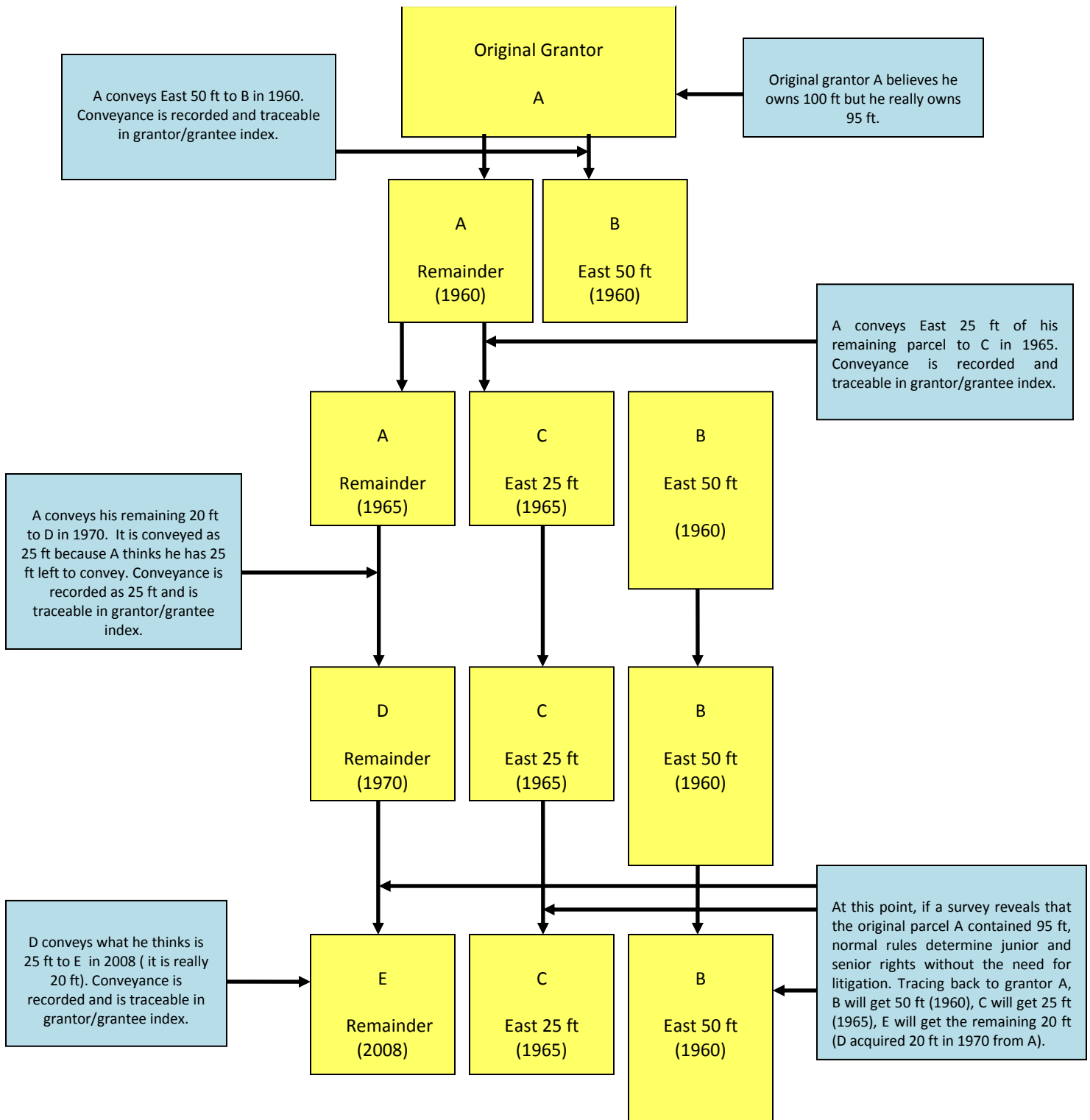


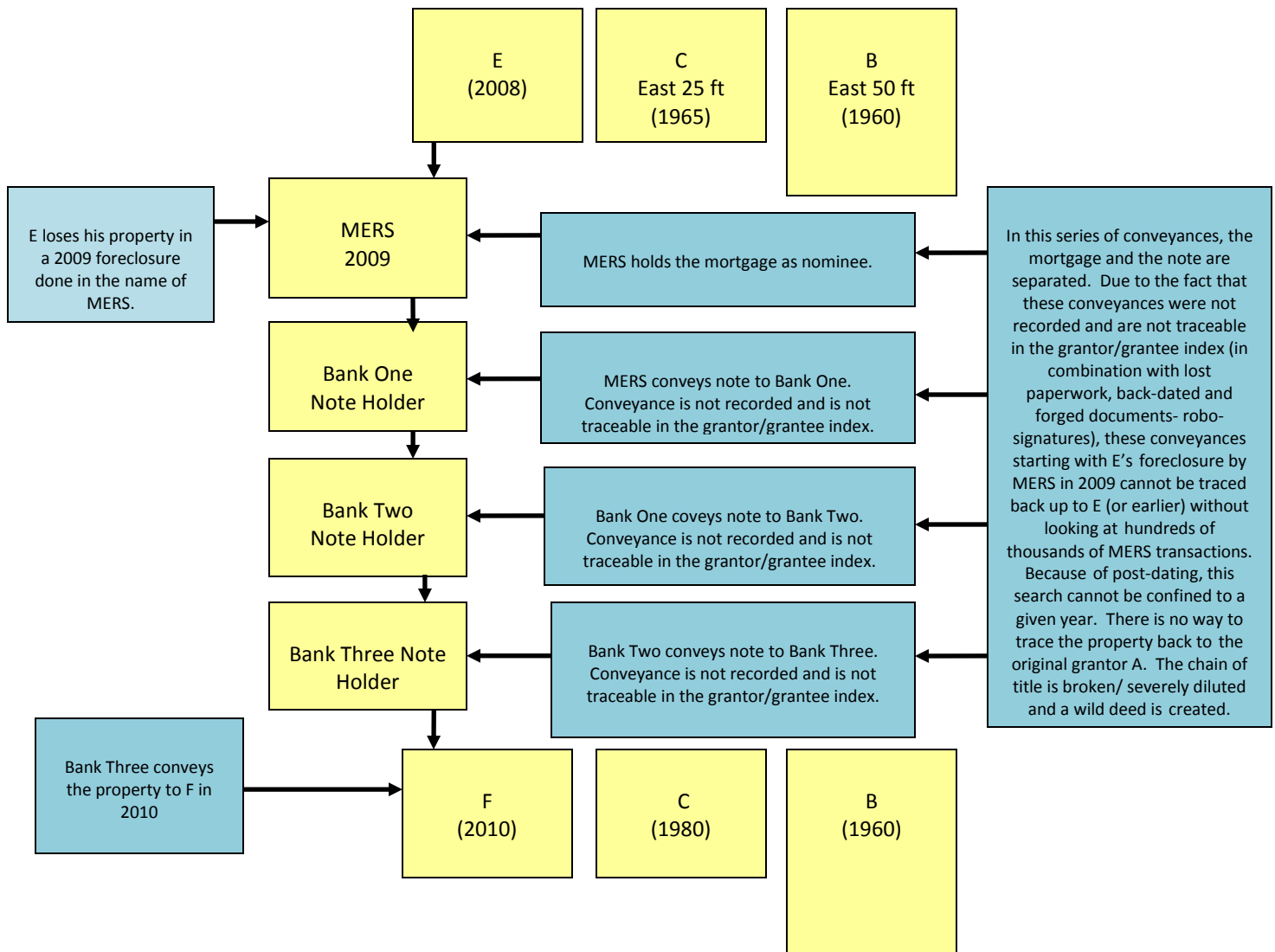
Diagram B
MERS CONVEYANCE



NOW THE PROBLEM STARTS

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MERS CONVEYANCE



Bank Three (note holder) conveys the foreclosed property to F in 2010. There are several problems with this conveyance:

First Set of Problems:

1. Bank Three cannot prove it actually owns title to the property because the note and the mortgage were separated in 2009 (MERS held the mortgage and the note was assigned to Bank One, Bank Two and Bank Three in a series of transactions and none of the transactions were recorded) – this is a wild deed.

- a. Because Bank Three cannot prove they own title to the property to convey to F, F cannot obtain title insurance on the property unless Bank Three agrees to indemnify F (or provide a warranty deed) against any title claims or losses as part of F's title insurance policy.
- b. Similarly, F cannot prove that he owns title to the property (clouded title/wild deed), therefore, F will have a problem selling the property because:
 - (1) Realistically, F will not be able to indemnify a prospective buyer against any title claims or losses (as Bank Three had done for F);
 - (2) A prospective buyer will not be able to obtain title insurance because the property's title is clouded and the property has a wild deed. Without title insurance or a redeemable warranty deed, a prospective buyer cannot obtain financing (leaving only cash buyers);
 - (3) A clouded title/wild deed will diminish the market value of the property when F tries to sell the property even if he can find a cash buyer.

Second Set of Problems

- 2. When F purchased the property in 2010, Bank Three believes that it was conveying 25 ft. to F. F also believed that he was purchasing 25 ft. F has a survey done in 2010 to determine boundaries. In conducting the survey, the surveyor finds:
 - a. The original grantor A (traced back from B and C properties) only had a total of 95 ft. to convey due to prior survey discrepancy.
 - b. The surveyor must determine the senior rights between F, C and B in order to determine who gets what portion of the 95 ft. (senior and junior rights), however, this cannot be determined because:
 - (1) F thinks he owns 25 ft., C thinks he owns 25 ft. and B thinks he owns 50 ft.
 - (2) The surveyor cannot trace F's property back to E due to the MERS transactions, so you cannot determine whose conveyance came first in time (thus senior by race/notice statutes) F, B or C?
 - (3) Therefore, the surveyor cannot determine who has senior and who has junior rights between F, B and C.
 - c. Therefore, all three properties (F, B and C) now have unclear boundary lines creating a cloud on all three properties' titles.

- (1) F, B and C will have to disclose the boundary discrepancy when they attempt to sell their properties;
 - (2) The boundary discrepancy will create a cloud on title for all three properties diminishing the properties' values;
 - (3) The cloud on title will make it impossible for prospective buyers to obtain title insurance (and financing) on any of the three properties.
- d. Because of the broken/diluted chain of title and the boundary discrepancy, F, B and C will have to go to court to have their boundary lines adjudicated (even if they agree to a compromise) because a surveyor cannot make this determination absent a court order. This process is expensive and time consuming, holding up land sales, disposition of estates and family trust and negatively affecting the American economy.
- e. The title industry can anticipate a litany of marketable title claims as the current owners must disclose their title issues to any prospective buyers – thus diminishing the property's value. See *Mertens v. Berendsen* (1931) 213 Cal. 111, 113 (stating that "Marketable title must be so far free from defects as to enable the holder, not only to retain the land, but possess it in peace, and if he wishes to sell it, to be reasonably sure that no flaw or doubt will arise to disturb its market value").