

# A PRACTICAL GUIDE TO REAL ESTATE PRACTICE

by Joshua Stein

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American Law Institute—American Bar Association Committee on Continuing Professional Education

320 pages



**As Reviewed by  
Dwight Merriam, CRE**

You'll laugh, you'll cry. This book is "The Perfect Storm" of real estate law practice. You won't be able to put it down until you've turned back that last page and slumped deep into your seat, satisfied that you now know all about the scintillating subject of severance clauses.

Sorry. I got carried away. The editors told me to jazz up the book review a bit. I mean, think about it. Book reviews are not all that exciting, and a review of a book on how to practice real estate law...Now that I might have your attention, please read at least one more paragraph. Then, if you must, you can bail out.

The inside cover says that "*A Practical Guide to Real Estate Practice* is designed for real estate attorneys..." Not so. This book is great reading for anyone who is ever involved in a real estate transaction. It would be helpful for non-lawyers in managing their lawyers, and its targeted audience—real estate lawyers—can glean enough from this small volume of 320 pages to make it worth the time.

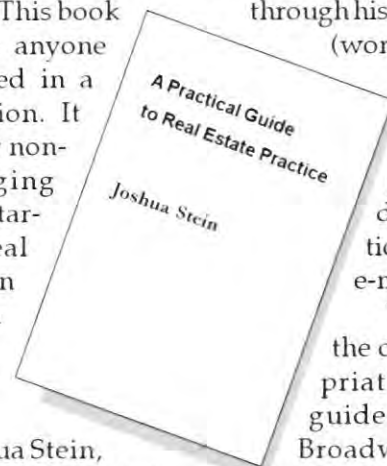
The author, Joshua Stein, has the pedigree to write a useful book. At age six, he says, he helped edit galley proofs of his father's book series on mathematics at the dining room table. (My six-year-old son, Alexander, pedals his

John Deere tractor around, so he'll probably become a dairy farmer, I guess.) Mr. Stein's mother is a published author of poetry. And the author has every imaginable ticket punched for a real estate lawyer—U.C. Berkeley Phi Beta Kappa, Columbia Law School, partner at Latham & Watkins, American College of Real Estate Lawyers, and 20 years of practice.

Like Gaul, the book has three parts. At the beginning, Stein starts with an overview of real estate practice. It's a hodgepodge of things, nearly all of them useful and some a little too cursory.

The second part, "The Documents," is half of the book and rightly so. Stein takes us from how to prepare legal documents, through his writers' workshop (worth the price of the book), to use of defined terms, reviews by others, practical aspects of document production, and his rant on e-mail.

The last part is on the closing and appropriately reads like a guide to producing a Broadway musical. Almost 100 pages are spent on "before, during, and after" closing matters. Each chapter ends with a practice checklist summarizing the chapter and reinforcing key points.



Stein's chapter on post-closing issues is a must-read. Here, his experience yields especially cogent advice based on a scary, but all-too-realistic, hypothetical transaction that went into default 27 months after the closing.

A lender's state-of-the-art non-recourse clause and an additional checklist for model documents are included as appendices.

Stein is my kind of real estate lawyer. He likes checklists, plain language writing, active prevention of mistakes, and critical review of documents by his colleagues. His coaching on writing could be useful even to some of the "old dogs" in our business. He gives lots of good illustrations that help sensitize the reader to recognize and correct bad writing. In one chart, he offers "complicated" versus "powerful" phrases—instead of "provide the requisite information," use "tell." Instead of "provide with," use "give." (Personally, the best discipline I get is when an editor tells me to cut an article *in half*. You quickly learn to trim wasted words.)

My beloved first semester contracts professor at Yale Law School, Leon Lipson, gave a brilliant graduation address of monosyllabic words. To write simply, plainly, and concisely requires more skill than writing the verbose and confusing documentation we see too often in transactions.

The author cites the U.S. Securities and Exchange Commission's *Plain English Handbook*. The correct site is currently [www.sec.gov/pdf/plaine.pdf](http://www.sec.gov/pdf/plaine.pdf). It's a useful resource for any writer, but Stein is careful to point out that what's good for SEC investor disclosure documents may not always work with deal documents.

Stein is right on with his suggestion that we use "defined terms"

to make documents work better. "Mortgaged Property," he says, might take several pages to define, but then you have the economy and precision of using just two words. Obviously, the non-lawyer real estate professional (Can you say CRE?) is often a key player in structuring and describing the defined terms. I write countless regulations in my work, and I spend most of my time on the definitions. And sometimes an effective definition, even though it should usually have its natural meaning, can shape the deal.

I see only one area where I differ with the author. Stein doesn't like e-mail, and he gripes about all the usual abuses. In the process of venting, he misses the chance to be positive and advocate what will be commonplace in five years—the use of extranets to manage the real estate deal making, permitting, financing, and closing processes. The extranet, which the author's firm uses (See [www.lw.com/news/clippings1%2Ehtm](http://www.lw.com/news/clippings1%2Ehtm) regarding its "ComplianceNet"), puts all the documentation in one place, accessible by the Internet. No faxes, no overnight or hand deliveries, no e-mail attachments. Our firm uses it with some of our biggest clients. With good planning in terms of access and who gets to edit what, it's a boon to efficient practice. It's like having the same file cabinet and work table in everyone's office.

Twenty-one percent of corporate counsel report that at least one of their outside counsel offer extranet service to them. BNA, *Corporate Counsel Weekly*, No. 41 (10-24-01) p.325. Go to the Web site of the American Corporate Counsel Association [www.acca.com](http://www.acca.com) and use the search word "extranet" for more information.

As I said, this is a book worth

buying and reading for both real estate deal makers and lawyers. Put it in your briefcase and read it while waiting for a meeting or traveling, and you'll have a quick education from a seasoned practitioner.<sup>REI</sup>

#### ABOUT OUR REVIEWER

**Dwight Merriam, CRE**, heads the national land use practice of Robinson & Cole LLP. He is a member of the American College of Real Estate Lawyers; past president and fellow of the American Institute of Certified Planners; a co-author of *The Takings Issue*; and an instructor on land use law at Vermont Law School. [REDACTED]