

Unit 6: Transfer of Title

Transfer of title is an aspect of a real estate sales transaction generally handled by lawyers and title companies. Nonetheless, a real estate professional who is aware of the fundamentals of deeds and title issues will be able to alert consumers to the need for legal advice to avoid potential title problems.



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Learning Objectives

- Describe the fundamental concepts of *title* as it relates to the ownership of land, and the processes and instruments used to apply these concepts.
- Describe the circumstances and conditions which may provide for the involuntary transfer of title.
- Explain testate, intestate, wills, and the probate process.

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Title Concepts

Voluntary Alienation

- A **grantor** conveys property *to* a **grantee**.
- A **grantee** receives property *from* a **grantor**.
- A **deed** is the instrument that conveys property from grantor to grantee.

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Requirements for a Valid Deed

- Grantor
- Grantee
- Consideration
- Granting clause
- Habendum clause (cont.)

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Requirements for a Valid Deed (cont.)

- Legal description of real estate
- Exceptions and reservations, if any
- Signature of grantor
- Acknowledgment
- Delivery and acceptance

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Types of Deeds

- General warranty deed—provides greatest protection to buyer
- Special warranty deed—warrants that grantor received title and did not encumber the property
- Bargain and sale deed—no express warranties, but implies that grantor holds title
- Quitclaim deed—conveys only whatever interest grantor may have when deed delivered (cont.)

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Types of Deeds (cont.)

- Deed of trust—*trustor* conveys legal title to a *trustee* for the benefit of a *beneficiary*
- Reconveyance deed—used by trustee to return title to trustor
- Trustee's deed—used by trustee to convey title to anyone other than trustor
- Deed executed pursuant to a court order

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Transfer Tax Stamps

- May require *transfer declaration form*—also called *transfer statement* or *affidavit of real property value*
- Exemptions
 - Gifts
 - Deeds not in connection with a sale
 - Conveyances to, from, or between governments bodies
 - Deeds by charitable, religious, or educational institutions
 - Deeds securing debts or releasing property as security for debt
 - Partitions
 - Tax deeds
 - Certain deeds of corporations

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Involuntary Alienation—Usually by Operation of Law

- Condemnation allowed by state's power of eminent domain
- Foreclosure of a mortgage loan
- Sale to satisfy delinquent tax liens
- Transfer on death of owner by law of intestate succession or, if no heirs found, to state by escheat
- Adverse possession

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Adverse possession requires that the use be:

- Open—obvious to anyone
- Notorious—known to others
- Continuous—uninterrupted
- Hostile—without true owner's consent
- Adverse—against the true owner's right of possession

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Conveyance of a Decedent's Property

- By Will, when a person dies *testate*
- According to the state's law of descent and distribution, when a person dies *intestate*
- Probate takes place in the county in which the decedent last resided, and in any other county in which the decedent owned real estate