

## **Chapter 9**

### **Marketable Record Title**

#### **57-9-1 What constitutes marketable record title.**

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 or more, shall be deemed to have a marketable record title to such interest as defined in Section 57-9-8, subject only to the matters stated in Section 57-9-2. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than 40 years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

- (1) the person claiming such interest or
- (2) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest: with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

Enacted by Chapter 109, 1963 General Session

#### **57-9-2 Rights and interests to which marketable record title is subject.**

The marketable record title is subject to:

- (1) all interests and defects which are inherent in the muniments of which such chain of record title is formed, except that a general reference in the muniments or any of them, to easements, use restrictions, or other interests created prior to the root of title is not sufficient to preserve them, unless specific identification is made therein of a recorded title transaction which creates the easement, use restriction, or other interest;
- (2) all interests preserved by the filing of proper notice or by possession by the same owner continuously for a period of 40 years or more, in accordance with Section 57-9-4;
- (3) the rights of any person arising from prescriptive use or a period of adverse possession or user, which was in whole or in part subsequent to the effective date of the root of title;
- (4) any interest arising out of a title transaction which has been recorded subsequent to the effective date of the root of title from which the unbroken chain of title of record is started, except that the recording does not revive or give validity to any interest which has been extinguished prior to the time of the recording by the operation of Section 57-9-3; and
- (5) the exceptions stated in Section 57-9-6 as to rights of reversioners in leases, as to apparent easements and interests in the nature of easements, as to the right, title, or interests of the state in school or institutional trust lands or sovereign lands, and as to interests of the United States.

Amended by Chapter 241, 1999 General Session

#### **57-9-3 Marketable record title held free and clear of interests, claims, and charges.**

Subject to Sections 57-9-2 and 57-9-6:

- (1) the marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims, or charges, whatsoever, the existence of which depends upon any act, transaction, event, or omission that occurred prior to the effective date of the root of title; and

- (2) all such interests, claims, or charges, however denominated, whether legal or equitable, present or future, whether the interests, claims, or charges are asserted by a person sui juris or under a disability, whether the person is within or without the state, whether the person is natural or corporate, or is private or governmental, are declared to be void.

Amended by Chapter 299, 1995 General Session

**57-9-4 Filing of notice of claim of interest authorized -- Effect of possession of land by record owner of possessory interest.**

- (1) Any person claiming an interest in land may preserve and keep effective such interest by filing for record during the forty-year period immediately following the effective date of the root of title of the person whose record title would otherwise be marketable, a notice in writing, duly verified by oath, setting forth the nature of the claim. No disability or lack of knowledge of any kind on the part of anyone shall suspend the running of the forty-year period. The notice may be filed for record by the claimant or by any other person acting in behalf of any claimant who is
  - (a) under a disability,
  - (b) unable to assert a claim on his own behalf, or
  - (c) one of a class, but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.
- (2) If the same record owner of any possessory interest in land has been in possession of such land continuously for a period of 40 years or more, during which period no title transaction with respect to such interest appears of record in his chain of title, and no notice has been filed by him or on his behalf as provided in Subsection (1), and such possession continues to the time when marketability is being determined, such period of possession shall be deemed equivalent to the filing of the notice immediately preceding the termination of the forty-year period described in Subsection (1).

Enacted by Chapter 109, 1963 General Session

**57-9-5 Notice of claim of interest -- Contents -- Filing for record.**

In order to be effective and to be recorded, the notice required by Section 57-9-4 shall contain a legal description of all land affected by the notice. If the claim is founded upon a recorded instrument, then the description in the notice may be the same as that contained in the recorded instrument. The notice shall be recorded in the county or counties where the land described is situated.

Amended by Chapter 320, 2000 General Session

**57-9-6 Applicability of provisions.**

This chapter may not be applied to:

- (1) bar a lessor or the lessor's successor as a reversioner of the right to possession on the expiration of any lease;
- (2) extinguish any right, title, or interest created or held for any pipeline, highway, railroad or public utility purpose;
- (3) extinguish an easement or interest in the nature of an easement, the existence of which is clearly observable by physical evidence of its use;

- (4) extinguish any water rights, whether evidenced by decrees, by certificates of appropriation, by diligence claims to the use of surface or underground water, or by water users' claims filed in general determination proceedings;
- (5) extinguish any right, title, estate, or interest in and to minerals, and any development, mining, production or other rights or easements related to the minerals or exercisable in connection with the minerals;
- (6) extinguish any right, title, or interest of the state or political subdivision of the state; or
- (7) extinguish any right, title, or interest of the United States, by reason of failure to file the notice required under this chapter.

Amended by Chapter 423, 2011 General Session

**57-9-7 Existing statutes of limitations and recording statutes not affected.**

Nothing contained in this act shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to affect the operation of any statutes governing the effect of the recording or the failure to record any instrument affecting land.

Enacted by Chapter 109, 1963 General Session

**57-9-8 Definitions.**

As used in this act:

- (1) The words "marketable record title" mean a title of record as indicated in Section 57-9-1, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in Section 57-9-3.
- (2) The word "records" includes probate and other official public records, as well as records in the registry of deeds.
- (3) The word "recording," when applied to the official public records of a probate or other court, includes filing.
- (4) The words "person dealing with land" include a purchaser of any estate or interest therein, a mortgagee, a levying or attaching creditor, a land contract vendee, or any other person seeking to acquire an estate or interest therein, or impose a lien thereon.
- (5) The words "root of title" mean that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date 40 years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.
- (6) The words "title transaction" mean any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, or sheriff's deed, or decree of any court, as well as warranty deed, quitclaim deed, or mortgage.

Enacted by Chapter 109, 1963 General Session

**57-9-9 Legislative purpose and construction.**

This act shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 57-9-1 of this act, subject only to such limitations as appear in Section 57-9-2 of this act.

Enacted by Chapter 109, 1963 General Session

**57-9-10 Extension of limitation period.**

If the forty-year period specified in this act shall have expired prior to two years after the effective date of this act, such period shall be extended two years after the effective date of this act.

Enacted by Chapter 109, 1963 General Session