civil actions. The summons shall be substantially in the following form, namely:

SUMMONS IN APPLICATION FOR REGISTRATION OF LAND

State of Minnesota,  
County of . . . . ., ss.  
District Court, . . . . . Judicial District.

In the matter of the application of (name of applicant) to register the title to the following described real estate situated in . . . . . County, Minnesota, namely: (description of land.)

Applicant.

vs.

(names of defendants) and "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein."

Defendants.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer the application of the applicant in the above entitled proceeding and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after service of this summons upon you exclusive of the day of such service, and, if you fail to answer the said application within the time aforesaid, the applicant in this proceeding will apply to the court for the relief demanded therein.

Witness . . . . . clerk of said court, and the seal thereof, at . . . . . in said county, this . . . . . day of . . . . . 19 . . . . .

Clerk

(Seal)

When the summons has been served as herein provided, the court shall be deemed to have acquired jurisdiction of the subject matter of the proceeding, and of all persons whatsoever, who have, or may have, any right, title, interest or estate in the real estate described in the application, or any lien or charge whatsoever upon or against the same. By the phrase in the summons "all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the application herein," all the world are made parties defendant, and shall be bound and concluded by the decree. (R. L. '05, §3384; G. S. '13, §6883; '27, c. 112, §4; Mar. 28, 1929, c. 97, §1.)

City maintaining sewer under private land could not have its rights cut off by summons issued to "all other persons or parties unknown," since city should have been made a party defendant as an occupant of part of the land. Op. Atty. Gen. (387b-11), Sept. 6, 1934.

**8266. Trial—Reference.**

Applicant in title registration proceeding may dismiss at any time, even though defendant is seeking to enforce rights as contract vendee and even after filing of adverse report of referee. Hiller v. S., 191M272, 253NW773. See Dun. Dig. 2741, 8358.

**8267. Dismissal.**

Where, in a title registration proceeding under Torrens Act, an answering defendant seeks to have applicant's title decreed to be subject to defendant's rights as a contract vendee, applicant may dismiss his application at any time during proceedings. Hiller v. S., 191M272, 253NW773. See Dun. Dig. 3362.

**8268. Decree of registration—Effect.**

One holding registered title to real estate and in actual possession has an insurable interest therein. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 4641.

A judgment in action between owner in possession of real property and one claiming rights therein under a void foreclosure sale, when such judgment is properly registered and declares foreclosure void and adjudges title in such owner, becomes a link in owner's chain of title, and is admissible in evidence even against a stranger to judgment. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 5171, 5191.

Judgment, entered long after date when title is in issue, does not bar a stranger thereto from showing, if he can, that, on prior material date, adjudged owner had no title. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 5171, 5191.

City having sewer under private property did not lose its right to maintain and repair the same by reason of registration of title in proceeding in which city was not made party. Op. Atty. Gen. (387b-11), Sept. 6, 1934.

**8270. Registration runs with land.**

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

**8271. Rights of person holding certificate of title.**

—Every person receiving a certificate of title pur-

suant to a decree of registration, and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration, shall hold the same free from all encumbrances, and adverse claims, excepting only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or incumbrances subsisting against the same, if any, namely:

1. Liens, claims or rights arising or existing under the laws or the constitution of the United States, which this state cannot require to appear of record.

2. The lien of any tax or special assessment for which the land has not been sold at the date of the certificate of title.

3. Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder.

4. All rights in public highways upon the land.

5. Such right of appeal, or right to appear and contest the application as is allowed by this chapter.

6. The rights of any person in possession under deed or contract for deed from the owner of the certificate of title. (R. L. '05, §3393; G. S. '13, §6892; Apr. 25, 1931, c. 357.)

Cook v. L., 191M6, 252NW649; note under §8293. One obtaining new certificates under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

**8279. Deputy registrars.**

Only two deputies could be employed in the office of the registrar of titles in Hennepin County. Op. Atty. Gen., Jan. 29, 1932.

**8280. Title, how registered—Register of titles.**

Duties of registrar of titles as to entries on certificate from complicated instruments and their effect. 181M615, 233NW866. See Dun. Dig. 8361.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8361.

A decree of the district court in proceedings under the Registration Act to which all interested persons are parties, defining and construing a trust, is conclusive as to the nature of the trust as against subsequent attaching creditors. McWhinney v. G., 183M141, 235NW676. See Dun. Dig. 8361a(6).

**8282. Certificates, etc., as evidence.**

McWhinney v. G., 183M141, 235NW676; note under §8280.

Fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8361.

**8284. Indexes, etc.—Court to adopt forms.**

"Attested" refers to endorsements of registrar of titles and not to duplicate instruments. Op. Atty. Gen. (373b-19), June 11, 1935.

**8293. Transfer of registered land.**

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of

which the records contained no notice did not affect the title. 174M22, 218NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

An unregistered quitclaim deed of Torrens title property although not affecting title nor creating any interest in land, was, as between parties thereto, effective as a contract. *Cook v. L.*, 191M6, 252NW649. See Dun. Dig. 8361.

#### 8294. Conveyances, etc., filed with registrar—Etc.

Intended for protection of grantees, mortgagees, whose deeds, mortgages, liens or judgments have been properly registered. 181M615, 233NW866. See Dun. Dig. 8362a.

#### 8295. New certificate—Interest less than fee.

Registrar of titles must file mortgage even though spouse does not join therein unless certificate shows real estate covered thereby is a homestead. Op. Atty. Gen. (374f), April 17, 1934.

#### 8296. Instruments to have name and address.

Registrar would not be justified in refusing to accept an instrument that contained full name and address endorsed thereon, even though it did not contain such information in body thereof. Op. Atty. Gen., Aug. 4, 1932.

#### 8297. Owner's duplicate must be presented, when.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

#### 8300. Mortgage.

Mortgage on registered land takes effect on the title only by registration. 171M182, 213NW736.

#### 8302. Assignment and discharge of mortgage.

Extension of mortgage may be registered on production of mortgagee's duplicate certificate alone. Op. Atty. Gen., Aug. 4, 1932.

#### 8304. Registration after foreclosure—New certificate.

*Rhode Island Hospital Trust Co. v. C.*, 191M354, 254NW 466; note under §8253.

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

#### 8317. Alterations on register—order of court.—No

erasure, alteration or amendment shall be made upon the register of titles after the entry of a certificate of title or of any memorial thereon, and the attestation of the same by the registrar, except by order of the court. A registered owner or other person in interest may, at any time, apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error or omission was made in entering a certificate or any memorial thereon, or on any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated; or that a corporation which

owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms, requiring security if necessary, as it may consider proper; but the provisions of this section shall not give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or of his heirs or assigns without his or their written consent. Provided, however, that, without order of court in counties in which a rule of the district court so provides, the registrar of titles may receive and register as memorials upon any certificate of title to which they pertain, the following instruments; receipt or certificate of county treasurer showing redemption from any tax sale or payment of any tax described in a certificate of title, a marriage certificate showing the subsequent marriage of any owner shown by a certificate of title to be unmarried, a certified copy of the death certificate of party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with said spouse; and in all subsequent dealings with the land covered by such certificates the registrar shall give full faith to said memorials. Provided, further, that in case of a certificate of title outstanding to two or more owners as joint tenants, upon the filing for registration of such a certificate of death and affidavit of identity as hereinbefore described, and upon the surrender of the owner's duplicate of title, the registrar shall issue a new certificate of title for the premises to the survivor in severalty or to the survivors in joint tenancy as the case may be. Provided, further, when instruments affecting registered land have been recorded in the office of any register of deeds in this state, a certified copy thereof may be filed for registration and registered with like effect as the original instrument, if the registrar of titles shall first be satisfied that the signatures to the original are genuine. (R. L. '05, §3439; G. S. '13, §6938; Apr. 5, 1933, c. 160, §1.)

Sec. 2 of Act Apr. 5, 1933, provides that the act shall take effect from its passage.

In proceeding to alter registration certificate of a subsequent purchaser of land over which right of way passed, court was not authorized to alter it further than describing right of way in exact language used in deed conveying it. *Minnetonka State Bank v. M.*, 189M 560, 250NW561. See Dun. Dig. 8361a.

In special proceeding to alter a certificate of registration of title to land, injunction against trespassing on land involved in certificate is improper. Id.

#### 8322. Damages through erroneous registration.

The fact that a purchaser of registered land in good faith relies upon a memorial entered on the certificate of title thereof, without examining the instrument on file in the registrar's office and noted in the memorial, does not make such purchaser guilty of negligence as a matter of law. 181M615, 233NW866. See Dun. Dig. 8362a.

City held not liable to damages resulting from registration of title by reason of fact that part of sewer system was maintained under such land. Op. Atty. Gen. (387b-11), Sept. 6, 1934.

## CHAPTER 65A

### Registration of Certain Trade-Names

#### 8330. Record of name, mark, etc.

Words "Stearns County No. 13" and "Minnesota Thirteen" are not in conflict. Op. Atty. Gen., Mar. 20, 1934.

Effect of non-compliance with statute regulating use of trade names. 15MinnLawRev324.

**8335-1. Definitions.**—The word person or persons as used in this act shall mean persons, firms, corpora-

tions, co-partnerships, associations or agents of any of them. (Act Apr. 25, 1931, c. 366, §1.)

**8335-2. Brands to be registered.**—Whoever operates a creamery, cheese factory, ice cream factory, or cream buying station, or if upon the farm or elsewhere produces milk or cream or any dairy product to be sold for human consumption or to be manufac-