

MINNESOTA STATUTES 1953 ANNOTATIONS

505.165 PLATS; COORDINATES

1268

Alleys in a town are not "town roads" within the meaning of section 100.01, subdivision 5, and they cannot be vacated by the procedure defined in section 163.13 or 163.19 and it is necessary to proceed under section 505.14. OAG June 3, 1947 (396-F-3).

Section 505.14 is not applicable to a village cemetery plat which the village sought to vacate when the realty was no longer needed as a cemetery. OAG April 6, 1948 (870-J).

505.165 PLATS OF LANDS WITHIN ANY TOWN, VILLAGE, OR CITY EXECUTED OR FILED PRIOR TO JANUARY 1, 1915

HISTORY. 1947 c 48 s 1-3.

505.17 CERTAIN PLATS AND CERTIFICATES PRIMA FACIE EVIDENCE

In view of the fact that the symbolic references by which the real estate is described in the descriptions submitted are familiar to surveyors only and other persons dealing with the preparation of road maps, it follows that the land is not described with sufficient certainty to enable a man of ordinary intelligence but not skilled as a surveyor to identify the land described with reasonable certainty. The land is not described with sufficient definiteness to enable the auditor to use the description for the purpose of listing the property for assessments, taxation, delinquent real estate tax proceedings, and forfeiture. OAG Dec. 27, 1951 (474).

505.173 CORRECTION OF PLATS

HISTORY. 1949 c 557 s 1; 1951 c 597 s 1.

COORDINATES

505.27 Renumbered 505.173.

CHAPTER 507

CONVEYANCING, RECORDING

507.01 CONVEYANCE AND PURCHASER

Original Indian title, existence and extent of aboriginal ownership as a relevant issue in title examinations whenever a chain of title is traced back to a federal grant or patent. 32 MLR 28.

Indian clouds on land title grants. 32 MLR 28.

How we bought the United States from the Indians. 32 MLR 34.

The doctrinal origin of Indian title. 32 MLR 43.

Johnson v McIntosh and other Indian title cases. 32 MLR 47.

Restrictive covenants in conveyances; waiver by acquiescence; estoppel. 32 MLR 524.

Assignment of contract for security; assumption of contract duties by assignee. 32 MLR 822.

The law of the state of incorporation governs as to dissolution of a corporation and its right after dissolution to exercise its corporate functions elsewhere; and dissolution of a corporation and deprivation of the right to exercise its corporate powers by the law of the state of incorporation will be effective in another state.

MINNESOTA STATUTES 1953 ANNOTATIONS

1269

CONVEYANCING, RECORDING 507.02

Assignment of a contract for a deed which was void under laws of the state of Delaware, the state of incorporation of assignee because assignee's charter had become void and its powers inoperative by reason of nonpayment of taxes, was also void in Minnesota. *Kratky v Andrews*, 224 M 386, 28 NW(2d) 624.

A provision in a lease which provided that during extended term thereof the lessor "shall have the right to sell the leased property at any time in said term to any one, but shall give said lessee 60 days notice in writing of said sale" is clear and unambiguous and parol evidence is not admissible to modify its meaning, nor does the language constitute an option from the lessors to the lessee permitting a right to purchase. *Bergland v Grommesh*, 226 M 19, 31 NW(2d) 644.

Distinctions between various parts of a conveyance may be ignored and the parties' intention may be determined from the entire instrument and exception is good where the grant in a deed or lease is in general terms and the excepted part is not specifically granted. *Johnson v Mason*, 226 M 23, 31 NW(2d) 910.

An undelivered deed conveys no title. *Yesnes v Cooper*, 235 M 356, 51 NW(2d) 67.

Where a warranty deed was made by an uncle and aunt who had no children, to a nephew, reserving to them a life estate, and the deed recited that the consideration was \$1.00 and other valuable considerations, and that the nephew would pay all taxes after the execution of the deed, an administrator of the uncle's estate could not, after the death of the uncle and aunt, have the deed forfeited because of the failure of the nephew to pay the taxes as required by the deed. Conditions in a deed to real property, a breach of which might work a forfeiture, are strictly construed against the grantor, since forfeitures of title to real property are not favored; and where a doubt arises as to whether a breach of a condition or covenant in a deed was intended to work a forfeiture or rescission, it will be resolved in favor of the grantee. *Klick v Fearing*, M, 55 NW(2d) 594.

Under a showing that restrictions in deeds against the sale of liquor had been abandoned by the entire community since 1933, all concerned are estopped to enforce the restrictions, and the hazard of litigation to enforce the restrictions against the hotel property contracted to be purchased was so negligible as to constitute no valid objection to the title. *Casreil v King*, 141 N. J. Equity 515, 58 Atlantic (2d) 269.

If a village leases dock facilities on a lake for more than three years the lease is a conveyance. OAG March 10, 1948 (273-A-17).

A registration tax must be paid on a mortgage prior to the recording of the mortgage, but the payment of taxes on the real estate described therein is not necessary prior to the recording thereof. OAG June 6, 1950 (373-B-16).

507.02 CONVEYANCES BY HUSBAND AND WIFE; POWERS OF ATTORNEY

HISTORY. RS 1851 c 49 s 13; RS 1851 c 46 s 2; 1856 c 6 s 1; 1857 c 10 s 1; PS 1858 c 36 s 13; PS 1858 c 35 s 2, 43, 72; 1865 c 25 s 1; GS 1866 c 40 s 2; GS 1866 c 48 s 13; GS 1866 c 68 s 1, 2, 7; 1869 c 26; 1869 c 57 s 1; 1874 c 64 s 1; 1875 c 65; 1875 c 66; 1878 c 33 s 1; GS 1878 c 48 s 13; GS 1878 c 40 s 2; GS 1878 c 68 s 1, 2, 7; 1887 c 47; 1891 c 75 s 1; 1891 c 81 s 1; GS 1894 s 4161, 5521, 5522, 5527; RL 1905 s 3335, 3456; 1907 c 123 s 1; GS 1913 s 6814, 6961.

Extent to which the common law concept of the unity of husband and wife and its consequences have been abrogated by the Married Women's and related Acts in Minnesota. 32 MLR 262.

It is the policy of the legislature to protect the homestead right and to preserve the homestead to the family even at a sacrifice of just demands. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

Without a wife's signature, a contract which purported to convey the homestead and which was signed only by the husband, was void until adopted or confirmed by the other spouse. Purchasers did not acquire any rights to such property until they

MINNESOTA STATUTES 1953 ANNOTATIONS

507.03 CONVEYANCING, RECORDING

1270

received a deed from both husband and wife. *Marr v Bradley*, M, 59 NW(2d) 331.

The minority of a wife does not invalidate any conveyance executed by her but the joining in the deed by the husband would not absolutely relinquish his statutory right in the wife's real estate, and as far as the husband is concerned, his deed would be voidable and subject to disaffirmation upon reaching the age of 21 years. OAG Nov. 3, 1949 (131).

507.03 PURCHASE-MONEY MORTGAGE; NON-JOINDER OF SPOUSE

Extent to which the common law concept of the unity of husband and wife and its consequences have been abrogated by the Married Women's Act and related Acts in Minnesota. 32 MLR 262.

507.04 CONVEYANCE BY HUSBAND OR WIFE OF INSANE OR INCOMPETENT

HISTORY. RS 1851 c 46 s 2; 1856 c 6 s 1; 1857 c 10 s 1; PS 1858 c 35 s 2, 43, 72; 1865 c 21 s 1; GS 1866 c 40 s 2; 1869 c 56 s 2, 5; 1869 c 57 s 1; 1874 c 66 s 1; 1878 c 25 s 1; GS 1878 c 40 s 2; GS 1878 c 69 s 2, 5; 1887 c 47; 1889 c 25 s 1; 1889 c 46 s 196; 1889 c 90 s 1; 1889 c 103 s 1; 1891 c 75 s 1; 1891 c 82 s 1; GS 1894 s 4161, 4603, 5532, 5535; RL 1905 s 3338; GS 1913 s 6825; 1915 c 131 s 1; 1919 c 395 s 1.

A release of the inchoate interest of the insane wife of the grantor may be obtained through the provisions of section 507.04. OAG Oct. 16, 1947 (131).

507.05 CONVEYANCE BY CORPORATION; RESOLUTION APPOINTING ATTORNEY

HISTORY. RS 1851 c 46 s 2, 3; 1856 c 6 s 1, 2; 1857 c 10 s 1; PS 1858 c 35 s 2, 43, 72, 73; GS 1866 c 40 s 2, 3; 1869 c 57 s 1; GS 1878 c 40 s 2, 3; 1887 c 47; 1891 c 75 s 1; GS 1894 s 4161, 4162; RL 1905 s 3339; GS 1913 s 6826.

507.06 QUIT CLAIM DEED PASSES ESTATE OF GRANTOR

HISTORY. RS 1851 c 46 s 3; PS 1858 c 35 s 3; GS 1866 c 40 s 3; 1875 c 51 s 1; GS 1878 c 40 s 3; GS 1894 s 4163; RL 1905 s 3340; GS 1913 s 6827.

507.07 WARRANTY AND QUIT CLAIM DEEDS; FORMS

Vendor's obligation as to fitness of land for a particular use. 37 MLR 108.

Evidence amply sustains finding of lower court that grantor did not intend unconditionally to divest herself of control over a deed conveying her homestead to her children, made by her many years previous to her death and left with her attorney at the time. Her actions and declarations subsequent to the alleged delivery were admissible and showed evidence of her intent at the time of the alleged delivery sufficient to support the findings. *Troseth v Troseth*, 224 M 35, 28 NW(2d) 65.

In 1907, a resident of Illinois, his wife joining, deeded to his unmarried son, B, a half section farm in Minnesota, said deed containing the following clause: "to their son * * * to have and to hold the same during his natural life, with remainder in fee to his children; should he die leaving no child or children, or the descendants of a child or children, then the said lands to revert to the heirs of the grantor herein, * * * ." A died in 1912. His wife died in 1915. B married in 1917. B had no children. B died in 1946, leaving his widow his sole heir at law. Held that A retained a reversion in the real estate in question.

As B died leaving no child or children or descendants of a child or children, the legal effect of the wording of the deed is the same as if the deed had run to B for life with the reversion to the heirs of A.

In such a situation A has a reversion in fee simple.

MINNESOTA STATUTES 1953 ANNOTATIONS

1271

CONVEYANCING, RECORDING 507.17

The heirs of A must be determined at the time of the death of A.

The word "then" in the clause in question means "in that event."

Neither the deed nor the circumstances indicate an intention on the part of A that those who take should be determined as of the death of B.

Reversions are vested estates.

Laws 1939, Chapter 90, MSA, Section 500.14, Subdivision 4, has no application to the case at bar.

The widow of B as sole heir of B is entitled to a one-sixth interest in the fee title of the property involved. *Shaw v Arnett*, 226 M 425, 33 NW(2d) 609.

An injunction would not lie to restrain erection of a synagogue on lots which had been acquired by deed which expressly permitted erection of a building for religious purposes, notwithstanding that the original owners of the land platted the district and sold lots in it restricted to family residences, other churches having been built in the district. *Rose v Kenneth Israel*, 228 M 240, 36 NW(2d) 791.

An undelivered deed conveys no title. *Yesnes v Cooper*, 235 M 356, 51 NW(2d) 67.

A reversion clause in a deed to a school district that the land if not used as a site for the school house should revert to the grantor or his heirs or assigns was valid and effective. OAG July 15, 1947 (622-I-17).

When land was conveyed to a city with the express condition that it be used for a public park or numerous other uses expressly named it could not be used for a community hospital as that was not one of the uses named in the conveyance. OAG March 8, 1848 (1001-A).

507.11 FEES FOR RECORDING

Where a mortgage does not conform to the standard form set forth in section 507.12 the fee for the register of deeds for recording the mortgage should be the usual fee for recording mortgages for the form offered most nearly resembled, plus an additional 25 percent. OAG Sept. 19, 1951 (373-B-16).

507.12 UNIFORM FEES

HISTORY. Amended, 1951 c 405 s 1.

507.15 UNIFORM SHORT FORM MORTGAGE

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 the homestead in preference to an unsecured debt. *Holden v Farwell*, 223 M 550, 27 NW(2d) 641.

When the mortgagor's title is free of outstanding claims and equities, the mortgagee's rights under the mortgage also are similarly free. *Henschke v Christian*, 228 M 142, 36 NW(2d) 547.

One using property, upon which the government holds a mortgage, to serve the government is not immune upon federal grounds from a personal property tax imposed upon him in personam. A sale and lease back, even though there is no provision for defeasance of title upon performance of stipulated conditions, will be treated as a mortgage when the conveyance was for security for a debt or for the performance of an Act. *Land O'Lakes v Wadena County*, 229 M 263, 39 NW(2d) 164.

507.17 CONVEYANCE INCLUDES ABUTTING VACATED PUBLIC RIGHT-OF-WAY

In an action by the village of Newport against the defendant to remove obstructions from a street, adverse possession may be established only by clear and positive

MINNESOTA STATUTES 1953 ANNOTATIONS

507.18 CONVEYANCING, RECORDING

1272

proof based on strict construction of the evidence without resort to any inference or presumption in favor of the disseisor, or with the indulgence of every presumption against him. The burden of proving the essential facts which create title by adverse possession rests upon the disseisor; and possession of the disseisor must be shown to be hostile, open, actual, continuous, and exclusive, and the absence of any one of these essential elements is fatal to the establishment of adverse possession. *Village of Newport v Taylor*, 225 M 299, 30 NW(2d) 589.

When a street is vacated by plat, a municipality may choose its own time to occupy, open and use the street. Until it does so, possession of the street by an abutting owner is not regarded as hostile, and the statute of limitations will not commence to run. Nonuser for any length of time, unless accompanied by some affirmative or unequivocal acts of the municipality, indicative of an intent to abandon and inconsistent with the continued existence of the easement, will not operate as an abandonment of a public street. *Village of Newport v Taylor*, 225 M 299, 30 NW(2d) 589.

507.18 PROHIBITED RESTRICTIONS

HISTORY. 1919 c 188 s 1-3; 1953 c 480 s 1.

Restrictive covenants against occupancy by non-Caucasians; action to enforce, 31 MLR 385.

507.22 EXECUTION OF CONVEYANCES

Execution and recording of instrument creating or conveying an easement. 33 MLR 35.

Right of the servient owner to make a change in location without consent of the dominant owner who is also benefited by the change. 35 MLR 494.

Injunction lies to protect the owner of an easement in its enjoyment whether the disturbance thereto is actual or threatened. A prescriptive right may be proved and an injunction to protect the same may be granted in a single proceeding for injunctive relief. Open and notorious possession of the premises by a party with full knowledge of the owner, constitutes notice to the owner that such use is under claim of right and no further notice to such effect is necessary. *Hildebrandt v Hagen*, 228 M 353, 38 NW(2d) 815.

The resolution of a village council declaring that certain tracts or parcels of land situated within the village are not served by a public highway, road, or alley, is not entitled to record. OAG Sept. 9, 1953 (373-B-17-A).

The recording laws do not require an acknowledgement by the lessee and witnesses to the execution by lessee in order that a lease for more than three years be recorded in the office of the register of deeds. OAG Sept. 9, 1952 (373-B-17-E).

A ten year lease witnessed and acknowledged as to the lessor is entitled to record although the lessee who executed the lease did not acknowledge it and the lease shows no witnesses as to the execution by the lessee. OAG Sept. 26, 1952 (373-B-17-E).

507.24 RECORDABLE, WHEN

Injunction lies to protect the owner of an easement in its enjoyment whether the disturbance thereto is actual or threatened. A prescriptive right may be proved and an injunction to protect the same may be granted in a single proceeding for injunctive relief. Open and notorious possession of the premises by a party with full knowledge of the owner, constitutes notice to the owner that such use is under claim of right and no further notice to such effect is necessary. *Hildebrandt v Hagen*, 228 M 353, 38 NW(2d) 816.

Without a wife's signature, a contract which purports to convey the homestead and which was signed only by the husband, was void until adopted or confirmed by the other spouse. Purchasers did not acquire any rights to such property until they

MINNESOTA STATUTES 1953 ANNOTATIONS

1273

CONVEYANCING, RECORDING 507.34

received a deed from both husband and wife. *Marr v Bradley*, M, 59 NW(2d) 331.

Where a contract for a deed in which there are seven vendors and one vendee, the vendors being tenants in common in the premises, and where only two of the vendors have acknowledged before a notary public and the signatures of these two are also witnessed, the instrument has not been acknowledged properly and is not entitled to record and the register of deeds should not accept it for record. The signature of all of the vendors should be witnessed and their acknowledgement taken. OAG May 19, 1950 (RC).

A contract binding an agent to sell real estate does not affect the title to real estate and is not entitled to record in the office of the register of deeds. OAG Jan. 29, 1953 (373-B-17-A).

The resolution of a village council declaring that certain tracts or parcels of land situated within the village are not served by a public highway, road, or alley is not entitled to record. OAG Sept. 9, 1953 (373-B-17-A).

507.251 ABSENCE OF ATTESTATION CLAUSE

HISTORY. 1949 c 134 s 1-4.

507.29 AFFIDAVITS AS EVIDENCE

HISTORY. Amended, 1949 c 276 s 1.

A state statute, declaring that written communications from the war department that a person in the armed force was dead should be prima facie evidence of death, has no application to a war department report that an insured was "presumed dead" for insurance purposes. *Smith v Massachusetts Mutual Life Insurance Co.*, 167 F(2d) 990.

The resolution of a village council declaring that certain tracts or parcels of land situated within the village are not served by a public highway, road, or alley, is not entitled to record. OAG Sept. 9, 1953 (373-B-17-A).

507.32 RECORD, WHEN NOTICE TO PARTIES; ASSIGNMENT OF MORTGAGE

Where the mortgagee makes obligatory advances pursuant to a mortgage to secure future advances, the advances have priority over encumbrances attaching after the recording of the mortgage but before the advances are made. On the other hand, where advances are optional, subsequent encumbrances take priority over all advances made after the mortgagee receives actual notice of the subsequent encumbrances. *Newman v Sauers*, 234 M 140, 47 NW(2d) 769.

507.34 UNRECORDED CONVEYANCES VOID IN CERTAIN CASES

Dissolution of a foreign corporation in the state of its domicile as notice in Minnesota; defects in title protected by recording act. 32 MLR 514.

Assignment of contract for deed by a foreign corporation after its dissolution in the state of its domicile. 32 MLR 517.

Purchaser under a contract for a deed who has knowledge of outstanding prior or unrecorded title is not a "purchaser in good faith" and takes subject to the outstanding title, and a purchaser from a bona fide purchaser succeeds to his grantor's rights as a bona fide purchaser regardless of whether he himself is one. *Henschke v Christian*, 228 M 142, 36 NW(2d) 547.

The grantee of the homestead property acquired title to the property exempt from the claims of the grantor's creditors since the grantor could sell and convey the homestead without subjecting it to any judgment or debt from which it was exempt in the grantor's hands. The owner's authority to sell or convey the homestead without subjecting it to any judgment or debt to which it was exempt in the owner's

hands was unlimited and hence such authority could not be defeated by a prior judgment creditor of the grantor by mere failure of grantee to record the debt within lifetime, or within any certain time. An agreement to compromise a baseless claim lacks consideration. *Sisco v Paulson*, 232 M 250, 45 NW(2d) 385.

Under the ancient claims extinguishment statute exception accorded rights of any person, partnership or corporation, in possession of real estate, "possession" must be present, actual, open and exclusive, and must be inconsistent with title of person who is protected by statute, and it cannot be equivocal or ambiguous but must be of a character which would put a prudent person on inquiry. *Harris v City of Hastings*, M, 59 NW(2d) 813.

The statute barring claimant of interest in real estate under a 40 year old instrument, event or transaction, was not intended as a mere procedural device to limit the time for commencing the action but was intended to bar right itself. *Harris v City of Hastings*, M, 59 NW(2d) 813.

The payment of taxes, although evidence of a claim of title, is not evidence of adverse possession. A person examining titles is not required or expected to examine books in the county auditor's office to ascertain whom they list as owner or agent or who has paid the taxes, because the books are not kept as record of titles to real estate and do not constitute constructive notice, to proposed purchaser of record title, that person listed there as owner has any interest in the land. *Harris v City of Hastings*, M, 59 NW(2d) 813.

507.37 RECORD OF CONVEYANCE, LAND IN UNORGANIZED COUNTY

HISTORY. 1854 c 22 s 1; PS 1858 c 35 s 40; GS 1866 c 40 s 21; 1875 c 51 s 2; GS 1878 c 40 s 21; GS 1894 s 4180; RL 1905 s 3360; GS 1913 s 6850.

507.40 MORTGAGES, HOW DISCHARGED OF RECORD

HISTORY. RS 1851 c 46 s 36; 1858 c 52 s 1; PS 1858 c 35 s 36; GS 1866 c 40 s 36; GS 1878 c 40 s 36; GS 1894 s 4196; 1899 c 182; RL 1905 s 3363; GS 1913 s 6853.

The authority of a trustee under a trust deed to receive payments on the bonds includes authority to satisfy the trust deed of record. *May v Ackerman*, 235 M 273, 51 NW(2d) 87.

Where payment was made to a trustee who executed a satisfaction of the deed of trust and made no payment to the bondholders and the owner of the realty conveyed to purchasers by warranty deed, purchasers could only be charged with notice and knowledge of the facts which would have been disclosed upon examination of the instruments in record, and were not chargeable with notice and knowledge of the alleged fraud of the trustee in failing to pay the bondholders since the record would not have revealed the alleged fraud. *May v Ackerman*, 235 M 273, 51 NW(2d) 87.

CHAPTER 508

CONVEYANCING, REGISTRATION

NOTE: Chapter 508 is excepted from the rules of civil procedure governing the procedure in the district courts in all suits of a civil nature, insofar as it is inconsistent with the procedure and practice provided by the rules.

508.01 REGISTRATION

HISTORY. 1891 c 153; 1901 c 237 s 1; 1903 c 234 s 1; 1905 c 305 s 1; RL 1905 s 3370; 1909 c 183 s 2; GS 1913 s 6868.