Chapter 3
Conveying Real Property Interests

Reasons for Complexity in Conveying Real Estate
• Real property is a complex bundle of rights
• Rights to land are enduring: Rights available today depend on transactions long ago
• Land is a continuous surface
  – Boundaries not obvious or natural
  – Boundary errors always hurt someone

Deeds: The Principal Conveyance of Real Property
• Deed: A special, written contract for conveying a permanent interest in real property
  – Fee simple absolute
  – Life estate
  – Conditional fee
  – Easement
  – Oil, mineral, or water rights
• Must be in writing to be upheld by a court

Requirements of a Deed
• Grantor (with signature) and grantee
• Recital of consideration
• Words of conveyance
• Covenants
• Habendum clause
• Exceptions and reservations clause
• Description of land
• Acknowledgment
• Delivery

Grantor and Grantee
• Grantor: Person or entity conveying real property
  – Must be of legal age
  – Must be legally competent
  – Must sign deed
• Grantee: Recipient of real property
  – No need to be of legal age
  – No need to be competent
  – Only needs to be identifiable

Recital of Consideration and Words of Conveyance
• Recital of consideration: A minimal statement suffices: “For 10 dollars and other good and valuable consideration…”
• Words of conveyance typically: “Does hereby grant, bargain, sell and convey…”
  – Functions:
    1. Affirms intention to convey real property
    2. Determines type of deed
Covenants
• Covenants: Legally binding promises
• Three main covenants:
  – Covenant of seizin: Grantor has good title and right to convey it
  – Covenant against encumbrances: No encumbrances except as noted in deed (liens, easements)
  – Covenant of quiet enjoyment: No one with a better claim to title

Habendum Clause
• Defines interest being conveyed
  – “for use as” implies easement
  – “so long as” implies conditional fee with reverter
  – “and his/her heirs and assigns forever” implies fee simple absolute
• Requires drafting by a knowledgeable legal professional

Exceptions and Reservations Clause and Descriptions
• Exceptions and reservations clause
  – Deed restrictions
  – Clauses withholding mineral or oil rights
  – Creation of an easement
• Property descriptions
  – Must be unambiguous and enduring
  – Three methods acceptable for public records:
    1. Metes and bounds
    2. Plat lot and block number
    3. Government rectangular survey
  – Unacceptable descriptions include street address and tax parcel number

Acknowledgment and Delivery
• Acknowledgment: Confirmation that grantor acted voluntarily
  – Notarized or equivalent (some states require witnesses)
• Delivery: Observable, verifiable intent that deed is to be given to grantor
  – Examples of failure of delivery:
    • Deed found in a desk/safety deposit box and handed to named grantee
    • Grantor’s attorney hands deed to named grantee without explicit instructions to do so

How Deeds Differ
• Key point: No deed conveys rights that grantor does not have
• Deeds differ by number of covenants

Types of Deeds
• General warranty deed: All three covenants; seizin, no encumbrances, and quiet enjoyment
• Special warranty deed: All three covenants but “no encumbrances” limited to grantor’s ownership
• Deed of bargain and sale: No covenants, but still is regarded as implying ownership
• Quitclaim deed: No covenants and makes no assertions about grantor’s interest
Review of Deeds

*CHighest quality deed = most covenants*

<table>
<thead>
<tr>
<th>Type of Deed</th>
<th>Seizin: Has valid title</th>
<th>Quiet Enjoyment: Will defend grantee against claims of others</th>
<th>No undisclosed restrictions or conflicting claims</th>
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</thead>
<tbody>
<tr>
<td>General Warranty*</td>
<td>Yes!</td>
<td>Yes!</td>
<td>Yes?</td>
</tr>
<tr>
<td>Special Warranty</td>
<td>Yes!</td>
<td>Yes!</td>
<td>Ltd?</td>
</tr>
<tr>
<td>Bargain and Sale</td>
<td>Implied</td>
<td>?</td>
<td>?</td>
</tr>
<tr>
<td>Quitclaim</td>
<td>No!</td>
<td>No!</td>
<td>No!</td>
</tr>
</tbody>
</table>

Ways Title Can Transfer

- Voluntary conveyance by deed
  - Ordinary sale and transfer of title
- Involuntary conveyance by deed
  - Probate (distribution of estate)
  - Bankruptcy
  - Divorce settlement
  - Condemnation
  - Foreclosure

Ways Title Can Transfer (continued)

- Voluntary conveyances without a deed (easements only)
  - Implied easement
  - Easement by prior use or necessity
  - Easement by estoppel
- Involuntary conveyance without deed
  - Easement by prescription
  - Title by adverse possession
  - Requirements
- Action of water (accretion, reliction)

Public Records, Notice and Real Property Conveyance

- Doctrine of constructive notice: Cannot be bound by what you cannot know
- Statute of Frauds: Contract must be written to be enforceable
- Recording statutes: A contract recorded in public records is considered known
- Actual notice: Open, continuous, actual possession of property

Creating Evidence of Title
Questions

• Why can a single document – a “title” – never serve as proof of real property ownership?

• If no single document can confirm title, what do we mean by “title”?

The Meaning of “Title”

• Title: Collection of evidence indicating a particular person(s) as holder of the “fee”
• Title search: Examining public records to construct “chain of title”
• Chain of title: the sequence of conveyances passing ownership down through time

Possible Breaks in the Chain of Title

Evidence of Title

• Evidence of title: Assurance of a good or marketable title
• Marketable title: Claim to title is regarded as free from reasonable doubt
• Two main forms of “evidence of title”
  – Title abstract with attorney’s opinion: Summary of all records in chain of title reviewed by an attorney for completeness
  – Title insurance commitment: Indemnifies grantee if challenge to title arises

Two “Evidences of Title”

Marketable Title Laws

• State laws to shorten necessary title search
  – Root of title: Most recent title conveyance (deed) being a minimum number of years old
  – To be enforceable certain interests may need to be reasserted by documents no older than root of title
    • Restrictive covenants
    • Some easements
  – Title unbroken back to its root is normally regarded as marketable
Methods of Land Description: Metes and Bounds

- A sequence of directed distances:
  - Compass directed “walk around property”
  - Establishing point of beginning is critical
- Oldest form of acceptable land description
- Most flexible form
- Most difficult to interpret
- Should be made or interpreted only by surveyors

Methods of Land Description: Subdivision Plat Lot and Block Number

- Subdivision survey map in public records identifies lot by block and lot number
- Lot and block number sufficient to describe parcel
- Dominant form of urban land description
- Map shows numerous features

Methods of Land Description: Government Rectangular Survey

- Basic reference points
  - Baseline
  - Principal meridian
- Measures of distance
  - Range lines
  - Tier lines
- Units
  - Township
  - Section
  - Check

Baselines and Principal Meridians of the United States
Township Identification

A Township

Subdividing a Section

End of Chapter 3