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# Webster's Real Estate Law in North Carolina: 2d ed

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## BOOK REVIEW

**WEBSTER'S REAL ESTATE LAW IN NORTH CAROLINA.** Revised edition by Patrick K. Hetrick. The Michie Company, Charlottesville, Va., 1981. Pp. 688.

The first law book printed in the English language was *Littleton's Tenures in English*, published in 1544. There are said to be in existence only three known copies of the first edition; one in the Bodleian Library in Oxford University, one in the Harvard University Law Library, and one in the Wake Forest University Law Library. The celebrated first sentence in this small volume, which can be placed in one's coat pocket, reads: "Tenant in fee simple is he which hath lands or tenements to hold to him and his heirs forever."

Sir Edward Coke, in his preface to *Coke on Littleton*, wrote: "This book is the ornament of the Common Law and the most perfect and absolute work ever written on any human science." Subsequent editions of *Littleton* became part of the equipment of lawyers for three hundred years.

It was not until the latter part of the eighteenth century, chiefly because of the enactment of N.C. Gen. Stat. § 39-1 in 1879, that it became no longer necessary in North Carolina to use the word "heirs" to create a fee simple estate. Most deeds, however, are still written "to grantee and his heirs." Use of the word "heirs" in deeds precludes ambiguities and misinterpretations that a different estate was intended by the grantor. The deeds today are almost identical with those drafted by hand on sheepskin by Sir Edward Coke and others during the golden days of the English common law.

While much has remained the same in the law of property since the days of feudalism, the past two decades have seen the greatest number of changes since *Littleton's Tenures*. New developments in the law of property have necessitated an updating of the treatises on the subject. The first sentence of the 1980 replacement volume 1 of *Thompson on Real Property* reads: "At this writing the real property law has left the quiet lagoon in which it has relaxed for the past 800 years and has entered the turbulent waters of change."

The original volume of *Webster's Real Estate Law in North Carolina*, published in 1971, has been extensively cited and quoted in the trial and appellate courts of North Carolina. It is the first source to which both lawyers and judges turn when a problem involving real estate or real property arises in this State. It has become within a short span of only 10 years the recognized authority on the law of real property in North Carolina. Professor Hetrick has now updated this fine book.

Professor Hetrick in the preface to the revised edition states: "This revision has been approached with the many strengths of the original edition in mind. Whenever possible, Professor Webster's analysis of North Carolina property law has been preserved. A special effort has been made by this revisor to present additions and revisions to the text in a manner and style consistent with the existing format." Indeed the style and format have remained Websterian throughout with only here and there a slight change.

There are few, if any, expressions by the author as to his own views of what the law is or should be in an area of the law. He simply states clearly and concisely what the North Carolina courts have said or the General Assembly has stated on the point. This is as it should be in a book dealing with North Carolina law on real property—especially when the author is young and not well known to many practicing lawyers. It would be quite different if the book dealt with such topics as constitutional issues, torts, jurisprudence, domestic relations, and other subjects where there may be social aspects to be injected; with such topics it seems that sometimes even the very young and inexperienced feel that they are obligated to express their own personal views at great length. A book on real property is not the place for an adventure in social engineering.

The fundamental principles of the law of real property as developed and enunciated in the appellate courts and statutes of North Carolina have been set forth in a textual form. They are briefly stated, yet correct. The work evokes thankfulness for the clarity with which the law of an admittedly difficult subject is explained.

Unfortunately the table of contents, printed on a single page, lists only the names of the 27 chapters. It seems that under each chapter number and name there should be listed the numbers and names of each section therein. In this way a reader could more easily determine what the book covers.

There is a scarcity of citations to the treatises, law reviews, and Annotated Law Reports. Such are customarily used for the

purpose of indicating supporting authority for textual statements; they are also used to encourage both students and practicing lawyers to turn to these cited authorities for more comprehensive treatment of the topic under discussion.

It is regretful that there is no treatment of the North Carolina law of condominiums in this volume. The Unit Ownership Act has been in our statutes since 1963 and the only legislative changes made were two minor ones in June, 1981. Already two articles and a note have appeared dealing with this condominium statute. Condominiums are rapidly becoming a part of the American lifestyle.

The revised work has added two new chapters: Chapter 8 entitled "Real Estate Brokerage" and Chapter 25 entitled "Marketable Title Act." The Marketable Title Act was enacted in 1973 largely as a consequence of a series of articles on the subject written by Professor Webster and published in the *North Carolina Law Review* during the 1960's.

There is included a textual treatment of two North Carolina statutes enacted in 1977 which have significantly changed the area of residential landlord-tenant law: the Residential Agreement Act and the Tenant Security Deposit Act. For example, the Residential Agreement Act imposes upon the landlord of a dwelling unit the obligation to provide fit premises and make all repairs and do whatever is necessary to keep the premises in a fit and habitable condition.

The present Chapter 20 (formerly Chapter 19), entitled "Liens on Real Property," has been increased by 51 pages due to the insertion of 36 sections dealing with Mechanics' Liens. In a footnote the revisor acknowledges (with his grateful appreciation) that the entire 36 sections are a reprint or paraphrase of portions of an article on Mechanics' Liens by Edmund T. Urban and James W. Miles, Jr. found in 12 WAKE FOREST LAW REVIEW 283 (1976). The insertion of this comprehensive material has increased the value of the volume to practicing attorneys.

Mortgages continue to be treated in a separate chapter, entitled "Mortgages and Deeds of Trust," because the mortgagee in North Carolina does not receive a mere "lien" on mortgaged real property, but he receives legal "title" to the land for security purposes.

Part 4 of this volume, entitled "Examination of Titles to Real Property in North Carolina" and consisting of the last 7 chapters, will probably continue to be regarded by law students and beginning practitioners as the most helpful portion of the entire book. It

sets out the procedure to be observed in searching a title to land.

The reason that no material on the subject of "Future Interests" appears anywhere in the volume is explained by Professor Webster in the last paragraph of his preface. It was his then intent to write another book that gives particular emphasis to the subject of "Future Interests in North Carolina." Note carefully that on the title page of the original work and the current work there appears a subtitle: "Possessory Estates and Present Interests."

The original author, James A. Webster, Jr., died in 1978 at the age of 51. Professor Webster was a native Reidsville, North Carolina. He was a student and colleague of mine at the Wake Forest University School of Law. Professor Patrick K. Hetrick, the revising author, is a native of Wisconsin. He left the faculty of The Marquette University School of Law to join the faculty of the Campbell University School of Law in 1978.

One can only hope that Professor Hetrick will continue to write in this area of the law; the results of his present efforts are both satisfying and exciting. He writes concisely, understandably, and in a scholarly manner.

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