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 areprevente 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
Equitable Conversion (Pre)	***Bifurcation of Title***
Equitable Title	Created at X - Transfer to Buyer
Legal Title	Created at X - Transfer to Seller
Date of Closing	***Must provide marketable title***
Marketable Title	Reasonably free from defects
Merger Doctrine	Land Sale Contract merges into Deed @ Closing

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Covenants of Title / Warranties

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

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

Deed

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

Deed Delivery and Acceptance (Conveyance)

Delivery	Delivery is a state of Mind
	Intent to transfer from grantor to ee
Delivery Types	Grantor gives to Grantee
	Grantor retains deed
	Grantor gives to 3rd party (Escrow)
Death Escrow	Majority will uphold
Acceptance	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 persmission 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 parel where restriction is to be implied took notice

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