

Allodial title

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Allodial title is a concept in some systems of property law. It describes a situation where real property (land, buildings and fixtures) is owned free and clear of any encumbrances, including liens, mortgages and tax obligations. Allodial title is inalienable, in that it cannot be taken by any operation of law for any reason whatsoever.

In common legal use, allodial title is used to distinguish absolute ownership of land by individuals from feudal ownership, where property ownership is dependent on relationship to a lord or the sovereign. Webster's first dictionary (1825 ed) says **allodium** is "land which is absolute property of the owner, real estate held in absolute independence, without being subject to any rent, service, or acknowledgement to a superior. It is thus opposed to *feud*."

True allodial title is rare, with most property ownership in the common law world—primarily, the United Kingdom, the United States, Canada, Australia, New Zealand and the Republic of Ireland—described more properly as being in *fee simple*. In particular, land is said to be "held of the Crown" in England and Wales and the Commonwealth realms. In England, there is no allodial land, all land being held of the Crown; even in the United States most lands are not allodial, as evidenced by the existence of property taxes. Some of the Commonwealth realms (particularly Australia) recognise native title, a form of allodial title that does not originate from a Crown grant.

In France, while allodial title existed before the French Revolution, it was rare and limited to ecclesiastical properties and property that had fallen out of feudal ownership. After the French Revolution allodial title became the norm in France and other civil law countries that were under Napoleonic legal influences. Interestingly Quebec adopted a form of allodial title when it abolished feudalism in the mid-nineteenth century making the forms of ownership in Upper and Lower Canada remarkably similar in substance.

Property owned under allodial title is referred to as **allodial land**, **allodium**, or an **allod**.

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Legal concept

Allodial lands are the absolute property of their owner and not subject to any service or acknowledgment to a superior. An allodial title is the opposite of a feudal tenure such as fee simple.

The derivation of the word is still doubtful, though it is probably compounded of the Germanic *all*, whole or entire, and *odh*, property. Allodial tenure seems to have been common throughout northern Europe, but is now unknown in common law jurisdictions apart from the United States. Allodial titles are known as udal tenure in Orkney and Shetland, the only parts of the United Kingdom of Great Britain and Northern Ireland where they exist.

Development of equitable title

As late as the Tudor period, in order to avoid estate taxes, a legal loophole was exploited where land was willed to a trustee for the use of the beneficiary. However, trustees often abused this privilege, and heirs found that the courts of common law would refuse to recognize the "use" clause, and would instead grant title in law to the trustee. However, the courts of equity, which were developed by the sovereign to deal with obvious injustices in the common law courts, ruled that the heirs were entitled to the use of the property, and gave them title in equity. As rulings of equity courts ranked above those of common law courts, this gave heirs the use of the land, but not title to it in the common law.

However, this distinction between common law and equity title helped develop forms of security based on the distinction, now known as the mortgage. Enjoyment of the property during the period where the mortgage was in good standing could be assured through the equity courts, while the right to foreclose on the property to merge the common law and equity title were guaranteed in the common law courts.

Proof of ownership

Until the 18th century, almost all common law property ownership depended on proving a link of possession from a royal grant of title to the property owner. Although the feudal system was rapidly disappearing from England in the 18th century, to be replaced with a system of taxation, in theory the feudal chain of title still exists, although it is a formality.

However, proving ownership in absence of the documents was an impossibility, and forgeries of crown grants were common and difficult to detect. Moreover, it was nearly impossible to determine if land was subject to common law encumbrances (i.e. mortgages). This led to the establishment in the 18th century of land registry systems, where a central office in each county was responsible for the filing of land deed, mortgages, liens and other evidence of ownership, transfer or encumbrance. Under land registry, deeds and charges were not recognized unless they were filed, and persons who filed were given priority over previous transactions that had not been filed. Moreover, under statutes of limitation, only documents that had been filed in the past 40 years had to be consulted to determine the chain of

ownership.

Allodial title in the United States

In the United States, "To say that land is owned 'allodially' is a fiction. All land under United States government jurisdiction is subject to expropriation by way of eminent domain",^[1].

Before 1774, all land in the American colonies could also be traced to royal grants, usually one grant creating each colony. The original grantee then sold or granted parcels of land within their grant to private citizens and other legal entities. However, when the colonies won the Revolutionary War, they did not want to retain a feudal system of land ownership. The Treaty of Paris (1783), which ended formal hostilities and recognized American independence, also had the effect of ending any residual rights held by the original grantees or the Crown. Essentially, this merely recognized that no person holding land in the new United States owed any allegiance or duty to the Crown or any English noble. There is no specific reference to allodial title in the text of the treaty. Some states created a form of allodial title while others retained the tenurial system with the state as the new ultimate landholder.

Apart from land that was formally owned at the time of the Revolutionary War, most American landholders can trace their title back to grants by the federal or state governments of land obtained by purchase (Louisiana Purchase, Florida, Alaska), treaty (the Ohio Valley, New Mexico, Arizona, and California), or annexation (Texas, Hawaii). However, in reality, previous grants prior to those territories becoming U.S. possessions were recognized. In fact, in *Dartmouth College v. Woodward*, the United States Supreme Court ruled a New Hampshire law that attempted to revoke the land grant to Dartmouth College from King George III was unconstitutional.

Many state constitutions (Arkansas, Wisconsin, Minnesota, New York) refer to allodial title, but only to clearly distinguish it from feudal title, which appears to be illegal throughout the United States. The conditions under which the government can compel the sale of privately owned real property for public benefit are established by eminent domain laws of either the federal or state governments, respectively. The Fifth Amendment to the United States Constitution requires just compensation for eminent domain compelled sale. The right of the several states to tax real estate is preserved in the Constitution. In addition, the government powers of police power, and escheat have been retained in the American legal system.

Allodial title advocates

Some groups say references to allodial title in state constitutions and (allegedly) the Treaty of Paris give property owners absolute, inalienable title to their property. These groups include:

1. Tax protesters. This group denies the legal power of municipal and state governments to tax property on the basis that allodial title cannot be alienated by failure to pay those taxes. However, most private property (to include all property in the United States) is not held in true allodial title, which would be the only title exempting the title holder from any tax.
2. Mortgagors. Persons who have overextended themselves and face foreclosure often try to create an allodial title. As allodial title cannot be alienated by seizure by a creditor, they claim the foreclosure by the mortgagee is illegal. However, by its nature, allodial title cannot be mortgaged in the first place, and an attempt to create allodial title on land that is subject to encumbrance by debt is impossible. Actually a contract can be created by an owner of allodial property with a mortgagee resulting in the transfer of title under certain circumstances such as default on a loan, thus that land falls out of the allodial title domain as it is essentially jointly owned and governed

by contract by both the mortgagee and mortgagor. Once the mortgagee releases the contract as satisfied in full, the ownership reverts entirely back to the owner. There was time when one was considered a fool to mortgage allodial land and thus give up allodial ownership as among other penalties the owner often lost the right of a freeholder to vote.

3. **Anti-Zoning groups.** Persons who own agricultural land that faces re-zoning due to encroaching urbanization often claim that zoning laws that control agricultural use of property are illegal as they constitute an encumbrance on allodial title. They claim that only the law of nuisance applies to persons holding allodial title. However, the U.S. Supreme Court has upheld the constitutionality of zoning laws on a very broad basis, even though such laws all post-date the 1787 Constitution.

Schemes to obtain allodial title usually advise property owners to file a deed of allodial title with the local registry office, or to publish a notice of allodial title in a local newspaper. However, neither these or any other method is recognised by U.S. courts, and attempts to improperly assert an allodial title in U.S. courts may be classified as a "frivolous claim".

Limited allodial title

Two states, Nevada and Texas, created limited allodial title provisions in order to protect property owners from the burden of highly increased property taxes which often occur when unincorporated land becomes part of a town or city.

Nevada allowed persons who owned and lived in single family residences to obtain allodial title if the property was not mortgaged and had no tax liens. The state accepted a one-time tax payment based on actuarial calculations of the present value of the future property taxes payable, given the age of the youngest title holder. Once this amount was paid, a certificate of allodial title was granted. Property taxes would then be paid by the state treasurer as long as the original owner remained in the home. Allodial titles were subject to exemptions from seizure in debt or bankruptcy under homestead laws; however, property could be seized if used in a criminal enterprise. The Nevada Legislature in 2005 prohibited applications by property owners for allodial title after June 13, 2005.

Other institutional property ownership can also be called allodial, in that property granted for certain uses is held absolutely and cannot be alienated in most circumstances. For example, universities and colleges that hold property for educational purposes can be described as having allodial title. In most states, property held by churches for the purpose of worship also has status similar to allodial title. American Indian reservations also share some similarity with allodial title. However, in all these cases, it is also clear that if the title ceases to be used for the purposes for which it was granted, it reverts to the state or the federal government.

Allodial Title in Nevada In 1997, the Nevada Legislature created a new section of statutes within the property tax statutory scheme. Nevada Revised Statutes (NRS) 361.900 to 361.920. These statutes, which are entitled "Allodial Title," became effective on July 1, 1998.

Those who can apply for allodial title is limited:

A person who owns and occupies a single-family dwelling, its appurtenances and the land on which it is located, free and clear of all encumbrances, except any unpaid assessment for a public improvement, may apply to the county assessor to establish allodial title to the dwellings, appurtenances and the land on which it is located. One or more persons who own such a home in any form of joint ownership may apply for the allodial title, jointly if the dwelling is occupied by each person included in the application.

NRS 361.900 (1)(emphasis added). After the county assessor receives the application, he transfers it to the state treasurer. NRS 361.900 (2).

The state treasurer then determines the amount which is required to be paid by the property owner to establish allodial title. This is done by using "a tax rate of \$5 for each \$100 of assessed valuation on the date of the application." NRS 361.900 (3). The treasurer must calculate, separately, the amount that must be paid in a lump sum, and for the payment in installments over a period of not more than 10 years. *Id.* These "amounts must be calculated to the best ability of the state treasurer so that the money paid plus the interest or other income earned on that money will be adequate to pay all future tax liability of the property for a period equal to the life expectancy of the youngest titleholder of the property." *Id.*

If the property owner pays the lump sum amount calculated by the state treasurer, and submits proof that the home is a single-family dwelling occupied by the homeowner, and that the property is free and clear of all encumbrances except any unpaid assessment for a public improvement, "the state treasurer shall issue a certificate of allodial title[.]" NRS 361.900 (5). If the property owner enters into an agreement with the state to make installment payments (in lieu of a lump sum payment), the issue of a certificate of allodial title occurs upon the receipt by the treasurer of the last payment. NRS 361.900 (6), (8).

Once a property owner receives a certificate of allodial title, he is relieved from the payment of all further property taxes, "unless the allodial title is relinquished by the homeowner or his heirs." NRS 361.905 (2). Instead, the state treasurer is responsible for the payment of the taxes due. NRS 361.905 (3).

Once allodial title is established, it "is valid for as long as the homeowner continues to own the residence unless he chooses to relinquish the allodial title[.]" NRS 361.910 (1). Upon the death of an allodial title holder, the heir or heirs can reestablish allodial title by using the same procedure that the original property owner used. NRS 361.910 (1)-(9).

The holder of an allodial title can voluntarily relinquish it at any time. NRS 361.915 (1). The title shall be relinquished if the property is sold, leased or transferred by the allodial title holder; the allodial title holder no longer occupies the dwelling for 150 days; or the home is converted to anything other than a single-family dwelling occupied by the owner. *Id.* If allodial title is relinquished, either voluntarily or otherwise, the property owner receives a refund of the unused portion of the payments made to originally establish the allodial title. NRS 361.915 (3)-(4). Once the allodial title is relinquished, the property owner is once again responsible for all future property taxes. NRS 361.915 (5).

The importance and benefit of establishing allodial title extends beyond the non-payment of property taxes. It also has significance in the area of homestead law. Pursuant to NRS 115.010 (2), the available homestead exemption in Nevada is \$125,000. However, if allodial title has been established and not relinquished, the homestead exemption "extends to all equity in the dwelling, its appurtenances and the land on which it is located." *Id.* (emphasis added). Furthermore, although the regular homestead exemption provides no protection against legal process to enforce the payment of obligations contracted for the purchase of the property, or for improvements made thereon (including any mechanic's lien lawfully obtained), or for legal taxes, or for any mortgage or deed of trust executed upon the property, NRS 115.010 (3), the holder of an allodial title is fully exempt from all of these under the homestead laws. NRS 115.010 (4). The only area within the homestead laws wherein allodial title fails to provide an extra benefit is in the realm of civil and criminal forfeiture of property. NRS 115.010 (5). Similar to all property in Nevada, property held by allodial title is subject to forfeiture for criminal conduct.

Despite this one area, allodial title provides significant benefits to those who qualify for it. These benefits are tremendous in the areas of property tax and homestead. If one can pursue allodial title, it

may well be worth the cost to do so.

Difficulties with allodial title

Although allodial title cannot be lost in most circumstances, that also means that it cannot be transferred or encumbered without losing its allodial status. As such, when a property owner dies and leaves ownership to more than one heir, the allodial status of the property is lost. Allodial title cannot be mortgaged. Moreover, as liens cannot attach to allodial title, it is difficult to finance improvements to a property held in allodial title as, once incorporated, the improvements become part of the allodial title and become exempt from lien or seizure of the property to pay a contractor's bill.

Allodial title cannot, in theory, be legally taken away against the will of the owner. However, an allodial owner can contractually give up allodial ownership and that allodial ownership can be restored or sold or passed on to a single heir. Allodial title cannot be taken away by fraud, only by legitimate contract.

Notes

- [^] <http://www.kinsellaalaw.com/publications/dictionary.pdf>

See also

- Fee simple
- Land tenure
- Manorialism
- Odelsrett
- Udal law
- Native title
- Torrens title
- Numa Denis Fustel de Coulanges
- Mark system
- Quia Emptores
- Nulle terre sans seigneur
- Assarting

External links

- Allodial title resources
- Court case where mortgage holder did not have allodial title recognized by court and sanctions were applied at quatloos.com
- Nevada's Allodial Title System

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