

# REVIEW:

## Nevada Real Property Practice and Procedure Manual

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**I had the opportunity to read an advance copy of the Nevada Real Property Practice and Procedure Manual, and it is difficult to overstate the positive contribution of the State Bar of Nevada's newest publication to the practice of law in Nevada. Anyone thinking about or working in real estate law – attorneys, developers, law students and professors, and state and local government officials – would benefit from having a copy of this manual at his or her fingertips.**

The manual begins with the foundational concepts of estates and interests in land, concurrent ownership, easements and servitudes—all subjects I cover in my first-year property law course. It adds the basics of water and mineral law as well. Every lawyer remembers the complexity and confusion of learning present and future interests in law school – defeasible fees, vested and contingent remainders, executory interests, and reversions to name a few – and I was grateful to see these basic concepts, as well as the Rule Against Perpetuities, tackled in the first chapter.

Each person will read the manual through the lens of their individual educational or practice experience. I read the manual thinking about the thousands of questions that Property and Land Use students have asked me over the years. I wish I had been able to refer to this manual, or that I had been able to refer

students to this manual, over the last 21 years teaching at UNLV's William S. Boyd School of Law. There is little secondary law material on property law in Nevada, so the manual is a welcome addition to the state's legal resources.

General practice lawyers needing to “issue spot” a transaction involving land will find this manual indispensable. Lawyers familiar with some areas of real estate law, like conveyancing or government approvals, but less expert in other areas, will also find the manual a valuable resource. Law students wanting clearer answers to what the law “is” will have their questions answered—at least as far as Nevada law is concerned. More importantly, students and practitioners alike can see where Nevada law mirrors, and differs from, other states—and in most cases why. These areas of law range from whether Nevada law requires “strict” or “reasonable” necessity to recognize an easement by necessity (the answer is “reasonable”) to the approach Nevada law takes to construction law (designers and contractors must be registered in Nevada).

Another example of situating Nevada law within the law of other states is the manual's discussion of servitude law. Generations of law students have been tortured by analyses of horizontal privity, vertical privity, or whether a servitude touches and concerns the land. The manual discusses these traditional analyses and then notes the influence of the restatement on the current development of Nevada law. The impact of the restatement differs from state to state, which makes servitude law all the more confusing to master. The manual clarifies the Nevada approach to servitudes (as clearly as can be expected) and does the same for many of the traditional first-year

property topics. For example, the manual notes that the “Grant, Bargain, and Sale” deed used often in Nevada is similar to the “special warranty deed” all law students read about in property textbooks. Similarly, Nevada is a race/notice state for purposes of the recording acts and a lien theory state for the purpose of foreclosing on residential real estate loans.

The manual is lengthy—my review copy was 938 pages, and the printed version will be even longer when the authors add all of the forms. It is not to be read in one sitting and, instead, is most helpful when one needs a refresher or introduction to a particular topic. The introductions to each topic, however, are deep and substantive. First, the authors often provide context for the topic. For example, the authors in one chapter describe how borrowers finance real estate purchases as well as how residential real estate loans are sold on the secondary market. Then each author goes into extensive and ordered detail about the state statutory regime and case law developments. Finally, the chapters contain sample forms and practice tips and, on occasion, the two are intertwined. For example, there is a sample Purchase and Sale Agreement in the chapter on conveyancing that has practice tips embedded within the document. These are invaluable tools for a real estate lawyer beginning his or her career.

In the preface, attorney and contributor Michael Buckley likens the manual to a “file cabinet” and invites readers to contribute additional material going forward. This breadth of coverage is another strength of the manual. It covers every topic addressed in a first-year property class in addition to a good number

of topics that would be addressed in a real estate transaction, real estate finance, water law, or land-use class. Rather than attempting to provide treatise-like answers to these topics, the manual instead provides a summary of key concepts and then a menu of the types of issues that a lawyer would likely face. For example, the manual contains about 13 pages of general reference real estate issues to consider under bankruptcy, and the manual appropriately encourages practitioners to engage qualified bankruptcy counsel. Lawyers who do not believe themselves expert in bankruptcy law will be grateful for the roadmap of issues and will make better decisions about how and when to engage more expert counsel.

Another example is the manual's treatment of the land-use approval process. Unlike the specialized expertise required to address bankruptcy issues, a real estate attorney may have the legal tools to guide his or her client through the approval process but may lack the experience of knowing how best to navigate the labyrinth procedure. The chapter does a tremendous job describing the architecture of planning and zoning laws, the responsibilities of the many land-use officials and boards, and the process for seeking a land-use approval and appealing an adverse decision. The architecture, responsibilities, and process in land-use law are concepts that a young lawyer can learn on their own, but it takes time and experience to understand how these components work together. When I was a lawyer a year out of law school, I represented a community association in Maryland fighting the placement of a telecommunications tower. I knew the structure of the zoning laws and how to appeal adverse land-use decisions, but I had little conceptual idea of "the bigger picture." The community association lost that case (we would still have lost if I were more experienced), but I may have been more creative with my counsel to the community if I had had a fuller picture of how the applicable law and policy were arrayed against us. This manual will provide similarly situated lawyers a better opportunity to provide excellent advice to their clients.

The manual will be helpful to experienced attorneys as well. For example, I found its summary but thorough treatment of the state's property tax system very informative. I have learned and forgotten its details several times, so to have those details now at my fingertips is invaluable. Similarly, the manual is thoughtful about how to address complex topics, and it

includes a useful sketch of real estate law issues in surrounding states, including California, Arizona, and Utah, considering the frequency with which they arise in Nevada transactions.

Returning to the "file cabinet" analogy, the manual summarizes the development of the law over time as well as capturing recent developments. For example, it addresses Nevada's eminent domain law by reference to the 2005 *Kelo v. City of New London* decision in the U.S. Supreme Court, the state's legislative response in 2007, and the PISTOL initiative (People's Initiative to Stop the Taking of Our Land) passed in the 2006 and 2008 Nevada elections. Addressing more recent events, the manual includes information about COVID restrictions on evictions and the suggestion to include *force majeure* provisions in conveyance documents because of COVID-like events.

Real estate law is broad in scope, complex, and can be intimidating. The major contributions of the authors in the Nevada Real Property Practice and Procedure Manual are to synthesize and demystify this area of practice. The authors patiently and cogently describe Nevada real estate law and policy, and

lawyers of many different experience levels will greatly benefit from having a copy of this manual at their fingertips.

*The Real Property Practice and Procedure Manual is expected to release later this year. When available, it can be ordered via the state bar's website at [www.nvbar.org](http://www.nvbar.org) > News and Publications > Resources > Books and Manuals. To be placed on a wait-list and be notified as soon as the book is available, email a request to [publications@nvbar.org](mailto:publications@nvbar.org).*



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