

Chapter 2

ESTATES, TRANSFERS, AND TITLES



I. ESTATE OWNERSHIP

A. Estates (Ownership)

- An interest, share, right, or equity in real estate that varies from the minimal right of a renter to the maximum right of full owner

B. Freehold Estate

- The right to use real property without a time limit

1. Estates in Fee

- Owner holds all rights for unlimited period – Fee Simple Absolute is the greatest interest a person can hold
 - a. Conditions That Restrict a Fee Estate (**Fee Simple Defeasible**):
 - **Condition Precedent** - an event which must occur before the property can be transferred
 - **Condition Subsequent** - an event that happens after a property is transferred, causing the property to revert to the grantor
 - **Fee Simple Determinable Estate** - determines the duration of the estate by the deed itself

2. Life Estate (Indefinite Period)

- Interest in real property for the length of a designated person's life.
 - Right to physically possess property
 - Right to all rents and profits
 - Right to lease, sell, or finance for only the term of the life estate
 - Must keep property in good repair
 - Must not injure or destroy property
 - Must pay all taxes and interest (all annual costs and expenses)
 - If grantor holds an **estate in reversion**, the property will return to the grantor
 - Upon death of designated person, life tenant loses ownership interest
 - Ownership goes to another life tenant (**estate in remainder**)

C. Less-Than-Freehold Estate

- The right to use real property for a period of time – personal (vs. real) property.
 1. **Estate For Years** - lease for any fixed period of time (hours, days, months or years)
 2. **Estate From Period-To-Period** - renewable agreement to rent or lease property from period to period (usually month-to-month or week-to-week)
 3. **Estate At Will** - rental agreement for an indefinite period of time (either party must give 60 days notice to terminate)
 4. **Estate/Tenancy At Sufferance** - lessee (tenant) will not vacate after the term of the estate has run out

II. ACQUISITIONS AND TRANSFERS



A. Transfers



- Any changeover in the ownership of property; sale being the most common manner
- Document used to effect transfer is called a conveyance
- Alienation is the opposite of acquisition -- "Acquisition" means acquire/buy/pull in; "Alienation" to transfer, sell, or push away
- There are seven basic ways to transfer real property:
 1. Will – witnessed/holographic
 2. Probate – Superior Court procedure; administrator/executor
 3. Intestate Succession – disposal by law; no will
 4. Accession – natural causes; permanent fixtures; encroachment
 5. Occupancy – abandonment/adverse possession/prescription
 6. Deed -- grant or quitclaim deed; most common method
 7. Dedication – voluntary; mandatory

1. Transfer by Deed (two basic types)

- **Grant Deed** - transfers full title using the word "**grant**," includes the **implied warranties** that:
 - a. owner has not conveyed title to anyone else
 - b. property is free of encumbrances (other than those disclosed)
 - c. after-acquired rights (any obtained after the sale) are retroactively transferred

- **Grantor** - is the person who grants property or property rights (seller)

- **Grantee** – is the person whom the grant is made (buyer)

Quitclaim Deed

- Conveys only the rights that a person may hold.
 - Quitclaim deed make no “covenants” (promises)
 - No implied warranties
 - Can convey absolute title or nothing (only what the grantor now possesses)
 - Can clear some **clouds of title** (a minor defect which must be removed from the records)
 - A QUIET TITLE ACTION - is a court proceeding to remove a cloud on title to real property

Subtypes of Deeds

- a. **Gift Deed** love and affection; voidable with intent to fraud
- b. **Tax Deed** when property is sold for past-due taxes
- c. **Administrator's Deed or Executor's Deed** when sale is for deceased owner
- d. **Sheriff's Deed** purchaser receives in court-ordered sale
- e. **Trustee's Deed** purchaser receives in foreclosure sale
- f. **Guardian's Deed** with minor's property
- g. **Land Patent** used by the government to grant public land to an individual

MAJOR TYPES OF DEEDS

GRANT DEED

Implied Warranties

Title not conveyed to any other person.

Property free of encumbrances.

QUITCLAIM DEED

No warranties, only convey rights grantor may have.

SUBTYPES OF DEEDS

Gift Deed

Tax Deed

Administrator's (Executor's) Deed

Sheriff's Deed

Trustee's Deed

Guardian's Deed

Land Patent

Valid Deeds must:

- be in writing
- properly describe the parties (grantee and grantor)
- contain a granting clause (action clause)
- be signed by the grantor

Delivery

- Property is not transferred until the deed is delivered with the intent of passing title
 - a. **Manual Delivery** - direct transfer from grantor to grantee
 - b. Delivery Through **Recording** - putting title in the grantee's name in the county records
 - c. **Conditional Delivery** - a specific event must occur before the deed is delivered manually



- The "**trust deed**" is not a deed, it gives bare (naked) legal title to a trustee with the power to foreclose/sell
- In California, since trust deeds secures loans to finance homes, the word "deed" can cause some confusion

2. Transfer by Will (Testate)

- Is a document by the owner as to how property is to be conveyed after death

Witnessed Will – typed, usually prepared by an attorney, dated, signed by the property owner, declared authentic by at least two witnesses (3 signatures total)

Holographic Will - entirely hand-written, dated, signed

Revocable Living Trust – is a trust that is effective during the life of the owner, rather than upon his or her death; it can eliminate probate and serve the same function as a will and maybe reduce excise taxes (see an attorney)

3. Transfer by Probate (Superior Court Approval)

- **Probate** is a court procedure for distributing shares of an estate to the rightful beneficiaries and creditors
 - **Executor (male)** or **Executrix (female)** are appointed or named in the will
 - **Administrator (male)** or **Administratrix (female)** is appointed by the court
- Minimum probate period: 6 months; party has four months to file a claim for probate
- Court usually confirms probate sale

4. Transfer by Intestate Succession (No Will)

- A procedure for transferring the estate of a deceased if there is no will
 - Community property goes entirely to the surviving spouse
 - Separate property is divided:
 - a. equally between surviving spouse and one child
 - b. one-third to surviving spouse and two-thirds to be divided equally among two or more than two children
 - If there are no heirs the property reverts to the State of California through a legal procedure called **Escheat** not automatic (5-yr. period for heirs to make claims)

5. Transfer by Accession (Natural Causes)



- The addition to a piece of land through forces of nature (natural growth), addition of fixtures or improvements made to the property in error
- **Accretion** - moving water adding land to a parcel' these deposits are called **alluvium**
- **Avulsion** - real property being lost because land is torn away by the action of moving water
- **Encroachment** - when improvements and permanent fixtures are placed on property that does not legally belong to the person who places them

6. Transfer by Occupancy



a. Abandonment

- is the relinquishing of a right or interest with the intention of never again reclaiming it

6. Transfer by Occupancy (cont'd)

■ b. Adverse Possession

- acquiring title to someone else's property through continuous and notorious occupancy under a claim of title
 1. Claimant must pay all taxes for **five years**
 2. Must use property **openly and notoriously**
 3. Must possess it **continuously** for **five years**
 4. Must have some reasonable **claim of title**
 - a. simple possession by others
 - b. defective written instrument (usually deeds)
 5. Must possess the property **hostile to the legal owner**

6. Transfer by Occupancy (cont'd)



■ c. Prescription

- an easement, or the right to use another's land, which can be obtained through 5 years of continuous use
 - a. unlike "adverse possession," "prescription" is the "use" of a property, NOT the transfer of title
 - b. owner continues to pay all taxes

7. Transfer by Dedication

- Dedication is the gift (appropriation) of land, by its owner, for some public use (usually to a city or county)
- Can be voluntary or mandatory (by statute)

III. TITLE (Forms of Ownership)

A. Title

- Title is the right to ownership of land and the evidence of that ownership
- There are 6 distinct ways to hold title

1. Severalty

Severalty (Sole Ownership) – is the sole and separate ownership of property by *one individual* (can be married and hold separate property) or a corporation (seen by law as a single “legal person” distinct from the shareholders)

2. Tenancy in Common – (Unity of Possession)

- Undivided ownership by two or more persons together:
 1. Tenants may hold unequal interests
 2. Each has a right to possess or occupy the property (unity of possession)
 3. Each may will or transfer their interest separately
 4. Each shares proportionately in the expenses and profits of the property
 5. Disputes among owners are settled by a **partition action** where the court orders the sale of the property and divides the assets

3. Joint Tenancy (Right of Survivorship)

- Two or more persons have identical interests in the whole property with the same right of possession and the right of survivorship
- All the owners have four things in common (“T-TIP”):
 - a. **Title** - all are granted title by the same instrument
 - b. **Time** - all obtain title at the same time
 - c. **Interest** - all own equal shares
 - d. **Possession** - all have equal right to use
- A deceased owner's interest is divided among the surviving owners.
 - a. It may not be willed
 - b. There is no need for **probate**, transfer is automatic, requiring only a death certificate
- **Corporations** cannot enter in joint tenancies; they can live forever

4. Tenancy in Partnership

- Two or more persons who are co-owners of a business
- Each partner has an equal right of **possession**
- When a partner dies, his interest passes to his heirs (who are generally bought out by surviving partners)
- **GENERAL PARTNERSHIP** – is where the partners share all profits and losses and share management responsibility
- **LIMITED PARTNERSHIP** – is one consisting of one or more general partners and limited partners; losses are limited to the amount of each partner's investment (often used as tax shelters)

5. Community Property

- All property acquired by a married couple during marriage is community property. All contracts should be signed by both **husband** and **wife**

- Any property obtained by either husband or wife **prior** to marriage may remain as separate property; this includes property obtained:
 - a. before marriage
 - b. during marriage by gift or inheritance
 - c. during marriage (personal furnishings and clothes)
 - d. **IMPORTANT** proceeds (rent, profit) from these properties cannot be commingled or they become community property

5. Community Property (cont.)

- Surviving spouse inherits property unless willed to an heir
- Spouse and heirs would hold property as tenants in common
- Either spouse may buy and sell community property
- Spouse has one year after deed is recorded to void the sale of community property if they **did not sign the deed**
- Community property is liable for debts, liens and contracts made during marriage

6. Community Property with Right of Survivorship

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- Transfers ownership to the spouse at death, with income tax benefits
- No capital gains tax if spouse sells property
- Stepped up basis for 100% of the property
- Surviving spouse may use affidavit of death of spouse to satisfy title company underwriting requirements to convey or encumber title
- Probate not necessary



IV. RECORDING AND ACKNOWLEDGMENT

A. Recording

- The legal process of making an instrument an official part of the records of a county
- Recording provides **constructive notice** of a transaction; it is assumed to be **public knowledge**, as opposed to **actual notice**, which are facts known only to the individual
- Documents that have to be recorded to be valid:
 - a. Mechanic's Liens
 - b. Declaration of Homestead

B. Priority of Recording

- Protects a buyer against subsequent claims against the property
 - **“The first in time is the first in right”**

- Four exceptions to priorities of recording:
 1. government liens and special assessments
 2. actual notice of another person's prior rights
 3. mechanic's liens
 4. agreements to the contrary

C. Acknowledgment

- Refers to a signed or verbal statement by the named person that he has signed that document of his own free will
- A deed does NOT have to be acknowledged to be valid, but must be acknowledged to be recorded

C. Acknowledgment

- Verification – oath or affirmation made before a notary that content of an instrument is true
- Affirmation – legally binding declaration made by a person whose religious beliefs prohibit taking of an oath
- Affidavit – written statement of circumstances, submitted under verification

Notary Public

- Is authorized by the Secretary of State to witness acknowledgments; a notary is not the acknowledgement – it is a witnessing of one

- Seal must contain:
 - The word “Notary Public”
 - The name of the County
 - The name of the Notary
 - The state seal
 - The expiration date

- Recording in the county where a property is located

D. Do Not Give Legal Advice

- A real estate salesperson or broker may not give legal advice, as the law is a highly complex and specialized profession

“A man who is his own lawyer has
a fool for a client”

“A real estate principal who seeks or uses his
agent’s legal advice is a fool”

HOMWORK

- Read Chapter 3
- Study for Quiz
- Continue reading your supplemental text and be prepared to give oral book report

Chapter 2 – Summary

- Estate – freehold, less than freehold
- Fee Simple – precedent or subsequent
- Life estate – estate in reversion, estate in remainder
- Lease/rental agreement is less-than-freehold
- Estate for years, from period-to-period, at will, at sufferance
- Property is sold/transferred by:
 - Deed
 - Will
 - Probate
 - Intestate succession
 - Accession
 - Occupancy
 - Dedication

Chapter 2 – Summary (cont.)

- Grant deeds
- Methods of holding title
 - Severalty
 - Tenants in common
 - Joint tenancy – T-TIP
 - Tenancy in partnership
 - Community property – with survivorship
- Deeds must be acknowledged to be recorded