Chapter 5: Deeds and Leases

Deed - written document that transfers title (ownership) to real estate from the grantor to the grantee

Necessary Elements of a Deed
- Designation of the parties
- Consideration given by grantee
- Legal description
- Specific interest conveyed
- Signature of the grantor and witnesses

Additional Elements
- Covenant against encumbrances – a promise from the grantor to the grantee that there are no undisclosed encumbrances on the property that will affect the grantee’s ownership rights
- Covenant of seisin – a promise from the grantor to the grantee that the grantor is the legal owner of the property and has the right to convey it
- Covenant of quiet enjoyment – a promise from the grantor to the grantee that there are no third parties who might try to claim ownership of the property
- Covenant of further assurances – a promise from the grantor to the grantee that the grantor will assist the grantee in defending ownership of the property should the need arise in the future
- Warranty forever – a guarantee from the grantor to the grantee to honor the promises made in the deed forever.

Types of Deeds
- General warranty deed, Figure 5.1 page 95
- Special warranty deed
- Bargain and sale deed
- Quitclaim deed, Figure 5.2, page 97
- Deeds for special uses

Lease – agreement between a property owner and tenant that transfers the rights of use and possession (but not ownership) of the property to the tenant in exchange for rent payments. Leases divide estates in land into two components: a leased fee interest and a leasehold interest.

Requirements of a Properly Prepared Lease
- Names of the lessor and lessee
- Conveyance of the premises
- Description of the premises
- Term or duration of the lease
- Amount of rent and manner of payment
- Duties and obligations of parties
- Signatures of the parties
Classifications of Leases
- **Duration of term**
  - Tenancy for stated period - conveys the property to the tenant for a stated period of time
  - Tenancy from period to period - indefinite duration
  - Tenancy at will - may be terminated by either party at any time
  - Tenancy at sufferance - provides the least protection
- **Type of Use**
  - Ground Lease - lease involving unimproved land
  - Residential lease – lease involving residential property
  - Commercial lease – lease involving commercial property
- **Methods of Payment**
  - Gross lease - landlord pays real estate taxes, utilities, insurance and all operating expenses
  - Net lease - tenant pays the operating expenses
  - Net net lease - tenant pays operating expenses, insurance premiums and real estate taxes
  - Net net net lease - tenant pays operating expenses, insurance premiums and real estate taxes in addition to rent
  - Fixed-rent lease - rent is fixed for the term of the lease
  - Graduated-rent lease - rent is increased by percentage at graduated intervals
  - Reappraisal lease - the level of each rent increase is determined by reappraisal of the property
  - Percentage lease - rent is based on some percentage of sales made on the premises
  - Index lease – rent adjusts periodically to track inflation rate

Other Issues in the Landlord-Tenant Relationship
- **Renewal option** – a provision that specifies whether the tenant has the right to renew the lease at the end of the stated period at a predetermined rental rate
- **Expense stops** – a provision that specifies that the tenant will be charged with operating expenses that exceed a certain amount
- **Assignment and subleasing** – language in the lease agreement that either prohibits or allows tenants to assign or sublease the space to another tenant.
- **Security deposits** – provisions in the lease agreement that require the tenant to post a deposit against possible damages to the premises or default on the lease terms.
- **Improvements** – provisions in the lease agreement that define whether the tenant has rights to modify the premises and who will own the modifications at the end of the leasehold estate.

The Rights and Obligations of Landlord
- **Covenant of quiet enjoyment**
- **Implied warranty of habitability**
- **Maintenance of common areas**
- **Protection against criminal acts**
- **Renewal clause**
- **Negative renewal clause**
- Positive renewal clause

See the Real Estate Today Feature “Jill Rents an Apartment” on pages 103 and 104.

State Statutes Affecting the Landlord-Tenant Relationship
- Each state has enacted laws that regulate the behavior and relationship between landlords and tenants. To view these laws for individual states, visit www.nolo.com on the World Wide Web.