

| 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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| Covenants of Title / Warranties | | Remedies After Closing | | Mortgages and Security Devices | |
|---|---|--|--|---|--|
| Deed Types | Quit Claim - As is | Traditional Rule | Caveat Emptor | Land Security Devices | Mortgage - Enforceable Interest in Land |
| | Warranty Deed (General Warranty) | Modern Approach | Implied Warranties (Fitness, Quality, Disclaimer) | | Note - Promissory note / personal obligation of debtor |
| | Special Warranty Deed (Created by Statute) | | Duty of Disclosure | Deed of Trust | Trust relationship between debtor/lendor |
| PRESENT Covenants of Title (General) | Seisin - Promise grantor owns property to give. | | Tortious (Duty, breach, causation, and damages) | Deed Absolute | Transfer of deed to lendor |
| | Right to Convey - Promise they can give property | Covenants and Equitable Servitude | | | |
| | No Encumbrances - Promise there are no unknown encumbrances | Real Covenant (Monetary) | Touch and Concern | Deed | |
| FUTURE Covenants of Title (General) | Quiet Enjoyment - No 3rd party will interfere | | Intent | Valid Deed | Written Document |
| | Warranty - No other parties other than grantor/ee | | Notice (Servient Side Only) | | Contents |
| | Further Assurances - Promise from Grantor to protect titles | <i>Horizontal Privity</i> | Privity (Horizontal & Vertical) | Needed for Deed (Contents) | Signature of Grantor |
| SPECIAL WARRANTY | Protect only from Grantor, not before | <i>Vertical Privity</i> | Mortgagor / Mortgagee | | Words Indicating Intent to convey |
| | Execution: Written as per SoF | | Transfer of Ownership | | Identification of Grantor & ee |
| | Granting Clause | | <i>Servient Side</i> - ALL Must transfer with land | | Adequate description of land |
| | i. Delivery | | Leases and others don't establish privity | Deed Delivery and Acceptance (Conveyance) | |
| CLOSING | Buyer Pays, Seller delivers Deed, Contract Done, Deed now Effective | <i>*Equitable Servitude (Non Monetary)</i> | <i>Dominant Side</i> - Any transfer of Interest | Delivery | Delivery is a state of Mind |
| | | | Touch and Concern | | Intent to transfer from grantor to ee |
| | | | Intent | Delivery Types | Grantor gives to Grantee |
| | | | Notice | | Grantor retains deed |
| | | | NO PRIVITY NEEDED | | Grantor gives to 3rd party (Escrow) |
| | | | | <i>Death Escrow</i> | 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 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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