

## In the Field...

# "Watch Out For Those Reverters!"

by Rick Elliot

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In 1955, Clark County, Nevada applied for the purchase of 200 acres of federally owned property. The application was filed under the *Recreation and Public Purposes Act* (43 USC 869). The sale was authorized by the Bureau of Land Management (BLM). Clark County purchased the land, and a patent was issued for the property.

Over the years, Clark County developed a small portion of the property, but most of the property remained undeveloped. Twenty years after Clark County purchased the land, BLM took action to reclaim the 162 acres of undeveloped land. Why?

Land sold under the *Recreation and Public Purposes Act* is to be used for public purposes. Each patent contains a clause which calls for reversion of title to the government if the land is used for a purpose other than for which it was granted. In the Clark County case, the land was granted for a long list of public uses, such as parks, schools, libraries, and "other civic-public use." The patent also contained a reversionary clause which stated that "if the land is transferred or devoted to a use other than for which the land is granted, title to the land shall revert to the United States."

BLM argued that non-use of the 162 acres was an unauthorized use. Thus, according to BLM, the land title reverted back to the federal government. Clark County contended, of course, that non-use was not cause for reversion.

Clark County eventually prevailed

in this case, but not before fighting it out in court with the federal government. This case exemplifies the problems that can arise when land title is encumbered with a reversionary clause. People working with land title should be aware that some conveyances contain reversionary clauses, and the operation of these clauses could lead to land title problems.

Just what is a reversionary clause? A reversionary clause in a deed is a statement that, upon the occurrence (or non-occurrence) of a specific event or events, title to the deeded property returns (reverts) to the original owner.

Following is an example of a reversionary clause in a right-of-way grant:

*This right of way will remain in full force and effect for so long as the road is used to provide public access to the airport. In the event the road is no longer used for public access to the airport, then this right of way automatically reverts to the grantor.*

Although there are many different types of reversionary clauses, most can be divided into two main groups: time determinable and event determinable.

Time determinable clauses have some type of time limit imposed. For example, a right of way for a power line may be granted with the provision that if the power line is not constructed within five years, the interest reverts back to the grantor. Time determinable clauses may be used to force development of a parcel. Time determinable clauses are generally less troublesome for land title people because they eventually go away.

Event determinable clauses stay with the property, and future conveyances are subject to the clause. Event determinable clauses fall into two main types: fee simple determinable and fee simple subject to a condition subsequent.

With a fee simple determinable clause, when an event occurs which triggers reversion, the reversion is automatic. No action is required by the grantor. The main problem with this type of reversionary clause is the transfer back to the grantor. While the legal title, technically, may have reverted, in some cases the parties may not even be aware of the reversion. In addition, the original conveyance will usually have been recorded, but there may be no recorded documentation of the subsequent reversion. Thus, the reversion may not show up in the chain of title. Fee simple determinables are the most common type of reversionary clause used; the U.S. government currently does, and has for many years, used them in grants.

Fee simple with a condition subsequent differs from a fee simple determinable in that the former requires an action by the grantor before title reverts. The action required is usually actual notice to the grantee and execution of a deed of reconveyance.

Here is an example of a condition subsequent clause:

*If the right of way ceases to be used for a power line, the grantor shall have the right to re-enter the property, and cause the grantee to forfeit the right of way.*

In this case, the right of way would not revert unless the grantor took specific action to enforce the reversion.

Why would anyone want to put a reversionary interest in a deed in the first place? In other words, what is the purpose of a reversionary clause? Reversionary clauses have two purposes. One purpose is to limit the use of the property, and the second is to restore title to the grantor if the use provision is violated.

A person may use a reversionary clause in order to maintain some control over the property without being burdened with ownership. For

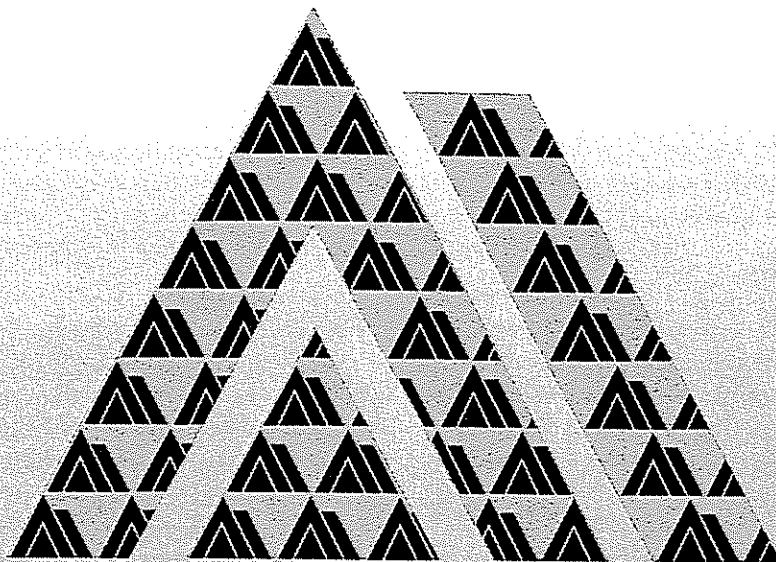


example, a farmer may want to sell part of his farm. However, he may want to make sure the buyer continues to use the land for farming. Therefore, the farmer might put a clause in the deed providing that the land can only be used for farming. The reversionary clause would provide that if the land is ever used for a purpose other than farming, title would revert to the farmer.

Properties with reversionary interests may develop problems. Such problems may not appear until years after the first deed with the reversionary interest is issued. Questions may arise about whether reversion has occurred. In the Clark County case, for example, the question was whether non-use was cause for reversion.

Any person dealing with land title should be aware of the existence of reversionary clauses in land conveyances. States, local governments, and non-profit organizations should especially be cognizant of reversionary clauses. Many patents have been issued to these entities under the authority of the *Recreation and Public Purposes Act*. Any subsequent transfers of title would be subject to the original reversionary interest.

Remember, a reversionary clause in a deed is a condition that may limit the use of land. The penalty for unauthorized use is reversion of title to the grantor. Some reversionary clauses may never expire thereby creating the potential for problems many years after issuance. Even a simple action such as the granting of an easement could, in some cases, trigger a reversion. If you are dealing with a parcel of land that has a reversionary clause, great care should be taken to make sure that your client, or third parties, are not adversely affected by the operation of a reversionary interest.



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