Transfer of Real Property

LEARNING OBJECTIVES

1. Describe the means by which title to real estate is transferred.
2. Explain the provisions normally contained in a deed.
3. Summarize the steps taken to transfer title safely and effectively to real property after a deed is signed.

PREVIEW CASE

Browning owned and lived on about 12.5 acres of land. A creditor obtained a judgment against Browning and sought execution against his property. The county sheriff held a sale, but failed to include an accurate property description in the notice of sale or post a notice of sale on the courthouse door as required by statute. Palmer purchased the property for $230. The sheriff delivered Palmer a deed reflecting the sale, but Palmer never demanded rent or removal from Browning. Browning continued to pay the mortgage and taxes. After thirteen months, Browning sued to set aside the sheriff’s sale, and Palmer countersued for ejectment. Why does the law require the posting of notice? Who behaved like the actual owner of the property after the sheriff’s sale?

A sale constitutes the most common reason for transferring title to real estate. In the ordinary case, the parties sign a contract of sale, but the title is not transferred until the seller delivers a deed to the buyer. A **deed** is a writing, signed by the owner, conveying title to real property. One may, by means of a lease, transfer a leasehold title giving the rights to the use and possession of land for a limited period. The provisions of the deed or the lease determine the extent of the interest transferred.

Even when the owner makes a gift of real property, the transfer must be evidenced by a deed. As soon as the owner executes and delivers a deed, title vests fully in the donee. Acceptance by the donee is presumed.
Deeds

The law sets forth the form that the deed must have, and this form must be observed. The parties to the deed include the grantor, or original owner, and the grantee, or recipient. The two principal types of deeds are:

1. Quitclaim deeds
2. Warranty deeds

Quitclaim Deeds

A quitclaim deed is just what the name implies. The grantor gives up whatever interest he or she may have in the real property. However, the grantor makes no warranty that he or she has any claim to the property.

Facts: The city of Branson, Missouri, vacated Chestnut Street for the benefit of adjacent property owners. Josephine Madry owned property on both sides of the street. Without mentioning the vacated portion of the street, she deeded Lot 1, on the west side, to Belinda Ruddick’s predecessor in title. She later deeded her lots on the east side to Security Bank and Trust Co. That deed purported to convey all “that part of Chestnut Street... heretofore vacated” that was west of the lots. The bank conveyed the lots and the east half of Chestnut Street adjacent to them to James and Mabel Bryan. Ten years later, the bank quitclaimed the west half of the vacated street to the Bryans. Ruddick sued, claiming she owned the west half of the vacated street. The Bryans claimed Madry’s conveyance to Ruddick’s predecessor in title did not convey the west half of Chestnut Street, and the quitclaim deed from the bank conveyed that half to them.

Outcome: Because the street was vacated for the benefit of the adjacent property owners, Madry’s conveyance of Lot 1 also conveyed the adjoining (west) half of Chestnut Street. The bank’s quitclaim deed to the Bryans conveyed nothing.

—Ruddick v. Bryan, 989 S.W.2d 202 (Mo. App.)

In the absence of a statute or an agreement between the parties requiring a warranty deed, a quitclaim deed may be used in making all conveyances of real property. A quitclaim deed transfers the grantor’s full and complete interest as effectively as a warranty deed. When buying real property, however, one does not always want to buy merely the interest that the grantor has. A buyer wants to buy a perfect and complete interest so that the title cannot be questioned by anyone. A quitclaim deed conveys only the interest of the grantor and no more. It contains no warranty that the grantor has good title. In most real estate transactions, therefore, a quitclaim deed cannot be used because the contract will specify that a warranty deed must be delivered.

Warranty Deed

A warranty deed not only conveys the grantor’s interest in the real property but in addition makes certain warranties or guarantees. The exact nature of the
warranty or guarantee depends on whether the deed is a general warranty or a special warranty deed. A **general warranty deed** (see Illustration 42–1) not only warrants that the grantor has good title to the real property but further warrants that the grantee “shall have quiet and peaceable possession, free from all encumbrances, and that the grantor will defend the grantee against all claims and demands from whomsoever made.” This warranty, then, warrants that all prior grantors had good title and that no defects exist in any prior grantor’s title. The grantee does not have to assume any risks as the new owner of the property.

**General Warranty Deed**
Warrants good title free from all claims

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**ILLUSTRATION 42–1 General Warranty Deed**

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\[\text{WARRANTY DEED}\\ \text{Know All Men by These Presents:}\ \\
\text{That Donald C. Coson and Millicent M. Coson, his wife}\ \\
of Butler County, Ohio\ \\
in consideration of the sum of Forty-five Thousand Dollars ($45,000)\ 
to them in hand paid by Eugene F. Acknor, the grantee, the receipt of\ 
which is hereby acknowledged,}\ 
\text{do hereby Grant, Bargain, Sell and Convey}\ 
to the said\ 
Eugene F. Acknor\ 
\text{he is heirs}\ 
and assigns forever, the following described Real Estate situated in the City\ 
of Hamilton\ 
in the County of Butler and State of Ohio\ 
Lot No. 10, Section 14, Range 62, Randall Subdivision, being a portion of\ 
the estate of Horace E. Cresswell and Alice E. Cresswell and all the Estate,\ 
Right, Title and Interest of the said grantors in and to said premises. To have and to\ 
hold the same, with all the privileges and appurtenances thereunto belonging, to said grantee, his\ 
heirs and assigns forever. And the Said Donald C. Coson and Millicent M. Coson\ 
do hereby Covenant and Warrant that the said so conveyed is Clear, Free\ 
and Undisputed, and that they will Defend the same against all lawful claims of\ 
all persons whomsoever.}\ 
\text{In Witness Whereof, the said grantors have hereunto set their hands, this first}\ 
\text{day of December in the year of Our Lord one thousand nine hundred and—}\ 
\text{Signed and acknowledged in presence of us:}\ 

\[\text{Michael R. Wilson}\ 
\text{Antonia C. Patricelle}\ 
\text{Donald C. Coson}\ 
\text{Millicent M. Coson}\ 

\[\text{State of Ohio, Butler County, }\ 
\text{On this first day of December A.D. 20 , before me, a Notary Public}\ 
in and for said County, personally came Donald C. Coson and Millicent M. Coson}\ 
\text{the grantor in the foregoing deed, and}\ 
\text{acknowledged the signing thereof to be their voluntary act and deed.}\ 
\text{Witness my official signature and seal on the day last mentioned.}\ 
Sarah M. Evans\ 
Sarah M. Evans\ 
Notary Public, State of Ohio\ 
My commission expires June 1, 20-\]
A special warranty deed warrants that the grantor has the right to sell the real property. The grantor makes no warranties of the genuineness of any prior grantor’s title. Trustees and sheriffs who sell land at a foreclosure sale use this type of deed. Executors and administrators also use such a deed. These officials should not warrant anything other than that they have the legal right to sell whatever interest the owner has.

When a builder sells a new house, most courts now impose an implied warranty of fitness not found in the deed. The warranty amounts to a promise that the builder designed and constructed the house in a workmanlike manner, suitable for habitation by the buyer.

### Provisions in a Deed

Unless statutes provide otherwise, a deed usually has the following provisions:

1. **Parties**
2. **Consideration**
3. **Covenants**
4. **Description**
5. **Signature**
6. **Acknowledgment**

### Parties

The grantor and the grantee must be identified, usually by name, in the deed, and the grantee must be a living or legal person. If the grantor is married, the grantor’s name and that of a spouse should be written in the deed. If the grantor is unmarried, the word *single* or the phrase “a single person” should be used to indicate that status.

### Consideration

The amount paid to the grantor for the property is the consideration. The payment may be in money or in money’s worth. A deed usually includes a statement of the consideration, although the amount specified does not need to be the actual price paid. Some localities have a practice of indicating a nominal amount, such as one dollar, although a much larger sum was actually paid. The parties state a nominal amount as the consideration to keep the sale price from being a matter of public record.

### Covenants

A covenant is a promise contained in a deed. There may be as many covenants as the grantor and the grantee wish to include. Affirmative covenants obligate the grantee to do something, such as agreeing to maintain a driveway used in common with adjoining property. In negative covenants, the grantee agrees to refrain from doing something. Such covenants frequently appear in deeds for urban residential developments. The more common ones prohibit the grantee from using the property for business purposes and set forth the types of homes that can or cannot be built on the property. Most covenants are said to “run with the land,” which means they basically attach to the property and thereby bind all future owners.
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**COURT CASE**

**Facts:** The Pine Haven development lots were subject to covenants and restrictions running with the land. They included, “[n]o mobile home . . . shall be used as a residence at any time.” Jerry and Janet White agreed to purchase a Pine Haven lot contingent on allowing them to place a manufactured home on the lot. The developer agreed. The Whites closed on the lot and began moving a home onto the lot. Marvin J. Halls, a resident of Pine Haven, sued claiming that a manufactured home fell within the “mobile home” restriction. At the time that the Pine Haven covenants were drafted, there was no definition of “manufactured home” in state law. When such a definition was added, it was the same as the definition of “mobile home.”

**Outcome:** The court stated that because “manufactured home” had replaced the term “mobile home,” the covenant allowed Halls to prevent having a manufactured home in the development.

—*Halls v. White*, 715 N.W.2d 577 (S.D.)

**Description**

The property to be conveyed must be correctly described. Unless the law provides otherwise, any description that will clearly identify the property suffices. Ordinarily, however, the description used in the deed by which the present owner acquired the title should be used if correct. The description may be by lots and blocks if the property is in a city; or it may be by metes and bounds or section, range, and township if the property is in a rural area. If the description is indefinite, the grantor retains title.

**COURT CASE**

**Facts:** Two brothers, Bernard and Frederick Rice, owned five pieces of property as tenants in common. As the years passed, the brothers had many discussions about how to divide up the properties between their families for estate planning purposes. At one such meeting, the Rices signed four blank warranty deeds. There was no information on any of the deeds concerning the date of execution, the identity and address of the grantor, the identity and address of the grantee, the consideration paid, or a description of the property. Frederick later filled in this information on two of the deeds and filed them in the Recorder’s office. Bernard sued for cancellation of the deeds.

**Outcome:** The court determined that the blank deeds had no legal effect. Further, when Frederick later filled in the missing information, there were no new grantor signatures and no new acknowledgements. The deeds were void.

—*Rice v. Rice*, 499 F.Supp.2d 1245 (M.D. Fla.)

**Signature**

The grantor should sign the deed in the place provided for the signature. A married grantor must have the spouse also sign for the purpose of giving up the
statutory right of the spouse. In some states, a witness or witnesses must attest the signatures. If the grantor cannot sign the deed, an agent, the grantor with assistance, or the grantor making a mark, may execute it as:

Maria Smith  Witness of the mark of  Henry  His  X  Finn
Henry Finn  Mark

Acknowledgment

The statutes normally require that the deed be formally acknowledged before a notary public or other officer authorized to take acknowledgments. The acknowledgment allows the deed to be recorded. After a deed has been recorded, it may be used as evidence in a court without further proof of its authenticity. Recording does not make a deed valid, but it helps give security of the title to the grantee.

The acknowledgment is a declaration made by the properly authorized officer, in the form provided for that purpose, that the grantor has acknowledged signing the instrument as a free act and deed. In some states, the grantor also must understand the nature and effect of the deed or be personally known to the acknowledging officer. The officer attests to these facts and affixes an official seal. The certificate provides evidence of these actions.

Delivery

A deed has no effect on the transfer of an interest in real property until it has been delivered. Delivery consists of the grantor intending to give up title, possession, and control over the property. So long as the grantor maintains control over the deed and reserves the right to demand its return before delivery of the deed to the grantee, there has been no legal delivery. If the grantor executes a deed and leaves it with an attorney to deliver to the grantee, there has been no delivery until the attorney delivers the deed to the grantee. Because the attorney is the agent of the grantor, the grantor has the right to demand that the agent return the deed.

PREVIEW CASE REVISITED

Facts: Browning owned and lived on about 12.5 acres. A creditor received a judgment against Browning and sought execution against his property. The county sheriff held a sale for the judgment, but failed to include an accurate property description in the notice or post notice of sale on the courthouse door as required by statute. Palmer purchased the property for $230. The sheriff delivered Palmer a deed reflecting the sale, but Palmer never demanded rent or removal from Browning. Browning continued to pay the mortgage and taxes. After thirteen months, Browning sued to set aside the sheriff’s sale, and Palmer countersued for ejectment.

Outcome: The court determined that the procedural irregularities, Palmer’s continuing to allow Browning to reside on the property, pay the mortgage and taxes, along with the extremely low sales price, amounted to a mistake and surprise and justified setting aside the sale. Browning could keep his house.

If the grantor, however, delivers the deed to the grantee’s attorney or agent, then there has been an effective delivery because releasing control constitutes evidence of intent that title pass. Once the grantor makes delivery, title passes.

**Recording**

Statutes in every state require grantees to file their deeds with a public official in the county in which the land lies. Any other instrument affecting title to real property in the county also can be filed. These public records of land transactions give notice of title transfers to all, particularly potential subsequent purchasers.

A deed need not be recorded in order to complete one's title. Title passes on delivery of the deed. Recording the deed protects the grantee against a second sale by the grantor and against any liens that may attach to the property while still recorded in the grantor’s name. Recording also raises the presumption of delivery of the deed.

When the recording official receives a deed for recording, the law ordinarily requires that the deed be stamped with the exact date and time the grantee leaves the deed for recording.

**Abstract of Title**

Before one buys real estate, an abstract of title may be prepared. An abstract company normally does this, but an attorney may also do it. The abstract of title gives a complete history of the real estate. It also shows whether or not there are any unpaid taxes and assessments, outstanding mortgages, unpaid judgments, or other unsatisfied liens of any type against the property. Once an abstracting company makes the abstract, an attorney normally examines the abstract to see if it reveals any flaws in the title.

**Title Insurance**

Some defects in the title to real estate cannot be detected by an abstract. Some of the most common of these defects are forgery of signatures in prior conveyances; claims by adverse possession; incompetency to contract by any prior party; fraud; duress; undue influence; defective wills; loss of real property by accretion; and errors by title examiners, tax officials, surveyors, and many other public officials. The owner of real estate can obtain a title insurance policy that will cover these defects. The policy may expressly exclude any possible defects that the insurance company does not wish to be covered by the policy. The insured pays one premium for coverage as long as the property is owned. The policy does not benefit a subsequent purchaser or a mortgagee.

**QUESTIONS**

1. When is title to real estate transferred?
2. Why is a quitclaim deed not used for all transfers of real property?
3. What is the difference between a general warranty deed and a special warranty deed?
4. What are six necessary elements in a deed?
5. Does a deed always recite the actual consideration paid?
6. What does it mean to say a covenant “runs with the land”?
7. What is an acknowledgment, and why is it necessary?
8. What is the purpose of recording a deed?
9. What is an abstract of title, and what is its significance when transferring real estate?
10. Explain who is benefited by title insurance.

**CASE PROBLEMS**

**LO 3**

1. Goodell was injured while doing carpentry work for Cathell Custom Homes. Rosetti was the developer of the property. For the purpose of securing financing for construction costs, Cathell would execute a deed for a particular lot to Rosetti, which would be held in escrow until the actual sale of the property to the buyer. Goodell sued Rosetti as record owner of the property. Rosetti claimed that as there was no intention actually to transfer ownership of the land, he did not own the property. Was the deed effective to transfer title to Rosetti?

**LO 1**

2. The Fulton County Sheriff conducted a tax sale of certain real property and conveyed the property to a third party. A tax deed subsequently was issued to that party documenting the sale. After the taxes and costs of sale were paid, the excess was deposited with the sheriff's department. Two years after the sale, the delinquent taxpayer executed a quitclaim deed to Georgia Lien Services. The quitclaim deed stated: “The purpose of this quitclaim deed is to give the grantee all the rights, entitlements, and obligations that grantor may have in the property.” Georgia Lien Services applied for the excess funds from the sheriff's department. The sheriff refused. Is Georgia Lien entitled to the money by virtue of the quitclaim deed?

**LO 2**

3. Weaver and J. E. Jordan executed a warranty deed of fifty acres to Daniel and Pearline Dallinga. The deed contained restrictive covenants prohibiting commercial enterprise or enterprise of any kind on the property and was signed by Weaver and Jordan, but not by the Dallingsa. There were several subsequent conveyances of the property until Jeremiah 29:11, Inc., became the owner. None of these conveyances referenced the restrictions of the Jordans’ deed. Jeremiah used the property as a leadership training center for pastors and leaders of nonprofit corporations and as a Boy Scout camp. Ernest Douglas and Leslie Seifert owned adjacent property formerly owned by the Jordans and alleged Jeremiah's use violated the commercial enterprise restriction. Jeremiah alleged it was not limited by the Jordans’ restrictions because they had not signed the original deed and the restrictions were not in subsequent deeds. Did the restrictive covenants apply to Jeremiah?

**LO 3**

4. Although unmarried, Mark Rausch and Michelle Devine lived together and had a daughter, Sydney. Devine cared for Sydney and all household paperwork and bills. Rausch provided their living expenses. Rausch, an attorney with experience in marital property law, asked lawyer friends to draft and acknowledge a quitclaim deed to Devine for his house in Anchorage. His friends recorded the deed, and Rausch apparently never thought about the deed. Devine did not have funds, and Rausch continued to pay the mortgage. Several years later, Devine sued to have Rausch vacate the house. Devine alleged the house was a gift from Rausch.
Rausch asked the court to order that he owned it, alleging the deed was never delivered to Devine. Who owns the house?

5. HCM Restaurant, Inc., quitclaimed lot 434-2 to Bluff Head Corp. and reserved a parking easement for patrons of its marina. At the time, Bluff Head planned to buy lot 434-1, which HCM did not own. The reserved easement stated Bluff Head would determine the precise location of the easement but it would “be located on the premises conveyed herein [Lot 434-2] or Lot 434-1.” Bluff Head never bought lot 434-1. Sakonnet Point Marina Association, Inc., (Sakonnet) acquired the marina from HCM and sued to enforce the easement. Bluff Head alleged that it had the right to select the location of the easement on either lot 434-2 or 434-1, and it selected lot 434-1. The owner of lot 434-1 sought an order that the quitclaim deed could not have created an easement over lot 434-1 because HCM had not owned it. Does Sakonnet have an easement, and, if so, over what property?

6. Lillian Julian and Joseph Corbridge, her brother, owned property as joint tenants. She quitclaimed her interest in the property to Corbridge. Before the deed was recorded, someone without Julian’s knowledge added the name LaRetta Corbridge as a grantee to the deed. LaRetta was Joseph’s wife. After the deed was recorded, LaRetta died. Seven years later, Joseph signed and recorded an affidavit stating that LaRetta was the same person named as grantee in the quitclaim deed. He also executed and recorded a quitclaim deed of the property to Julian and him as joint tenants. Then Joseph died. Carl, Leonard, and Arnold Petersen, LaRetta’s children by a previous marriage, claimed an interest in the property. They alleged that Joseph owned the property after the initial deed from Julian and could and did validly convey part of his interest to LaRetta without Julian’s consent. Did Joseph convey an interest to LaRetta by:
   a. Recording the quitclaim deed?
   b. The combination of the quitclaim deed and the affidavit?
   c. The affidavit alone?

7. Martha Wisdom executed a deed conveying certain real property to her son, Charles Smith. Wisdom put the deed in an envelope and asked Smith to hide the envelope with other papers in a wall heater in Wisdom’s house, which he did. Wisdom had told Smith, she had made a deed of the house to him. At a later time, when at Wisdom’s home, Smith went through the papers and found the deed. After Wisdom died, Smith recorded the deed. Smith’s sister, Mildred Cecil, filed a suit to have the deed set aside based on failure of Wisdom, the grantor, to deliver the deed. Should the court find a valid delivery?