

doma


The History of Land Title Ownership in America

Montana Land Title Association
2022 Fall Education Seminar

1 | Proprietary & Confidential

1

Speaker



Michael Holden
Vice President,
Strategic Agency Manager
Doma Title Insurance, Inc.
Ph: 440.725.8973
Email: michael.holden@doma.com

2 | Proprietary & Confidential

doma

2

Agenda

History of Land Title Ownership in America

- Different Kinds of Real Property Ownership in the World
- The American System
- Expansion of America
- The Invention of the Mortgage
- Land Systems in the 21st Century
- Q&A

3 | Proprietary & Confidential

doma

3

This information is not a substitute for legal advice. It is for your reference only, and is not intended to represent the only approach to any particular issue.

This information should not be construed as legal, financial or business advice, and users should consult legal counsel and subject-matter experts to be sure that the policies adopted and implemented meet the requirements unique to your company.

© Proprietary & Confidential **doma**

4

doma

Different Kinds of Real Property Ownership in the World

5

Different Kinds of Real Property Ownership in the World

The Feudal System

- Land ownership is organized around a series of obligations, such as military service or labor
- Divided society into three groups: Lords, Vassals and Fiefs
- Mostly focused in Europe during the 9th to 15th Centuries
- Marked a decentralization of empires
- Serfs were indebted to the land, required in many cases to live their entire lives on the same county or area
 - Controlled by Lords
 - In many ways, they resembled slaves, but could not be bought and sold

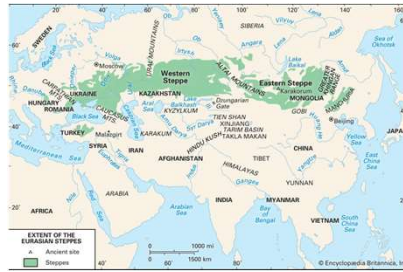
© Proprietary & Confidential

6

Different Kinds of Real Property Ownership in the World

Nomadic Tribes

- Nomadic tribes used land within the western steppe, without ownership customs
- From 1500 to 1800, the Empire of Russia drove out the nomads and established colonies
- Colonies included a process for assignment of land, taxation, and redistribution based on need
 - Local magistrate was assigned this task and often was a member of royal family



7

Different Kinds of Real Property Ownership in the World

Clan Control

- China, Japan, Ireland, Scotland, Nigeria, and Egypt all had forms of clan control of land in pre-industrial revolution period
- Clan control defaulted to the family as the "rulemaking" force, and family elders determined land use and assignment for crops, hunting, homesites, and villages
- In Karl Marx's *Capital: Critique of Political Economy* (1867) he argued that the exclusive use of land concentrated wealth in a limited few and denied average people use of land for basic needs, like agriculture and shelter



8

Different Kinds of Real Property Ownership in the World

Enclosure in England

- Taking common land and enclosing it for exclusive use by a person or family
- Practice began in the 16th Century in England
- Created increased production in agriculture
- Provided land ownership for common peasants
- Acts of "Enclosure" by Parliament between 1604 and 1911 created property rights from common ownership types
 - Over 5200 "acts" enacted during this time
- Sets up the understanding that land can be exclusively owned and retained by heirs and descendants



9

Massachusetts Body of Liberties 1641

- *The Body of Liberties*, a document originally published in 1641, is the first legal code established by European colonists in New England and was composed of a list of liberties, rather than restrictions, and intended for use as guidance for the General Court of the time.
- This document is considered by many as the precursor to the General Laws of Massachusetts and the Massachusetts Constitution, and incorporates rights later judged to be ahead of their time, with some of these rights eventually appearing in the *Bill of Rights*
- Included that all land and chattels would be freely *alienable*
- Property rights begin to diverge between England and the Colonies
- The *United States Constitution* eliminates peerage (titles of nobility) and ends entails, or other ways to hold land indefinitely in a single family
- Original draft of the *Declaration of Independence*: "... life, liberty, and property..." (changed to "life, liberty and the pursuit of happiness")

10 | Proprietary & Confidential

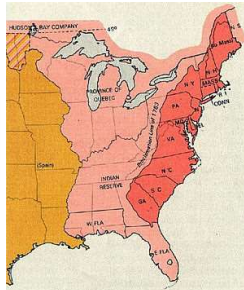
doma

10

The American System

Land Ownership

The Public Land Survey System



Boundary between Mississippi River and 46th parallel uncertain due to misconception that source of Mississippi River lay further north

1775 doma

11 | Proprietary & Confidential

11

Treaty of Paris: 1783

- Ended the United States Revolutionary War
- England gave 2 key concessions:
 - All land claimed by England south of the Great Lakes, north of Florida, and East of the Mississippi River were ceded to the United States
 - England recognized the United States as a sovereign nation



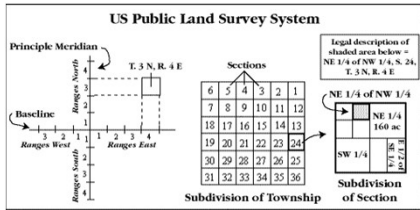
12 | Proprietary & Confidential

doma

12

Public Land Survey System

- Land Ordinance of 1785 creates the Public Land Survey System using base lines and meridians, dividing townships into 36 square mile tracts, and then further dividing them into 36 one-mile sections
- Northwest Ordinance in 1787 corrected errors, established the Surveyor General of the United States, and allowed for sale of lands in the Northwest Territory



13

U.S. EXPANSION MAP



14

Louisiana Purchase

- 828,000 square miles
- 1803: President Jefferson sent James Monroe and Robert Livingston to negotiate the purchase of the port of New Orleans from France
- Napoleon offered to sell the entire French holding in North America, all lands within the Mississippi River basin
- Price of \$15 million



15

Impact on Native American Tribes

- Idea of Aboriginal Title assumes joint tribal ownership of lands that are occupied by Native Nations
- Decree by the King of England prevented any purchase of Aboriginal Title from tribes after 1763
- Was one of the numerated complaints in the Declaration of Independence
- U.S. Constitution vests rights to acquire land from Native Nations in the United States Federal Government



16

Treaties that Created the United States

1803 – 1860

- **Treaty of 1818:** Sets the 49th Parallel as the boundary between British Canada and the United States
 - Red River Basin in Minnesota and Oregon territory ceded to United States
 - Parts of Louisiana Purchase north of 49th Parallel ceded to the United Kingdom
- **Adams-Onís Treaty of 1819:** Set the boundary between Spanish colonies in what would become Mexico; ceded Florida to the United States
- **Webster-Ashburton Treaty of 1842:** Set boundaries around Lake of the Woods and Lake Superior between the United Kingdom and the United States
 - Further affirmed the 49th Parallel as the boarder, and made the Great Lakes shared between the countries
- **Annexation of Texas, 1845:** Texas became an independent country in 1836, and became the 28th state by treaty in 1845
- **Oregon Treaty of 1846:** Established the boundaries for the Oregon Territory
- **Treaty of Guadalupe Hidalgo in 1848:** Ceded 55% of Mexico's territory to the United States and ended the Mexican American War

17

U.S. EXPANSION MAP



18

The Most Successful Cadastral Survey in the History of the World

States Included in the PLSS

doma

19

doma

Unique Aspects of the U.S. Real Estate System

20

Birthplace of Title Insurance

Watson v. Muirhead (Pennsylvania Supreme Court, 1868)

- Decision settled the matter of ownership over a property purchased after an "abstract of title," or title records search, was conducted
- Watson lost his investment in a real estate transaction as the result of a prior lien on the property
- Muirhead, a conveyancer, had discovered a lien prior to the sale, but told Watson the title was clear after his lawyer had erroneously determined that the lien was not valid
- Courts ruled the conveyancer was not liable for mistakes based on professional opinions. As a result, in 1874, the PA legislature passed an act allowing for the incorporation of title insurance companies
- On March 28, 1876, Joshua Morris, a conveyancer in Philadelphia, and several colleagues met to incorporate the first title insurance company; Real Estate Title Insurance Company of Philadelphia issued the first title insurance policy to Morris' aunt for \$1,500, to cover a home in Philadelphia

doma

21

Most Transparent Market in the World

- Multiple Listing Service (MLS) only exists in the United States
 - Concept of a "exclusive listing" only in the United States
 - Laws governing real estate brokerage follow concept of cooperation between listing and selling brokers
- Easy access to capital and mortgages
 - 30-year, fixed rate mortgages (only country to have this feature)
- No restrictions on the transfer or ownership of land
 - Low or no taxes around inheritance
 - High value of land before taxed for death taxes or inheritance tax
 - Property can be transferred on death without probate or estate complications
- Land tied to the ethos and history of America

22 | Proprietary & Confidential doma

22

doma

Mortgages

23

Mortgages

- Mortgages are mentioned in English common law documents as early as 1190
 - These documents illustrate the beginnings of a basic mortgage system
 - Describe how a creditor is protected in property purchase agreements
 - Specifically, a mortgage was a conditional sale where the creditor held the title to the property, while the debtor could sell that property in order to recover the money paid

24 | Proprietary & Confidential doma

24

Mortgages

- Mortgages used for everything BUT real estate from the Middle Ages to the 19th Century
- Ship mortgages = Loaning money with the collateral of a ship or vessel
 - Used by the shipping industry to finance ship building and voyages to the new world
- Mortgages on enslaved peoples, during the period of slavery in the United States, the first modern bond market developed, creating mortgages on enslaved people and using stock market to securitize those debt obligations
 - The modern securitized mortgage backed security is based on this concept

25 | Proprietary & Confidential

doma

25

Mortgages

Before the Great Depression

- 1- to 5-year maturity or "balloon"
- Interest-only, with the principal due at maturity
- Because the loan was renegotiated every year, the interest rate changed based on the prevailing rate
- About 20% LTV for all residential properties in the U.S. prior to 1929
- 1/10 properties was in foreclosure during the Great Depression

After the Great Depression

- Creation of Federal Housing Administration and FHA-backed mortgage
- 30-year amortization loans, with both principal and interest payments
- Fixed rates // mortgage lending practices rules
- Secured with bonds and sold on the secondary market
- Charter for Fannie Mae in 1938 to create secure market for mortgages

26 | Proprietary & Confidential

doma

26

Mortgages

- Mortgage industry played key role during financial crisis of 2007, which led to "great Recession"
- Housing prices rose quickly, creating a bubble
- Lenders issued subprime mortgages and converted them to financial instruments like derivatives and mortgage backed securities
- These three factors caused a crisis for banks worldwide and created trillions of dollars of worthless securities, which then caused a crash in the stock market



27 | Proprietary & Confidential

doma

27

Land Systems in the 21st Century

The Mystery of Capital by Hernando De Soto

- Published in 2000
- De Soto argues that much of the population of developing countries lacks access to credit, not because they lack assets, but because ownership of their property is secured informally
- This prevents the use of property as collateral

31 | Proprietary & Confidential doma

31

Land Systems in the 21st Century

- Blockchain? Will it ever come to real estate?
- NFTs? Can they be used for real estate?
- Remote Online Notarization (RON)?
- Completely digital closings?
- Predictive analytics in real estate titles?
- Virtual Real Estate – the Metaverse
- Affordable housing trusts

Blockchain
[ˈblɒk-ˌtʃeɪn]
A digital database or ledger that is distributed among the nodes of a peer-to-peer network.

Investopedia doma

32 | Proprietary & Confidential

32


“A community of small farmers ... land property owners, will be the only assurance that the freedom our republic offers will be guaranteed to each and every citizen.”

– Thomas Jefferson, 3rd President of the United States

33 | Proprietary & Confidential doma

33

Q&A



Michael Holden
Vice President,
Strategic Agency Manager
Doma Title Insurance, Inc.
Ph: 440.725.8973
Email: michael.holden@doma.com

doma

34



doma

35
