

### Outline

Conveyance	
I. Valid Conveyance (Any Interest)	Document + Delivery
A. Valid Document	(Deed, Note, etc...)
	Statute of Frauds
	Execution
B. Delivery	Intent - to make a present transfer
II. Interest	
Interest in Land	
A. Interest Held (By Grantor)	
B. Interest Conveyed (To Grantee)	
III. Recording Acts (Other statutes, if given)	Q: Who is protected?
A. Notice	
B. Race	
C. Race-Notice	

### Items to Remember

Adverse Possession	
Contract Law	Statute of Frauds
	Implied promises with every land sale
	a. Marketable Title
	b. Chain of Title
	Warranties
Conveyance	Time
	Delivery
	Deeds (Legal transfer doc w/sigs)

### Items to Remember (cont)

Title (Concept/Abstract - Right to Use/Own)	
Closing	
Recording Acts	
Bona Fide Purchaser for Value	
Mortgages	

### Adverse Possession

Three Elements	Physical, Mental, Time
Physical Element (PE): Exclusive	(depending on the customs of the land)
PE: Actually, Open and Notorious	(visible)
PE: Continuous and Exclusively	(Can use tacking approach)
Mental Element (ME): Hostile Intent	Taking from the true owner
ME: Color of Title	(Faulty paperwork - should convey title but does not)
Time Element (TE): For a period of time set by the statute of limitations	20+ years in most
TE: Tacking allowed	APs passing bad title
CA ONLY: Pay taxes	CA must pay property taxes in addition to possession
AP barred if True Owner disabled	

### Chain of Title

Chain of Title	Historic Record of Ownership and transfers
1. Wild Deed	Improperly Recorded Deed (no recording)
2. Estoppel by Deed	Buyer buys from Seller but seller doesn't own. When seller acquires they are prevented from denying sale
3. Shelter Rule	Buyer, not a BFP, can be protected by a recording system if Seller was a BFP

### Land Sale Contracts

Problems In Land Sale Contract	X---Closing---Y
Pre Close	X----Closing
Post Close	Closing----Y
Statute of Frauds	Everything must be in writing
<i>Equitable Conversion (Pre)</i>	<i>Bifurcation of Title</i>
Equitable Title	Created at X - Transfer to Buyer
Legal Title	Created at X - Transfer to Seller
<i>Date of Closing</i>	<i>Must provide marketable title</i>
Marketable Title	Reasonably free from defects
<i>Merger Doctrine</i>	Land Sale Contract merges into Deed @ Closing



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Not published yet.

Last updated 18th April, 2022.

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### Covenants of Title / Warranties

Deed Types	Quit Claim - As is
	Warranty Deed (General Warranty)
	Special Warranty Deed (Created by Statute)
<b>PRESENT Covenants of Title (General)</b>	Seisin - Promise grantor owns property to give.
	Right to Convey - Promise they can give property
	No Encumbrances - Promise there are no unknown encumbrances
<b>FUTURE Covenants of Title (General)</b>	Quiet Enjoyment - No 3rd party will interfere
	Warranty - No other parties other than grantor/ee
	Further Assurances - Promise from Grantor to protect titles
<b>SPECIAL WARRANTY</b>	Protect only from Grantor, not before
	Execution: Written as per SoF
	Granting Clause
	i. Delivery
<b>CLOSING</b>	Buyer Pays, Seller delivers Deed, Contract Done, Deed now Effective

### Remedies After Closing

Traditional Rule	Caveat Emptor
Modern Approach	Implied Warranties (Fitness, Quality, Disclaimer)
	Duty of Disclosure
	Tortious (Duty, breach, causation, and damages)

### Covenants and Equitable Servitude

<b>Real Covenant (Monetary)</b>	Touch and Concern
	Intent
	Notice (Servient Side Only)
	Privity (Horizontal & Vertical)
<i>Horizontal Privity</i>	Mortgagor / Mortgagee
<i>Vertical Privity</i>	Transfer of Ownership
	<i>Servient Side</i> - ALL Must transfer with land
	Leases and others don't establish privity
	<i>Dominant Side</i> - Any transfer of Interest
<i>*Equitable Servitude (Non Monetary)</i>	Touch and Concern
	Intent
	Notice
	NO PRIVACY NEEDED

### Mortgages and Security Devices

Land Security Devices	Mortgage - Enforceable Interest in Land
	Note - Promissory note / personal obligation of debtor
Deed of Trust	Trust relationship between debtor/lendor
Deed Absolute	Transfer of deed to lender

### Deed

<b>Valid Deed</b>	Written Document
	Contents
<b>Needed for Deed (Contents)</b>	Signature of Grantor
	Words Indicating Intent to convey
	Identification of Grantor & ee
	Adequate description of land

### Deed Delivery and Acceptance (Conveyance)

<b>Delivery</b>	Delivery is a state of Mind
	Intent to transfer from grantor to ee
<b>Delivery Types</b>	Grantor gives to Grantee
	Grantor retains deed
	Grantor gives to 3rd party (Escrow)
<i>Death Escrow</i>	Majority will uphold
<b>Acceptance</b>	General = Acceptance is Presumed



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### Deed Delivery and Acceptance (Conveyance) (cont)

Grantee can refuse delivery

### Recording Acts

**Bona Fide Purchaser (PFB)** Pay value for property

**Race Statute** First person to record wins (No BFP Requirement)

**Notice Statute** Subsequent BFP will prevail

**Race-Notice** Subsequent BFP will prevail over previous grantees if BFP records first

**NOTICE DEFINITION** Actual and Constructive Notice

**ACTUAL** - second buyer knew about sale to first buyer

**CONSTRUCTIVE** - Someone is considered to know if they didn't actually know.

**Constructive Notice** Inquiry Notice - 2nd didn't know sale of the 1st but could have reasonably discovered

Record - 2nd buyer would have seen it recorded before the second

### Creditor Remedies

**Options** In personam = Personal Suit

In rem = Property Suit

**Foreclosure Process** Proceeds of Sale

### Creditor Remedies (cont)

Cost of Sale

Distribution to Mortgagee

*Deficiency Judgement if not enough money*

### Debtor Remedies

**Redemption (2 Types)** Equitable Right of Redemption (Pay off debt)

Statutory Right (Given time after foreclosure to pay)

**Transfer of Mortgage Property** Mortgage Runs with Land (Unless sold to BFP)

Personal Liability (Suit is in personam)

### Recording Systems

**Tract Index** Parcel Index (Paged for Parcels)

**Grantor-Grantee Index** Chronological listing of each transaction in different Grantor / Grantee Books

### Land Use (Easements, Profits, Licenses)

**Interest in Land** Right to use someone's else land for specific purpose

**Use of Easement** Express Language

Reasonable Use

**Easement** Most Common  
Non-possessory INTEREST that grants holder use of another's land

### Land Use (Easements, Profits, Licenses) (cont)

**Servient Estate** Property owner were easement exists

**Dominant Estate** Land that benefits from easement

**Easement Appurtenant** Landlocked Land needs access across another

*Always a servient estate*

*Always a dominant estate*

**Appurtenant Transfer** Appurtenant - Travels with dominant estate

**Easement in Gross** Benefited an entity (Power Company)

*Always a servient*

*Never a dominant*

**In Gross Transfer** Will only change if owner assigns

**Profits** Non-possessory INTERESTS that allows holder to remove something from another's land

e.g. - take water from spring

*Must enter into agreement*

**License** Special permission to do something on or with another's property

e.g. - Sporting event, Movies, Museum, enter land for specific purpose

General Rule - FREELY REVOCABLE



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### Creating Easements, Profits, Licenses

#### Easement Creation

Expressly Writing sufficient for Statute of Frauds

Impliedly (quasi-easement) Implied by prior use (Applied Grant, Applied Reservation)

Common Ownership From Original Owner

Necessity

Necessity Common Ownership

Necessity

Prescription Adverse Possession on Easement - Continual Use

Profits Expressly

Prescription

License Orally

Expressly

### Covenants and Equitable Servitude

Termination Merger of Ownership

Written Release

Abandonment

Estoppel

Abandonment

Agreement

Changed Circumstances

Implied Reciprocal Servitude Common Scheme or plan for development

Current Owner of the parcel where restriction is to be implied took notice



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