Conveying Real Property Interests

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

Deeds: The Principal Conveyance of Real Property
- Deed: A special, written contract for conveying a permanent interest in real property

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
- Grantee: Recipient of real property

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
  - Not common in Texas
  - Covenant against encumbrances: No encumbrances except as noted in deed
  - 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

### Exceptions and Reservations
- Exceptions and reservations clause
- Deed restrictions
- Clauses withholding mineral or oil rights
- Creation of an easement

### Property Descriptions
- 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

### 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

Covenants by Grantor

- Seizin: Has valid title
- Quiet Enjoyment: Will defend grantee against claims of others
- Encumbrances: No undisclosed restrictions or conflicting claims

Review of Deeds

*Highest quality deed = most covenants!*

<table>
<thead>
<tr>
<th>Type of Deed</th>
<th>General Warranty</th>
<th>Special Warranty</th>
<th>Bargain and Sale</th>
<th>Quitclaim</th>
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<td>Yes!</td>
<td>No!</td>
<td>No!</td>
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<td>Seizin</td>
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<td>Yes!</td>
<td>Yes!</td>
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<td>Quiet Enjoyment</td>
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<td>Yes!</td>
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<td>?</td>
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<tr>
<td>Encumbrances</td>
<td>Yes!</td>
<td>Yes!</td>
<td>Yes!</td>
<td>Yes!</td>
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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

Modes of Conveying Real Property

- With a Deed: Valid title, will defend grantee against claims of others, no undisclosed restrictions or conflicting claims
- Without a Deed: Implied easement, easement by estoppel, dedication, probate, bankruptcy, divorce, condemnation, foreclosure

Creating Evidence of Title

- Method of recording a contract: Recording, recording statutes, recording requirements, recorded contract is not private in public record
- Options for recording: Recorded contract, unrecorded contract, oral contract, unrecorded oral contract, written contract, written oral contract
- 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:
- Title search:
- Chain of title:

Possible Breaks in the Chain of Title

Conveyance of only a partial interest?
Conveyance by adverse possession?
Inconsistent property descriptions?
Faulty separation of mineral or water rights?
Missing spousal signature?

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:
  - Title insurance commitment:

Two “Evidences of Title”

Abstract w/Opinion of Title
Title Insurance Commitment

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
Metes and Bounds Description: Example

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

Subdivision Plat Lot and Block: Example

Methods of Land Description: Government Rectangular Survey
- Basic reference points
  - Baseline
  - Principal meridian

Baselines and Principal Meridians of the United States

Township Identification
A Township

Subdividing a Section

End of Chapter 3