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REAL ESTATE SUBDIVISIONS. By Stanley L. McMichael. New York: Prentice-Hall, Inc., 1949. Pp. 393. \$5.75.

"ADAM was the first to be given possession of land, subject, however, to certain restrictions," says McMichael. "Through the reported connivance of his co-tenant, Eve, these restrictions were broken and the first eviction occurred . . . Adam had been given no deed to the land and not even a one dollar consideration was on record as having been paid. Indeed, the first real estate transaction was actually a conditional lease in perpetuity, contingent upon observance of certain covenants. Violation of one of these covenants led, subsequently, to a long series of litigations, which have been responsible for more clogged legal dockets than any other phase of human behavior."

It is in this manner that the author traces the historical trends in subdivision activities to men like W. E. Harmon, "the first man in America to apply the installment selling idea to real estate . . .," M. J. Van Sweringen, and the story of Shaker Heights, Cleveland, "probably the largest single subdivision in the world . . ." and Jesse Clyde Nichols, who impressed upon the realty world that "the higher the quality of a subdivision, the more satisfactory it is to its creator and the more money can eventually be made out of it by both seller and buyer." He continues on into the more modern subdivision "package" concept—merging into one operation the creation of a lot as a building site and the construction of the dwelling itself.

McMichael states that the subdividers have become the city builders, and his volume deals largely with the problems associated with the acquisition, development, and sale of subdivision land. It is, therefore, of primary interest to subdividers and realtors.

He sets forth the irresponsible action of many subdividers in the past, in failing to study their future markets and in throwing onto the market large numbers of unneeded lots, as the factor resulting in restrictions tending to tighten and extend public control of land development. He states that municipal, county, and state governments have stepped in and placed restrictions "on the size and use of lots sold, character and width of streets platted, areas of buildings in relation to lot sizes, type of public improvements which must be installed, and various other controls to be found in platting, building, and zoning laws . . . social control of land." It is, perhaps, only this phase of his book which will be of interest to the legal-minded.

The legal aspects of restrictions are given from material by Melvin B. Ogden, member of the Los Angeles Bar, stating that private control over the development of subdivisions of land by means of "restrictions imposed in deeds, declarations of restrictions, agreements, and similar contracts between the subdivider and lot owners, is of comparatively recent origin."

Here is set forth that the Supreme Court of the United States has ruled that zoning ordinances establishing residential districts are valid, and do not violate the due process and equal protection clauses of the constitution. He distinguishes between valid zoning restrictions, as contrasted to deed restrictions, noting that in general the two are entirely separate and apart; and "that deed restrictions are private contract rights which cannot be abrogated by legislative interference, and which operate independently of zoning regulation."

Some of the legal aspects of restrictions are found in his answers to the questions which confront the subdivider:

"Has one a legal right to convey the title to land and impose restrictions?"

"What type of instrument should be used for the imposition of the restrictions desired?"

"... consider the form in which the restrictions shall be created—shall they be covenants, either personal or running with the land, or shall they be conditions subsequent?"

The importance of form and wording of the restrictions is discussed by the author in analyzing the structure of deed restrictions in the sequence in which they usually appear. He has included much material as "informative on the contingencies and problems that should be considered . . .", but cautions the laymen to consult legal counsel before entering into any contract or business arrangement based thereon.

"Can a subdivider of land so restrict sales of his lots that he can prevent, legally, the occupancy of such by non-Caucasians?" is a question McMichael covers at length. Here he brings out that many decisions of state courts enforced such restrictions as legal for years. He states, however, that the matter was not formally passed on by the Supreme Court of the United States until May 3, 1948. At that time it ruled "that race segregation, as applied to the sale of land, was in violation of the first section of the Fourteenth Amendment to the Constitution." He refers you to the legal opinions of the judges of the Supreme Court set forth in *Shelley v. Kraemer*, 334 U.S. 1 (1947). Regarding these decisions rendered by the Supreme Court, McMichael lists eight suggestions "made to soften the impact of the blow that racial restrictions have received."

He has also presented a chapter prepared by Herbert Becker, while associated with the Title Insurance & Trust Co. of Chicago, on the legal precedents involved in "Subdividing the Air". The case of *Corbett v. Hill*, L.R. 9 Eq. Cases 671, decided in England in 1870, is given as an "excellent case . . . which dealt specifically with the ownership of a vertical column of air."

Again he has used material by Melvin B. Ogden in the chapter on Contracts and Deeds, with the comment that "only a few of the salient

points have been generally treated . . ." in view of the comprehensive law relating to enforcement of contracts and the remedies upon breach.

Stanley L. McMichael, realtor, appraiser, is also the author of: *Selling Real Estate; City Growth Essentials; McMichael's Appraising Manual; How to Make Money in Real Estate; How to Operate a Real Estate Business; Leases—Percentage, Short and Long Term; and How to Finance Real Estate.*

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