

## Fin 5413: Chapter 1&2

### Legal Considerations

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- Real property law is State law, however, there are many similarities among states
- The secondary markets, especially Freddie Mac and Fannie Mae influences have brought a lot of standardization to mortgage lending



### Real Property

- Defn: Land and items attached to land, that is, the land and the improvements that are attached.
- Question: Is a range real property?



### Legal Description: Survey Based

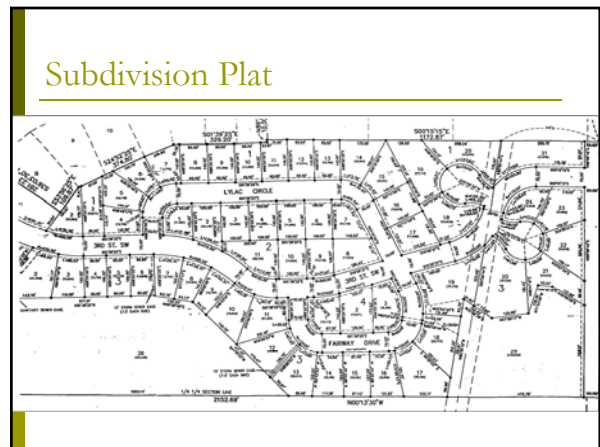
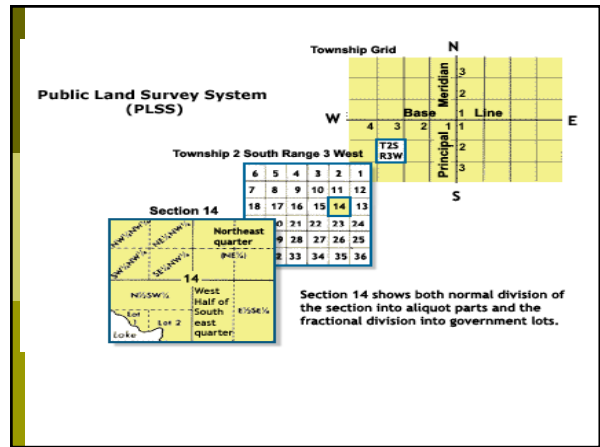
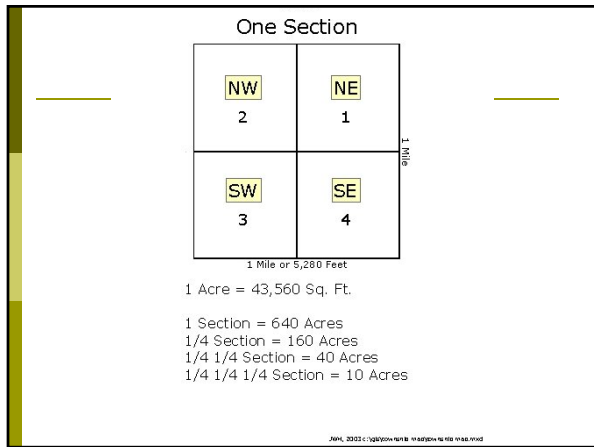
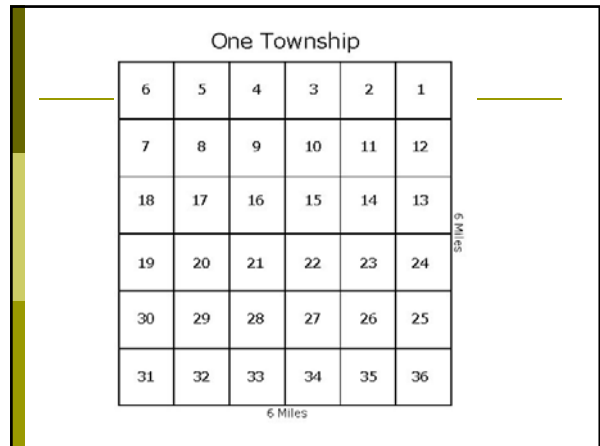
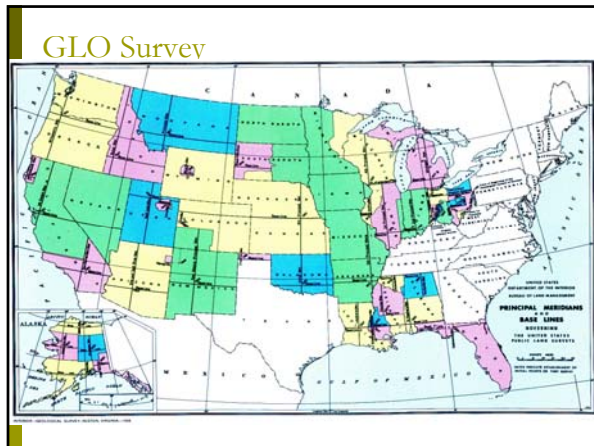


### Metes and Bounds (from Wikipedia)

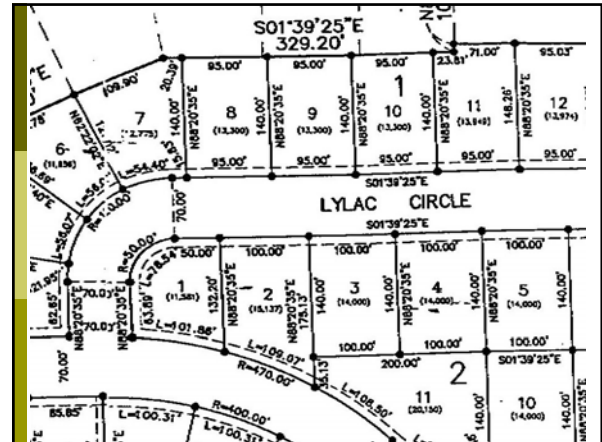
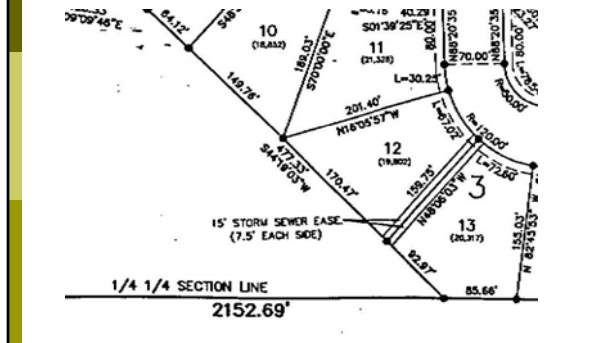
- Metes and bounds** is a system or method of describing land, 'real' property (in contrast to personal property) or [real estate](#). The system has been used in [England](#) for many centuries, and is still used there in the definition of general boundaries. By custom, it was applied in the original [13 colonies](#) that became the [United States](#), and in many other land jurisdictions based on English Common Law.

### Metes and Bounds (from Wikipedia)

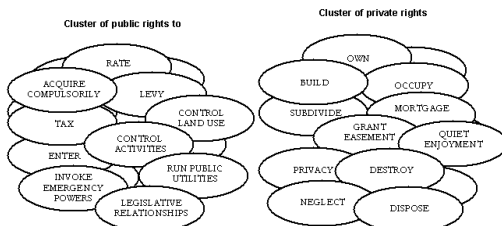
- The term 'metes' refers to a boundary defined by the measurement of each straight run, specified by a distance between the terminal points, and an orientation or direction. A direction may be a simple compass bearing, or a precise orientation determined by accurate survey methods. The term 'bounds' refers to a more general boundary description, such as along a certain watercourse, a stone wall, an adjoining public road way, or an existing building.



## Link to Section Line



## Property Rights



## Property Rights

- Property Rights
  - Property rights may be divided in many ways
  - Ownership is the highest bundle of rights
  - Typical rights are occupation, right to sell, and right to “quiet enjoyment” (Quiet enjoyment is a right to the undisturbed use and enjoyment of real property by a tenant or landowner. )
  - Right to occupation is often sold as a lease

## Non possessory rights

- Easements – utility easements for water, sewer, electric, etc. lines give right to use, but not to possess
- Profits – e.g. the right to remove oil or minerals.
- License – e.g. the right to attend a concert or sporting event
- Security Interests

## Security Interests

- E.g. the interest you grant to the person who holds your mortgage
- A mortgage provides the lender with what is referred to as a “secured interest.” This provides the lender with rights if you fail to comply with the terms of your mortgage
- Mortgage is rooted in French for “dead pledge”

## Forms of Ownership

- ❑ Single ownership such as a person or a corporation
- ❑ Various forms of joint ownership including husband and wife, or partnerships
- ❑ Community Property – housing coops
- ❑ Condominium – a special form of community ownership
  - Each unit has its own mortgage
  - Each unit is individually taxed
  - The interior of each unit is like single ownership

## Non-individual Owners

- ❑ General Partnerships (has the usual disadvantage of partnerships)
- ❑ Limited Partnerships
- ❑ Corporations
- ❑ Trusts
- ❑ REIT (Real Estate Investment Trust) – A legal form of ownership that follows the laws governing REITs to prevent double taxation
- ❑ [http://www.whitestonereit.com/map\\_houston.html](http://www.whitestonereit.com/map_houston.html)

## Concept of Title

- ❑ Title = Ownership (the highest level of rights)
- ❑ Title is an abstract terms. It refers to the bundle of rights that are documented through a chain of title over time

## Private Limits on Title

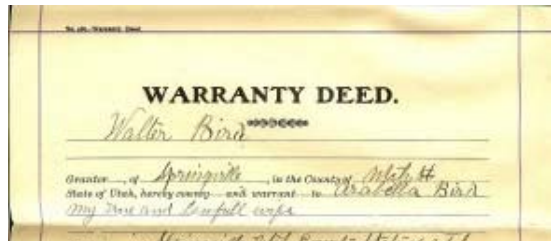
- ❑ Security Interests
- ❑ Leasehold Interests
- ❑ Covenants (i.e. rules in subdivisions or Planned Unit Developments, PUD)
- ❑ Why do we voluntarily limit our ownership rights?

## Public Limits on Title

- ❑ The State has various police powers
  - Power to condemn
  - Power to regulate through zoning
  - Building codes
  - Environmental concerns (e.g. drainage)
  - Property taxation

## Good and Marketable Title

- ❑ Ownership can be traced over time
- ❑ Has no “defects” in title (i.e. questions about ownership)



## The Deed

- A common way to convey title is with a deed
- A valid deed
  - Must be in writing
  - Identify who title is being conveyed to
  - Identify the property (typically by using the "legal" description)
  - Signed by the person making the conveyance

## Deed (continued)

- Also need "consideration", that is something of value such as money
- Delivery – has to be clear intent to deliver

### WARRANTY DEED

- For good consideration, we (I) \_\_\_\_\_ of \_\_\_\_\_ State of \_\_\_\_\_, County of \_\_\_\_\_ hereby bargain, deed and convey to \_\_\_\_\_ of \_\_\_\_\_ County of \_\_\_\_\_, State of \_\_\_\_\_, the following described land in \_\_\_\_\_ county, free and clear with WARRANTY COVENANTS: to wit:

Grantor, for itself and its heirs, hereby covenants with Grantee, its heirs, and assigns, that Grantor is lawfully seized in fee simple of the above-described premises; that it has a good right to convey; that the premises are free from all encumbrances; that Grantor and its heirs, and all persons acquiring any interest in the property granted, through or for Grantor, will, on demand of Grantee, or its heirs or assigns, and at the expense of Grantee, its heirs or assigns, execute and instrument necessary for the further assurance of the title to the premises that may be reasonably required; and that Grantor and its heirs will forever warrant and defend all of the property so granted to Grantee, its heirs, against every person lawfully claiming the same or any part thereof.

Being the same property conveyed to the Grantors by deed of \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_.

WITNESS the hands and seal of said Grantors this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Grantor \_\_\_\_\_

Grantee \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ personally appeared \_\_\_\_\_ personally

**GENERAL WARRANTY DEED**  
(WITH STATUTORY ACKNOWLEDGMENTS)

THIS INSTRUMENT, made on the 2<sup>nd</sup> day of NOVEMBER, A. D. One Thousand Nine Hundred and Seventy-two, by and between Don Garner and Maxie M. Garner, his wife, of Taney County, Missouri, part 12A of the first part, and Bruce C. Garner and Melba A. Garner, his wife, of the county of TANEY, State of MISSOURI, part 12B of the second part, for and in consideration of the sum of FIFTY DOLLARS AND OTHER VALUABLE CONSIDERATION, to them paid by the said parties of the second part, the receipt of which is hereby acknowledged, do hereby bargain, sell, grant, convey, and assign, with all the rights and appurtenances thereto in anywise in anywise appertaining unto the said part 12A, to have and to hold the premises aforesaid, with all and singular the rights, privileges, appurtenances, and immunities thereto in anywise appertaining unto the said part 12A, unto the said parties of the first part, their heirs and assigns forever; the said Don Garner, AND Maxie M. Garner, his wife, do hereby covenant, warrant and defend the title to the said premises unto the said parties of the first part, their heirs and assigns forever, against the lawful claims and demands of all and singular other persons lawfully claiming the same or any part thereof.

IN WITNESS WHEREOF, the said Don Garner, AND Maxie M. Garner, his wife, have hereunto set their hands and seals, this 2<sup>nd</sup> day and year first aforesaid.

## Types of Deeds

- General Warranty Deed
  - The grantor does indeed own the property
  - Has the full right to convey
  - No claims exist on the property except those noted
  - Quiet Enjoyment – means that no person with a superior claim can interfere with the grantees use and possession of the property

## Types of Deeds

- Special Warranty Deed
  - Says that the grantor is conveying all the rights he had when he acquired the property
- Deed Without Warranty
  - Seller asserts ownership but does not warrant the quality of the title
- Quitclaim Deed
  - Grantor quits any claim on the property
  - The most "popular" deed that you will see in public records
  - Often used after divorce and other situations to clear a "cloud" or possible defect in title

## Methods of Title Assurance

- Lawyer Abstract of Title and Opinion
- Title Insurance
  - An insurance company (e.g. Alamo Title) guarantees that the title is good
  - Two kinds of policies used at closing
    - Owners policy – defends the owner against title claim
    - Mortgagee (or lenders) policy – defends the quality of the lien
  - Both paid in full at closing
    - Owners policy commonly paid by seller
    - Mortgagee policy paid by buyer
  - Insures for events that happened in the past

## Title Insurance

Why Title Insurance and not Abstract and Opinion?

1. Definite contract liability to the premium payer
2. Reserves sufficient to meet insured losses
3. Supervision by an agency of the state
4. Protection to the policyholder against financial loss because of any kind of title defect, disclosed or hidden

While an abstract and opinion method may still be used because of cost considerations, in general title insurance is used. As a general rule, lenders will require that a buyer use title insurance.



## Recording Acts

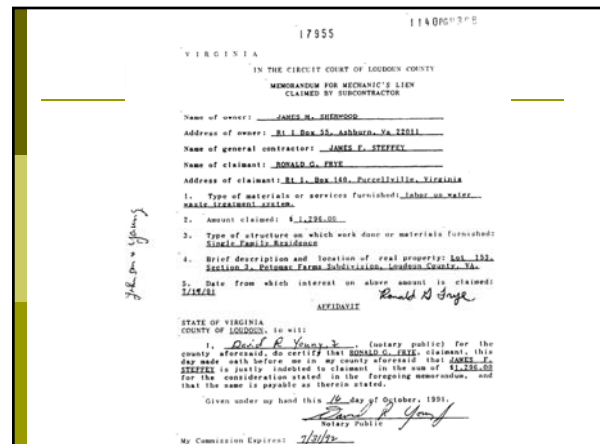
□ Various legal transactions can be recorded with the County

- This is typical for Plat Maps, Zoning, Subdivision Covenants, Deed Restrictions.
  - May record a lease
- Items that are recorded are said to have given "constructive notice." i.e. anybody can find this information if they want

## Mechanics Liens

- A person who does work on a house, or delivers materials to a job site has a mechanics lien on your property. Depending on the State, they may be filed before or after work on your property

□ <http://jordanheights.com/lien/lien-paid.htm>



[Space Above This Line For Recording Data]

State of Texas **DEED OF TRUST** FHA Case No:  
495-5593325-703  
Loan #: 0010847291

THIS DEED OF TRUST ("Security Instrument") is made on May 12th, 2000  
The Grantor is SHARON K EALY-BERGERON, AN UNMARRIED PERSON

("Borrower"). The trustee is First American Title Insurance Company

("Trustee"). The beneficiary is Cendant Mortgage Corporation D/B/A FHA Mortgage Services  
which is organized and existing under the laws of New Jersey  
whose address is 3000 Leadendhall Road Mount Laurel, NJ 08054  
Seventy-Five Thousand Four Hundred Sixty-One Dollars and zero Cents  
("Lender"). Borrower owes Lender the principal sum of  
Dollars (U.S. \$75,461.00 ).  
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on June 1st, 2030  
This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the  
Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums,  
with interest, advanced under paragraph 7 to protect the security of this Security Instrument, and (c) the performance

#8418180175

FHA Texas Deed of Trust - 4/96

## Essential Elements of the Mortgage Note

- Amount borrowed
- Rate of interest
- Payment amount, due date, and term
- Maturity date
- Reference to the mortgage
- Default
- Penalties for late payment
- Both the Note and Mortgage or Deed of Trust are often "Uniform" instruments of FNMA/FHLMC

## The Mortgage

- A security interest on a property
- Typically executed along with a promissory note that obligates the borrower to repay the loan
- If the borrower fails to honor the note, the security interest is pursued

## Deed of Trust

- Like a mortgage, but is a three party instrument with lender, borrower, and trustee
- In theory, the trustee holds the Trust Deed so it may be easier for the lender to pursue his security interest in the case of default

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FHA Texas Deed of Trust - 4/96

FHA MORTGAGE FORMS - 800821-7001  
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## Important Mortgage Clauses



- Requires borrower to pay all charges and liens (note payments, property taxes, etc.)
- May require servicer to collect reserves for taxes and insurance
- Must carry hazard insurance, and possibly flood insurance
- Preserve the property (don't allow wasting of the property)

## Important Mortgage Clauses

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- Transfer of Property
  - Often has a due on sale clause
    - "Acceleration" (requires the balance to be paid of immediately)
- Borrowers right to reinstate
  - If the borrower gets behind on payments, they are allowed to catch up prior to foreclosure
- Lender in Possession
  - Terms under which the lender can take over the property

## Important Mortgage Clauses

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- Release
  - The lender will release you from the mortgage when you repay the note
- Prepayment (rules of prepayment stated)
  - Typically no prepayment penalty for Fannie Mae and Freddie Mac loans
  - No prepayment penalty on VA loans
  - Subprime loans often have prepayment penalties
  - Commercial loans typically have prepayment penalties in the form of "yield maintenance" agreements

## Important Mortgage Clauses

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- Future Advances
  - This mortgage could cover future advances made on the property (useful for construction loans, and the lien will apply to any future property improvements)
- Subordination Clause
  - Lists the lien priority
- Assumption
  - Lender may need to qualify the party assuming the loan
  - Recourse may still go back to the original borrower

## Important Mortgage Clauses

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- Recourse – The ability of the Lender to seek a judgment from the borrow for non payment, in addition to foreclosure of the property.
  - Common for home mortgages and Commercial Bank loans
- Nonrecourse loan: No personal liability
  - Common for non bank commercial mortgages

## Seller Financing

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- When the seller provides all or part of the financing
- May be in the form of a second mortgage
- May be in the form of a "Contract for Deed" or land contract
  - Will deliver deed after all note payments are made

## Mortgage Default

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- What is a default?
  - Any breach of the mortgage contract (such as failure to maintain your property)
  - In practice, its when you miss a note payment
  - Generally foreclosure procedures are not initiated until 3 mortgage payments have been missed





## More Foreclosure (continued)

✘ Deficiency judgment: Judgment against mortgagor for unrecovered balance

+ Example:

- ✘ Net foreclosure auction price: \$100,000
- ✘ Remaining loan balance: \$120,000
- ✘ Deficiency judgment: \$20,000

## Bankruptcy

- Often a borrower will declare bankruptcy to slow down the foreclosure proceedings or because other financial distress is occurring at the same time
- This may complicate the foreclosure process as the bankruptcy rules must also be followed
- Mortgage lenders must be careful to not be perceived as receiving preferential treatment

## Bankruptcy

- Chapter 7- straight bankruptcy
  - In this case assets are sold to pay off creditors. Creditors receive some fraction of what is owed according to their lien priority. The mortgage holder typically gets the value the house can be sold for.
- Chapter 11- business owners reorganization
  - Typically keep liens on real property. Often used to get out of leases – e.g. Sharper Image
- Chapter 13- Personal reorganization