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The Marketable Record Title Act - Is Private Foreclosure Barred Ten Years After Maturity, or Not?

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Before 1982, owners of California real property would from time to time, to their surprise and chagrin (and that of their title insurers), receive a demand for payoff of some deed of trust hiding among documents recorded in the county many decades earlier, securing a debt owed by a former owner of the property. It might be that a title searcher had "missed" a trust deed in insuring a sale three owners "up the chain," and that the error had been repeated in subsequent title policies. It might be that someone assumed the debt had been paid or otherwise satisfied, and that the reconveyance instrument simply had not been recorded. As the result of some anomalous legal analysis in California cases reaching back to the 1870s, the harsh reality was that such a deed of trust remained a blemish on title even after any action to collect the debt it secured was long barred by the statute of limitations. This impaired the marketability of real property in the state, and led to some arguably inequitable results.

The Marketable Record Title Act ("MRTA")² was passed in 1982 to provide for an outside time limit to exercise a power of sale in a deed of trust, so that recorded "ancient mortgages" would at some point cease to constitute a cloud on the title to real property. An amendment to the MRTA adopted in 2006 was intended to eliminate some confusion reflected in the appellate cases interpreting the MRTA, on the subject of how that outside time limit is to be determined.

This article describes the history and purpose of the Marketable Record Title Act, analyzes two cases decided in the months before the 2006 amendment, and provides some conclusions as to what the MRTA's time limitations on the exercise of a power of sale mean to real estate practitioners and title underwriters today. In short, a legislative drafting error committed in 1982 persists even after the 2006 amendment, and will continue to cause problems in the application of key provisions of the MRTA until it is corrected.