

4 Conveyances and Recording

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Marketable Title?

A New Orleans lawyer sought an FHA loan for a client. He was told the loan would be granted if he could prove satisfactory title to a parcel of property being offered as collateral. The title to the property dated back to 1803, which took the lawyer three months to track down. After sending the information to the FHA, he received the following reply (actual letter):

“Upon review of your letter adjoining your client's loan application, we note that the request is supported by an Abstract of Title. While we compliment the able manner in which you have prepared and presented the application, we must point out that you have only cleared title to the proposed collateral back to 1803. Before final approval can be accorded, it will be necessary to clear the title back to its origin.”

Annoyed, the lawyer responded as follows (actual letter): “Your letter regarding title in Case No. 189156 has been received. I note that you wish to have title extended further than the 194 years covered by the present application. I was unaware that any educated person in this country, particularly those working in the property area, would not know that Louisiana was purchased by the U. S. from France in 1803, the year of origin identified in our application. For the edification of uninformed FHA bureaucrats, the title to the land prior to U. S. ownership was obtained from France, which had acquired it by Right of Conquest from Spain. The land came into possession of Spain by Right of Discovery made in the year 1492 by a sea captain named Christopher Columbus, who had been granted the privilege of seeking a new route to India by the then reigning monarch, Isabella. The good queen, being a pious woman and careful about titles, almost as much as the FHA, took the precaution of securing the blessing of the Pope before she sold her jewels to fund Columbus' expedition. Now the Pope, as I'm sure you know, is the emissary of Jesus Christ, the Son of God. And God, it is commonly accepted, created this world. Therefore, I believe it is safe to presume that He also made that part of the world called Louisiana. He, therefore, would be the owner of origin. I hope ... you find His original claim to be satisfactory. Now, may we have our ... loan?”

They got it.



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"No matter how high you aim"



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Transfer of Title

Title to real estate is the right to and evidence of ownership of the land. It may be transferred by voluntary alienation, involuntary alienation, will and descent.

The **voluntary transfer** of an owner's title is made by a **deed**, executed (signed) by the owner as **grantor** to the purchase or donee as **grantee**.

Among the most common requirements for a valid deed are a grantor with legal capacity to contract, a readily identifiable grantee, a granting clause, a legal description of the property, a recital of consideration, exceptions, and reservations on the title and the signature of the grantor. In addition the deed should be acknowledged before a notary public or other officer to provide evidence that the signature is genuine and to allow recording. *Title to the property passes when the grantor delivers a deed to the grantee and it is accepted.* The obligation of a grantor is determined by the form of the deed. The words of conveyance in the *granting clause* are important in determining the form of deed. The most common deed forms are the general warranty deed; special warranty deed; bargain and sale deed; quitclaim deed; deed in trust; trustee's deed; reconveyance deed; and deed executed pursuant to a court order.

General warranty deed. A general warranty deed provides the greatest protection of any deed. It is called a general warranty deed because the grantor is legally bound by certain covenants or warranties. In most states, the warranties are implied by the use of certain words specified by statute. In some states, the grantor's warranties are expressly written into the deed itself. Each state law should be examined, but some of the specific words include *convey and warrant or warrant generally*. The basic warranties are as follows:

Five covenants:

- * **Covenant of seisin:** The grantor warrants that he or she owns the property and has the right to convey title to it. (Seisin simply means "possession.") The grantee may recover damages up to the full purchase price if this covenant is broken.
- * **Covenant against encumbrances:** The grantor warrants that the property is free from liens or encumbrances, except for any specifically stated in the deed. Encumbrances generally include mortgages, mechanics' liens and easements. If this covenant is breached, the grantee may sue for the cost of removing the encumbrances.
- * **Covenant of quiet enjoyment:** The grantor guarantees that the grantee's title will be good against third parties who might bring court actions to establish superior title to the property. If the grantee's title is found to be inferior, the grantor is liable for damages.



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* **Covenant of further assurance:** The grantor promises to obtain and deliver any instrument needed to make the title good. For example, if the grantor's spouse has failed to sign away dower rights, the grantor must deliver a quitclaim deed (discussed later) to clear the title.

* **Covenant of warranty forever:** The grantor promises to compensate the grantee for the loss sustained if the title falls at any time in the future. These covenants in a general warranty deed are not limited to matters that occurred during the time the grantor owned the property; they extend back to its origins. The grantor defends the title against both himself or herself and all those who previously held title.

Special warranty deed. A special warranty deed contains two warranties:

1. That the grantor received title

2. That the property was not encumbered during the time the grantor held title, except as otherwise noted in the deed

In effect, the grantor defends the title against himself or herself. The granting clause generally contains the words "Grantor remises, releases, alienates and conveys." The grantor may include additional warranties, but they must be specifically stated in the deed. In areas where a special warranty deed is more commonly used, the purchase of title insurance is viewed as providing adequate protection to the grantee.

A special warranty deed may be used by fiduciaries such as trustees, executors and corporations. A special warranty deed is appropriate for a fiduciary because he or she lacks the authority to warrant against acts of predecessors in title. A fiduciary may hold title for a limited time without having a personal interest in the proceeds. Sometimes, a special warranty deed may be used by a grantor who has acquired title at a tax sale.

Bargain and sale deed. A bargain and sale deed or **grant deed** *contains no express warranties against encumbrances*. It does, however, imply that the grantor holds title and possession of the property. The words in the granting clause are usually "**HIJ**" **grants and releases** or "**XYZ**" **grants, bargains and sells**. Because the warranty is not specifically stated, the grantee has little legal recourse if title defects appear later. In some areas, this deed is used in foreclosures and tax sales. The buyer should purchase title insurance for protection.

A covenant against encumbrances initiated by the grantor may be added to a standard bargain and sale deed to create a bargain and sale deed with covenant against the grantor's acts. This deed is roughly equivalent to a special warranty deed. Warranties used in general warranty deeds may be inserted into a bargain and sale deed to give the grantee similar protection.



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Quitclaim deed. A quitclaim deed provides the grantee with the least protection of any deed. It carries *no covenants or warranties* and generally conveys only whatever interest the grantor may have when the deed is delivered. If the grantor has no interest, the grantee will acquire nothing. Nor will the grantee acquire any right of warranty claim against the grantor. A quitclaim deed can convey title as effectively as a warranty deed if the grantor has good title when he or she delivers the deed, but it provides none of the guarantees that a warranty deed does. Through a quitclaim deed, the grantor only "**remises, releases and quitclaims**" his or her interest in the property, if any. Usually, a quitclaim deed is the only type of deed that may be used to convey less than a fee simple estate. This is because a quitclaim deed conveys only the grantor's right, title or interest.

A quitclaim deed is frequently used to cure a defect, called a cloud on the title. For example, if the name of the grantee is misspelled on a warranty deed filed in the public record, a quitclaim deed with the correct spelling may be executed to the grantee to perfect the title.

A quitclaim deed is also used when a grantor allegedly **inherits** property, but is not certain that the decedent's title was valid. A warranty deed in such an instance could carry with it obligations of warranty, while a quitclaim deed would convey only the grantor's interest, whatever it may be.

Deed in trust: A deed in trust is the means by which a **trustor conveys real estate to a trustee for the benefit of a beneficiary.** The real estate is held by the trustee to fulfill the purpose of the trust.

A deed does not need to be recorded to be valid but recording protects the grantee.

An owner's title may be transferred without his or her permission by a court action, such as a **foreclosure** or judgment sale, a tax sale, **condemnation** under the right of eminent domain, **adverse possession** or **escheat**. Land may also be transferred by the natural forces of water and wind, which either increase property by **accretion** or decrease it through **erosion** or **avulsion**.

The real estate of an owner who makes a properly witnessed valid **will** (who dies **testate**) passes to the devisees through the probating of the will. The maker of the will must be of legal age and sound mind. The title of an owner who dies **without a will (intestate)** passes according to the provisions of the law of descent and distribution of the state in which the real estate is located.

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KEY TERMS

acceptance _____

adverse possession _____

bargain and sale deed _____

deed _____

deed in trust _____

delivery _____

descent _____

escheat _____

general warranty deed _____

grantee _____

granting clause _____

grantor _____

habendum clause _____

intestate _____

involuntary alienation _____

marketable title _____

minor _____

probate _____

quitclaim deed _____

reconveyance deed _____



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recording _____

special warranty deed _____

testate _____

testator _____

title _____

transfer tax _____

trust deed _____

trustee's deed _____

voluntary alienation _____

will _____



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GEORGE E. COLE, LEGAL FORMS NO. 810 February, 1985

WARRANTY DEED
Joint Tenancy
Statutory (ILLINOIS)
(Individual to Individuals)

CAUTION: Consult a lawyer before using or selling under this form. Neither the publisher nor the author of this form makes any warranty with respect thereto, including any warranty of merchantability or fitness for a particular purpose.

THE GRANTOR
Walter J. Anderson, a widower

of the Village of Rockvale County of Cook
State of Illinois for and in consideration of
Ten and xx/100 DOLLARS.
_____ in hand paid.

CONVEY and WARRANT to
Brian L. Johnson and Susan R. Johnson of
303 W. Maple, Rolling Hills, Wisconsin,
as joint tenants to have and to hold

(The Above Space For Recorder's Use Only)

(NAMES AND ADDRESS OF GRANTEE(S))
not in Tenancy in Common, but in JOINT TENANCY, the following described Real Estate situated in the
County of Cook in the State of Illinois, to wit:
Lot 47 and the South half of Lot 48 in Block 5 in the Sunset Subdivision,
a subdivision in the West 1/2 of the East 1/2 of Section 8, Township 23
North, Range 12 East of the Third Principal Meridian, in Cook County,
Illinois.

Subject to: General real estate taxes for 1985 and subsequent years
including special assessments (if any); building, use, and
occupancy restrictions, conditions, and covenants of record;
zoning laws and public and private easements of record.
Common Address: 433 N. Lake Avenue
Rockvale, IL 65798

Gen. Tax No: 18-07-307-4000

hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of
Illinois. TO HAVE AND TO HOLD said premises not in tenancy in common, but in joint tenancy forever.

Permanent Real Estate Index Number(s): _____
Address(es) of Real Estate: _____

DATED this 24th day of March, 1994

PLEASE PRINT OR TYPE NAME(S) BELOW SIGNATURE(S)

Walter J. Anderson (SEAL) _____ (SEAL)
Walter J. Anderson _____ (SEAL) _____ (SEAL)

State of Illinois, County of _____ ss. I, the undersigned, a Notary Public in and for
said County, in the State aforesaid, DO HEREBY CERTIFY that

IMPRESS SEAL HERE personally known to me to be the same person _____ whose name _____ subscribed
to the foregoing instrument, appeared before me this day in person, and acknowl-
edged that _____ signed, sealed and delivered the said instrument as
free and voluntary act, for the uses and purposes therein set forth, including the
release and waiver of the right of homestead.

Given under my hand and official seal, this _____ day of _____ 19____

Commission expires _____ 19____ NOTARY PUBLIC _____

This instrument was prepared by _____
(NAME AND ADDRESS)

MAIL TO: { _____

City, State and Zip

OR RECORDER'S OFFICE BOX NO. _____

SEND SUBSEQUENT TAX BILLS TO _____

City, State and Zip

AFFIX "AIDERS" OR REVENUE STAMPS HERE

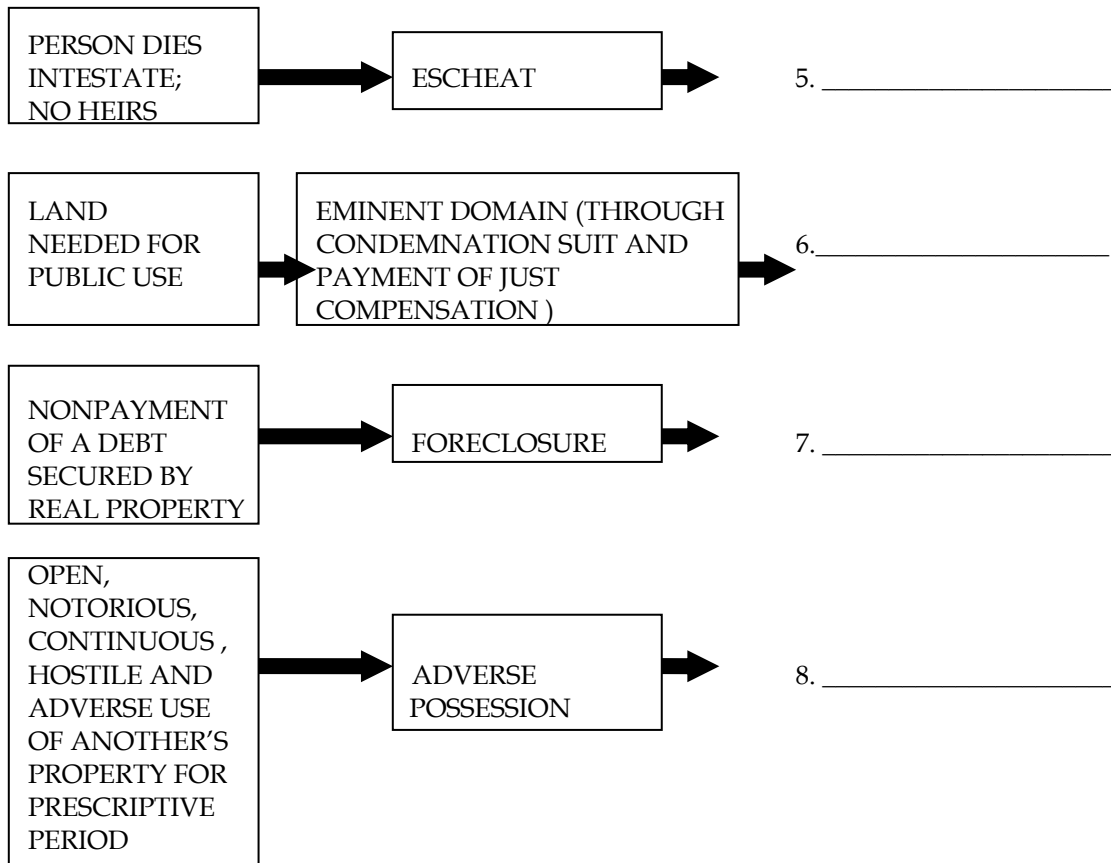


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1. In the deed, title is being transferred to _____
2. How are the grantees taking title? _____
3. Other than being labeled as such, what indicates that this is a general warranty deed? _____
4. Is this a valid conveyance? Why or why not? _____

The four types of involuntary transfer of real estate are illustrated in following figure. In each example, indicate at right who would acquire ownership of the property.

INVOLUNTARY ALIENATION



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SELF-EVALUATION QUESTIONS

1. What instrument would a trustee use to convey title held in trust?
 - a. Trust deed
 - b. Assignment
 - c. Deed in trust
 - d. Trustee's deed

2. A deed that entails the least liability for the grantor is a:
 - a. special warranty deed.
 - b. quitclaim deed.
 - c. bargain and sale deed.
 - d. general warranty deed.

3. Sarah sold her residence and delivered a warranty deed to the purchaser. Among other provisions, the deed warrants that Sarah is the owner of the property and has the right to sell it and the property is free from all liens and encumbrances except those noted in the deed. In which of the following covenants are these warranties expressed?
 - a. Covenant of quiet enjoyment
 - b. Covenant of seisin and covenant against encumbrances
 - c. Covenant of seisin and covenant of quiet enjoyment
 - d. Covenant against encumbrances

4. Joan owns an undivided one-quarter interest in real estate and wants her interest transferred to her sister Mae. In general, which of the following actions will transfer her interest during her life.
 - a. A tax sale
 - b. The signing of a will
 - c. A deed delivered to Mae
 - d. A deed signed and kept to be found at Joan's death

5. Brent bought a parcel of unimproved land from Stan for \$1,000 an acre, and received a properly executed deed from Stan. Before recording the deed, Brent signed a contract to sell the land to Paul for \$1,700 an acre. In this situation:
 - a. Brent can assign Stan's deed to Paul and Paul can record the assigned deed and become the owner of the real estate.
 - b. Brent can record Stan's deed and then convey his interest to Paul.
 - c. Stan must execute a second deed to Paul and void the one he gave to Brent.
 - d. Brent cannot agree to sell his interest until he records Stan's deed.

6. Which of the following is generally required of a seller by the terms of the typical real estate sales contract?
 - a. Special warranty deed
 - b. Quitclaim deed
 - c. General warranty deed
 - d. Bargain and sale deed

7. In a real estate sale, the transfer tax stamps are generally paid for by the:
 - a. Buyer.
 - b. Seller.
 - c. escrow agent.
 - d. broker.



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8. Which one of the following is not a term used for one who may acquire title to real estate?

- a. Vendee
- b. Devisee
- c. Grantee
- d. Lessee

9. What purpose is served by a notary acknowledgment on a deed?

- a. It shows the genuineness of the grantor's signature
- b. It marks the moment of transfer of title.
- c. It assures that the title is good.
- d. It proves that the grantor is competent.

10. Which of the following is **not** required for a valid deed?

- a. That it be signed by the grantor
- b. That it be signed by the grantee
- c. That it include a granting clause
- d. That it be delivered



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SOLUTIONS

KEY TERMS

acceptance The act by which a grantee receives the deed delivered by a grantor. Acceptance marks the moment at which title transfers.

adverse possession-The actual, visible, hostile, notorious, exclusive and continuous possession of another's land under a claim of title; a means of acquiring title.

bargain and sale deed-A deed that carries with it no warranties against liens or other encumbrances but does imply that the grantor has the right to convey title.

deed-A written instrument that, when executed and delivered, conveys title to or an interest in real estate.

deed in trust -A deed used to convey title to real estate to a trustee, usually in order to create a land trust.

delivery-Before a transfer can take effect, there must be an actual delivery of the deed by the grantor and an actual or implied acceptance of it by the grantee.

descent-The acquisition of an estate by inheritance when an heir receives this estate by operation of law; property is passed on by descent when a person dies without leaving a valid will.

escheat-The reversion of property to the state or county, as provided by law, in cases where a person dies without leaving a will and leaves no ascertainable heirs.

general warranty deed-A deed in which the grantor fully warrants good and clear title to the property being conveyed. It offers the grantee the most protection of any deed.

grantee-A person who receives a conveyance of real property from a grantor.

granting clause-Words in a deed of conveyance that state the grantor's intention to convey the property at the present time; generally worded as "convey and warrant," "grant," "grant, bargain and sell," or the like.

grantor-The person who transfers title to or an interest in real estate to a grantee.

habendum clause-That part of a deed beginning with the words, "to have and to hold," following the granting clause and defining the extent of ownership the grantor is conveying.

intestate-The condition of a property owner who dies without leaving a valid will.

involuntary alienation-The involuntary transfer of title to real estate, such as through adverse possession or eminent domain.

marketable title- Property that is owned by the seller who has all rights to sell.

minor-Someone who has not reached the age of majority and therefore does not have legal capacity to contract or to transfer title to real property.

probate-A legal process by which a court determines who will inherit a decedent's property and what is included within the estate's assets.

quitclaim deed-A deed in which the grantor transfers whatever interest he or she has in the real estate, without warranties or obligations.



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reconveyance deed-A deed used by a trustee under a deed of trust to return title to the trustor.

recording- making a document public record through the state recording office.

special warranty deed-A deed in which the grantor warrants, or guarantees, the title only against defects arising during the period of his or her ownership of the property and not against defects that existed before that time.

testate-Having made and left a valid will.

testator-One who has made and left a valid will.

title-The right to or ownership of real property; also, the evidence of this ownership.

transfer tax-Tax stamps required by state or local law to be affixed to a deed upon transfer.

trust deed-An instrument used to create a mortgage-like lien by which the borrower conveys title to a trustee, who holds it as security for the benefit of the lender (noteholder); also called a deed of trust.

trustee's deed-A deed executed by a trustee conveying land held in a trust.

voluntary alienation-A transfer of property made willfully, such as by deed, gift, or will. Contrast with involuntary alienation.)

will-A written document, properly witnessed, providing for the transfer of title to property owned by the deceased, called the testator.

ILLUSTRATIONS

1. Brian L. Johnson and Susan R. Johnson
2. as joint tenants
3. the wording "conveys and warrants"
4. Yes, because it contains all the requirements of a valid deed. A notary acknowledgment is not essential between the parties (grantor and grantee), though it may be for recording.
5. state or county
6. public or governmental agency
7. highest bidder at the foreclosure sale (after the redemption period expires)
8. adverse possessor



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SELF-EVALUATION QUESTIONS

1. d. Because the trustee is the legal owner of a property held in trust, this is the document that is employed by the trustee to convey the property.
2. b. The grantor's liability is determined by the covenants of warranty stated or implied in the deed. All of the deeds mentioned state or imply covenants, except a quitclaim deed, which conveys only an interest that the grantor may have in the property. A quitclaim deed carries no warranties.
3. b. In the covenant of seisin, the grantor warrants that he or she is the owner of the property and has the right to convey it; in the covenant against encumbrances, the grantor warrants that the property is free from liens or encumbrances with the exception of those listed in the deed. In most states, these and other or all of the five warranties listed in the text are implied by the use of certain language in the deed of conveyance, such as "convey and warrant" or "grant, bargain and sell."
4. c. Choice "c" is the only way to voluntarily transfer the title now. A will does not transfer until after the death of the testator and probate proceedings, A deed that is not delivered and accepted during the grantor's lifetime has no effect.
5. b. The purpose of a sales contract is to bind the buyer and seller to a real estate transaction while the details are being completed. Brent will have to record the deed from Stan and then give Paul a new deed.
6. c. An individual who sells his or her real estate should be required to agree to deliver a warranty deed to the buyer. If the seller objects, the buyer should find out if the seller's title is merchantable. The buyer may find it wise to be represented by an attorney. The usual practice of sellers giving owner's title insurance policies to buyers may lessen the need for a buyer to insist on a warranty deed.

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7. b. In most localities, custom requires that the seller pay the cost of the transfer tax stamps on his or her deed. In other areas, however, the buyer may be required to pay the cost or the seller and buyer may share the expense. The matter of who will pay the cost of the transfer tax stamps is often specifically outlined in the real estate sales contract.

8. d. Choice "a" is a buyer. The devisee, choice "b," obtains a title under a probated will of the deceased owner. The grantee, choice "c," receives title when a grantor delivers a deed to him or her. A lessee gets the right of possession from the lessor. Because you must make a selection of one of these as not acquiring title, it has to be "d."

9. a. Notary acknowledgment gives no assurance that the title is good or that grantor is legally competent. It also is not necessary for the deed to be recorded except in some states. Its main purpose is to provide proof that the grantor's signature is genuine.

10. b. A granting clause, a signature by the grantor and the actual delivery of the deed are all requirements for a valid conveyance. The deed says "Here, I give it to you" and thus must be signed by the grantor.



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TITLE RECORDS

The purpose of the recording acts is to give legal, public and **constructive notice** to the world of parties' interests in real estate. The recording provisions have been adopted to create system and order in the transfer of real estate. Without them, it would be virtually impossible to transfer real estate from one party to another. The interests and rights of the various parties in a particular parcel of land must be recorded so that such fights will be legally effective against third parties who do not have knowledge or notice of the fights.

Possession of real estate is generally interpreted as constructive notice of the rights of the person in possession. **Actual notice** is knowledge acquired directly and personally.

Title evidence shows whether or not a seller is conveying **marketable title**. A deed of conveyance is evidence that a grantor has conveyed his or her interest in land, but it is not evidence of the kind or condition of the title. Marketable title is generally one that is so free from significant defects that the purchaser can be assured against having to defend the title.

There are four forms of providing title evidence commonly used throughout the United States: abstract and attorney's opinion of title, certificate of title, Torrens certificate and title insurance policy. Each form reveals the history of a title. Each must be later dated, or continued or reissued, to cover a more recent date.

Under the Uniform Commercial Code the filing of a **financing statement** gives notice to purchasers and mortgagees of the security interests in personal property and fixtures on the specific parcel of real estate.

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KEY TERMS

abstract of title _____

actual notice _____

ALTA policy _____

attorney's opinion of title _____

bulk transfer _____

caveat emptor _____

certificate of title _____

chain of title _____

constructive notice _____

evidence of title _____

financing statement _____

marketable title _____

recording _____

security agreement _____

subrogation _____

suit to quiet title _____

title insurance _____

Torrens system _____

Uniform Commercial Code _____



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ILLUSTRATIONS

Study the illustration that follows, and fill in the accompanying blanks completely.

CHAIN OF TITLE FOR LOT 27 IN BLOCKS OF OAKS SUBDIVISION

GRANTOR GRANTEE INSTRUMENT DATE

| | | | |
|-----------------------------|-----------------------------------|---------------------|--------------|
| MCGOWAN BUILDERS | BURTON BROWN AND EVELYN, HIS WIFE | WARRANTY DEED | JAN 19,1909 |
| BURTON AND EVELYN, HIS WIFE | MIDSTATES TITLE & TRUST CO. | TRUST DEED | JAN 20, 1909 |
| MIDSTATES TITLE & TRUST CO | BURTON BROWN & EVELYN | RECONVEYANCE DEED | JUN 5, 1933 |
| BURTON & EVELYN BROWN | MARK ARMOUR, A BACHELOR | BARGAIN & SALE DEED | MAR 23, 1936 |
| DORIS SHERWOOD, A WIDOW | STEPHEN SELOVER & JANE, HIS WIFE | WARRANTY DEED | OCT 21, 1951 |
| STEPHEN & JANE SELOVER | BROOKFIELD BANK & TRUST CO | MORTGAGE | OCT 25,1951 |
| STEPHEN & JANE SELOVER | DAVID OLIVER & PATRICIA, HIS WIFE | WARRANTY DEED | SEP 14, 1971 |
| BROOKFIELD BANK & TRUST CO | STEPHEN & JANE SELOVER | RELEASE | SEP 21, 1992 |

1. Is the above chain of title broken? _____
2. Who conveyed as a grantor but does not appear to have received title as a grantee? _____
3. What legal proceeding may be used to clear up this defect? _____

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SELF-EVALUATION QUESTIONS

1. Which of the following is not acceptable evidence of an owner's title?
 - a. Abstract of title and lawyer's opinion
 - b. Title insurance
 - c. Recorded deed
 - d. Torrens registration

2. If the title to land is registered under the Torrens system (where applicable):
 - a. it is easier for the owner to lose title by adverse possession
 - b. the original certificate of title is given to the owner.
 - c. mortgage liens are valid only when registered on the original title certificate.
 - d. tax liens are valid only when registered on the original title certificate.

3. A contract that protects an owner against loss (subject to special exceptions) due to defects in the title records and other risks such as forged documents is called a(n):
 - a. chain of title.
 - b. certificate of title.
 - c. title insurance policy.
 - d. abstract of title.

4. The law creates a presumption that all persons have knowledge of the information contained in a recorded instrument. This is called:
 - a. caveat emptor.
 - b. constructive notice.
 - c. direct knowledge.
 - d. the recording acts.

5. Which of the following mortgages would have priority?
 - a. The one that was executed most recently
 - b. The first one delivered to the mortgagee
 - c. The one recorded first
 - d. The one labeled "first mortgage"

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KEY TERMS

abstract of title -The condensed history of a title to a particular parcel of real estate, consisting of a summary of the original grant and all subsequent conveyances and encumbrances affecting the property and a certification by the abstractor that the history is complete and accurate.

actual notice-Express information or fact; that which is known; actual knowledge.

ALTA policy-A title insurance policy complying with the uniform standards set by the American Land Title Association.

attorney's opinion of title-An abstract of title that a lawyer has examined and has certified to be, in his or her opinion, an accurate statement of fact.

bulk transfer-The sale of the major part of a business as a whole (including fixtures, chattels and merchandise) not made in the ordinary course of the transferor's business dealings.

caveat emptor-Latin for "let the buyer beware"; legal responsibility for investigating title is the buyer's concern.

certificate of title-A statement of opinion on the status of the title to a parcel of real property based on an examination of specified public records; used in some areas of the country and also under the Torrens system.

chain of title The succession of conveyances, from some accepted starting point, whereby the present holder of real property derives his or her title.

constructive notice-Notice of an interest in real property given to the world by recorded documents and by possession of the property.

evidence of title-Proof of ownership of real property; generally either a certificate of title, a title insurance policy, an abstract of title with lawyer's opinion or a Torrens certificate of title.

financing statement-A brief document required by the Uniform Commercial Code that creates a security interest in chattels, including chattels intended to become fixtures; this document must be filed of record to "perfect" the lien; a short form of a security agreement. recording The act of entering or recording documents affecting or conveying interests in real estate in the office for such purposes established in each county.

marketable title- seller has clear title or can make the title clear upon conveyance.

recording -gives legal, public and constructive notice to the world of parties' interests in real estate.

security agreement-An instrument required by the Uniform Commercial Code that creates a security interest in chattels; this form contains a complete description of the items against which a lien then applies.



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subrogation-The substitution of one creditor for another, with the substituted person succeeding to the legal rights and claims of the original claimant; used by title insurers to acquire from an injured party rights to sue to recover any claims they have paid.

suit to quiet title-A court action intended to establish or settle the status of title to a particular parcel of real estate, especially when there is a cloud on the title.

title insurance-A policy that insures the owner or mortgagee of real estate against loss by reason of defects in the title to the property, other than matters specifically excluded in the policy.

Torrens system-A method of evidencing title by registration with the proper public authority, generally called the registrar of titles.

Uniform Commercial Code-A codification of commercial law, adopted in most states, that attempts to make uniform all laws relating to commercial transactions, including the sale of goods, chattel mortgages, bulk transfers and negotiable instruments.

ILLUSTRATIONS

1. yes
2. Doris Sherwood
3. a suit to quiet title

SELF-EVALUATION QUESTIONS

1. c: A recorded deed gives no proof of the kind or condition of the title. It might have been signed by a "seller" who didn't really own the property.
2. c. Under the Torrens system, mortgage liens are valid only when they are registered on the original title certificate. Liens that are valid even when not registered are real estate taxes, special assessments and court decrees. The registrar keeps the original certificate of title and gives a duplicate to the owner.
3. c. A title insurance policy is a contract between the insurance company and the insured. It is the only contract presented in the four alternative choices; therefore, the only possible correct
4. b. This is what the law charges everyone with. If someone actually looks at the public records, he or she has direct knowledge (choice "C"). Caveat emptor means "buyer beware." Recording acts are the legislative statutes that provide the procedure by which documents are recorded.
5. c. Priority rights are usually established by the date of recording. Executing a mortgage or delivering it is not as important in establishing priority. Merely labeling a mortgage as "first" is of no significance at all.



4 Conveyances and Recording

REAL ESTATE TAXES AND OTHER LIENS

Liens are claims of creditors or taxing authorities against the real and personal property of debtor. A lien is a type of encumbrance. Liens are either **general**, covering all real and personal property of a debtor/owner, or **specific**, covering only identified property. They are also either voluntary (rising from an action of the debtor) or involuntary--created by statute (statutory) or based on the concept of fairness (equitable).

With the exception of real estate tax liens and mechanics' liens, the priority of liens is generally determined by the order in which they are placed in the public record of the county in which the property is located.

Real estate taxes are levied annually by local taxing authorities and are generally given priority over other liens. Payments are required before stated dates, after which penalties accrue. An owner may lose title to property for nonpayment of taxes, because such tax-delinquent property can be sold at a tax sale. Some states allow a time period during which a defaulted owner can redeem his or her real estate from a tax sale.

Special assessments are levied to allocate the cost of public improvements to the specific parcels of real estate that benefit from them. Assessments are usually payable usually over a five- or ten-year period, together with interest due on the balance of the assessment.

Mortgage liens and **trust deed liens** are voluntary, specific liens given to lenders to secure payment for real estate loans.

Mechanics' liens protect general contractors, subcontractors and material suppliers whose work enhances the value of real estate.

A **judgment** is a court decree obtained by a creditor, usually for a monetary award from a debtor. A judgment lien can be enforced by court issuance of a **writ of execution** and sale by the sheriff to pay the judgment amount and costs.

Attachment is a means of preventing a defendant from conveying property before completion of a suit in which a judgment is sought.

Lis pendens is a recorded notice of a lawsuit that is awaiting trial in court and may result in a judgment that will affect title to a parcel of real estate.

Federal estate taxes and **state inheritance taxes** are general liens against a deceased owner's property.

Liens for **water charges or other municipal utilities** and **bail bond liens** are specific liens, while **corporation franchise tax liens** are general liens against a corporation's assets.

Internal Revenue Service tax liens are general liens against the property of a person who is delinquent in payment of IRS taxes.



4 Conveyances and Recording

KEY TERMS

ad valorem tax _____

assessment roll _____

attachment _____

bail bond _____

corporation franchise tax _____

equalization factor _____

equitable lien _____

estate taxes _____

general lien _____

inheritance taxes _____

Internal Revenue Service tax lien _____

involuntary lien _____

judgment lien _____

lien _____

mechanic's lien _____

mill _____

mortgage lien _____

priority _____

redemption _____



4 Conveyances and Recording

redemption period _____

special assessment _____

specific lien _____

statutory lien _____

subordination agreement _____

surety bail bond _____

tax foreclosure _____

tax lien _____

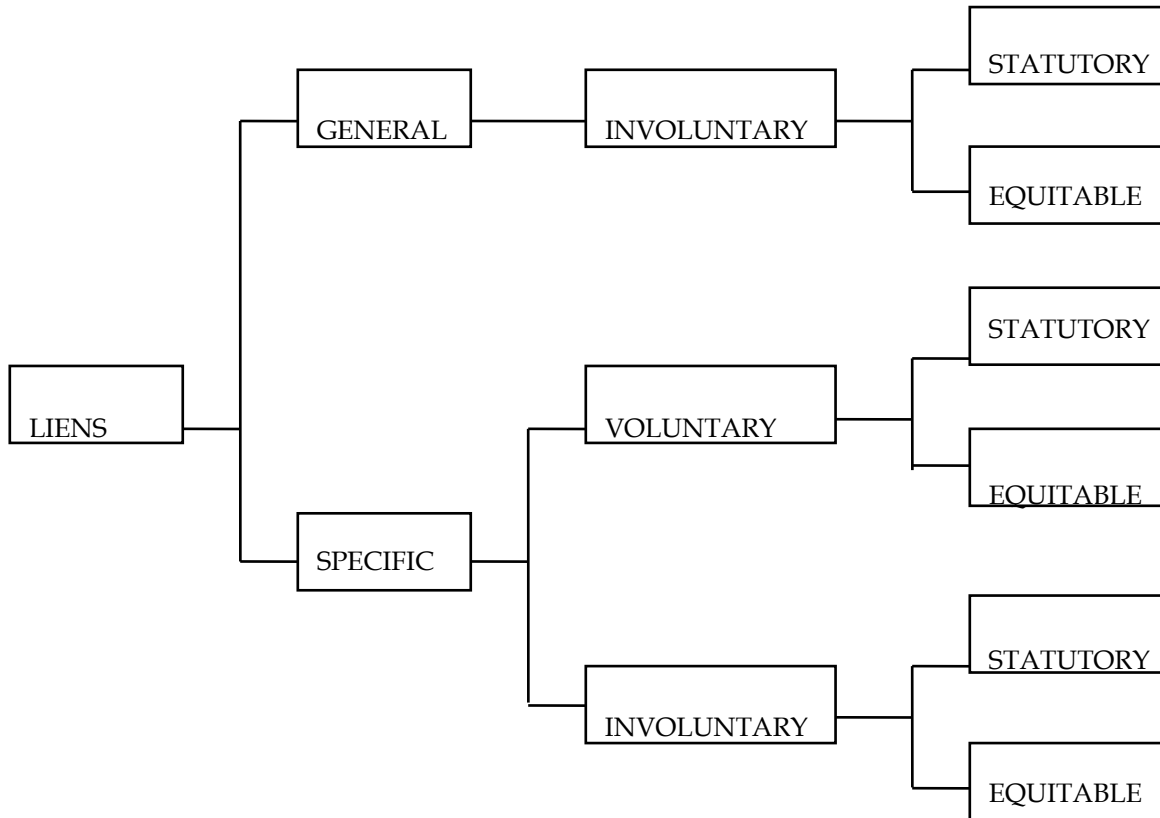
voluntary lien _____



4 Conveyances and Recording

ILLUSTRATIONS

Refer to the diagram of liens and answer the following questions.



1. Generally, liens may be classified as _____
2. Whether a lien is classified as voluntary or involuntary is usually determined by _____
3. The difference between a statutory lien and an equitable lien is that a statutory lien _____ while an equitable lien _____

In the following chart, indicate which of the liens are voluntary, and which are involuntary, and which are general or specific.

4 Conveyances and Recording

LIENS

| TYPE OF LIEN | VOLUNTARY | INVOLUNTARY (STATUTORY) | GENERAL | SPECIFIC |
|----------------------------|-----------|-------------------------|---------|----------|
| 4. General real estate tax | | | | |
| 5. Special assessment | | | | |
| 6. Mortgage lien | | | | |
| 7. Mechanic's lien | | | | |
| 8. Judgment | | | | |

SELF-EVALUATION QUESTIONS

1. To give constructive notice that a parcel of real estate is the subject of a lawsuit, the party suing (the plaintiff) should file a:

- a. writ of attachment.
- b. creditor's lien.
- c. lis pendens.
- d. foreclosure.

2. A real estate tax is an example of a:

- a. specific involuntary lien.
- b. specific voluntary lien.
- c. general voluntary lien.
- d. general involuntary lien.

3. Dr. Gastro failed to pay his roofing contractor, who filed a lien to protect himself. At the contractor's request, the court ordered the sale of Gastro's home.

This court proceeding is called:

- a. a mechanics sale.
- b. an attachment.
- c. a foreclosure.
- d. a redemption.

4. The market value of a tract of land is \$20,000, and the assessed value is 40 percent of its market value. An equalization factor of 1.50 is applied to the assessed value, and the tax rate is \$4 per \$100. What is the amount of the tax?

- a. \$475 .00
- b. \$480.00
- c. \$556.20
- d. \$578.15

5. Which of the following is not true of a mechanic's lien?

- a. It gives a general contractor a statutory right to file a lien for an unpaid bill for work ordered by the owner
- b. It is based on the "enhancement of value" theory.
- c. It usually must be enforced within a certain time period.
- d. It does not apply to subcontractors' claims.



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6. An example of a general lien on both real and personal property of a debtor is:
- a. a mechanic's lien.
 - b. a mortgage lien.
 - c. an ad valorem lien.
 - d. a judgment.
7. Which of the following liens would generally take priority over all the others?
- a. Real estate tax lien
 - b. Mortgage lien
 - c. Mechanic's lien
 - d. IRS tax lien
8. How would a municipality most likely pay for the construction of new concrete curbs and gutters provided to a residential neighborhood within the community?
- a. An ad valorem tax
 - b. An increase in utility rates
 - c. A general revenue bond
 - d. A special assessment
9. The value placed on a property for real estate tax purposes is called:
- a. equalization value.
 - b. assessed value.
 - c. appraised value.
 - d. fair value.
10. If a potential lender/lienholder desires to take priority over an existing lienholder the lender should request the existing lienholder to enter into a(n)
- a. subcontractor's agreement.
 - b. subordination agreement.
 - c. attachment,
 - d. involuntary lien.
11. Which of the following is a lien that does not need to be recorded?
- a. Money judgment
 - b. Real estate taxes
 - c. Mechanic's lien
 - d. Voluntary lien
12. Given the following information, which lien holds third priority?
- a. Real estate tax lien for the current year.
 - b. First mortgage (recorded April 12, 1985)
 - c. Second mortgage (recorded October 17, 1991)
 - d. A mechanic's lien (date of contract September 12, 1991 but not recorded until January 7, 1992)
13. An ad valorem lien refers to a:
- a. general real estate tax.
 - b. special tax.
 - c. federal tax.
 - d. delinquent tax.

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SOLUTIONS

KEY TERMS

ad valorem tax-A tax levied according to value; usually refers to general real estate taxes; also called a general tax.

assessment roll-Spreading an assessment over the various parcels of real estate that are within a taxing body's jurisdiction.

attachment-The act of taking a person's property into legal custody by writ or other judicial order to hold it available for application to that person's debt to a creditor.

bail bond-A voluntary specific lien placed against a parcel of real estate to serve as security for a court appearance.

corporation franchise tax-A tax on corporations levied by the states as a condition of allowing them to do business in the states.

equalization factor-The figure set by local taxing bodies whereby assessed values of property for tax purposes in a particular county or taxing district may be raised or lowered to make them equal to assessments in other counties or districts.

equitable lien-A lien imposed on property that arises out of common law and that may be created by a court when justice and fairness require it. For example, a judgment against the property's owner may result in a lien on the property. (Contrast with statutory lien.)

estate taxes-Federal taxes on deceased persons' real and personal property, levied when such property passes to deceased persons' heirs.

general lien-The lien right of a creditor that attaches to all of a debtor's property, both real and personal.

inheritance taxes-State taxes on deceased persons' real and personal property, levied when such property passes to deceased persons' heirs.

Internal Revenue Service tax lien-A lien imposed on property by the Internal Revenue Service resulting from a person's failure to pay any portion of his or her federal income taxes.

involuntary lien-A lien that is imposed on property without the owner's permission, such as those instituted by court order or tax liens. (Contrast with voluntary lien.)

judgment lien-Lien placed after the formal decision of a court upon the respective rights and claims of the parties to an action or suit.

lien-A right given by law to certain creditors to have their debt paid out of the property of a defaulting debtor, usually by means of a court sale.

mechanic's lien-A statutory lien created in favor of contractors, material suppliers and laborers who have performed work or furnished materials in the erection or repair of a building.

mill-One-tenth of one cent; used by some states to compute real estate taxes.

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mortgage lien-A lien on real estate created by a mortgage borrower as security for payment of the debt.

priority-The order of position or time; the priority of liens is generally determined by the chronological order in which the lien documents are recorded, with the exception of property tax liens, which have priority even over previously recorded liens; and with the exception of mechanics' liens which can take priority as of the contract date.

redemption-The buying back of real estate sold at either a foreclosure or tax sale; the owner of the property enjoys the right of redemption.

redemption period-A period of time set by state law during which a property owner has the right to redeem his or her real estate from a tax or foreclosure sale by paying the debt plus interest and costs.

special assessment-A tax or levy customarily imposed against only those specific parcels of real estate that will benefit from a proposed public improvement, such as a street or sewer.

specific lien-A lien affecting or attaching only to a certain, specific parcel of land or piece of property.

statutory lien A lien imposed on property by statute--a tax lien, for example, (Contrast with equitable lien)

subordination agreement - Written agreements between lienholders to change the priority of mortgage, judgment and other liens under certain circumstances.

surety bail bond-An agreement by an insurance or bonding company to be responsible for certain possible defaults, debts or obligations contracted for by an injured party; in essence, a policy insuring one's personal and/or financial integrity.

tax foreclosure-A legal procedure whereby the court orders real property sold to satisfy unpaid general real estate and special assessment taxes.

tax lien-A statutory lien imposed against property to force payment of general taxes and assessments. Tax liens take priority over all other liens.

voluntary lien-A lien, such as a mortgage lien, originated voluntarily by the owner of the property. (Contrast with involuntary lien.)

ILLUSTRATIONS

1. general liens or specific liens
2. Whether the lien is imposed on the property without the owner's consent or if the owner voluntarily originates the lien
3. is imposed on the property by state law; may be created by a court
4. involuntary; specific
5. involuntary; specific
6. voluntary; specific
7. involuntary; specific
8. involuntary; general



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SELF-EVALUATION QUESTIONS

1. c. A lis pendens is a notice to the world of a potential future lien on a specific parcel of real estate. A writ of attachment is used by a creditor to have the court hold property so the debtor cannot convey or encumber it. Foreclosure is the name given to the lawsuit and choice "b" is nonsense.
2. a. Specific involuntary liens are defined as liens created by law that are secured by a specific parcel of real estate. Real estate taxes are specific involuntary liens. In general, liens can be either general or specific and either voluntary or involuntary, depending on how the liens originated and by what categories of property they are secured.
3. c. Foreclosure is the only possible correct answer because it is the only type of lawsuit mentioned in the alternative choices. The result of a foreclosure proceeding, if the plaintiff is successful, is sale of the property.
4. b. The assessed value is 40 percent of the market value, so:
 $\$20,000 \times .40 = \$8,000$
Then, applying the equalization factor: $\$8,000 \times 1.50 = \$12,000$
Therefore:
 $\$12,000 \times \frac{\$4}{\$100}$ (or $\$12,000 \times .04$) = **\$480** total tax
5. d. A general contractor has a statutory right to file a mechanic's lien for unpaid bills. Because the value of the property has been enhanced, the lien provides security for payment. A mechanic's lien remains valid in situations where the general contractor has been paid but has not paid the subcontractors. Therefore, "d" is the correct answer.
6. d. A judgment is a general lien on both real and personal property owned by a debtor. After the judgment decree is issued by the court, it is recorded to create the lien. The court will then issue a writ of execution directing such property to be sold to pay the debt.
7. a. In general, real estate taxes and special assessments are given priority over all other liens. The other liens generally take priority in the order in which they were recorded; mechanics' liens, by the date the work was ordered.
8. d. Such improvements as curbs and gutters benefit specific parcels of real property and do not benefit the general public. Therefore, they are taxed directly to those enriched taxpayers by way of a special assessment. Ad valorem taxes are spread equally to all taxpayers, and nonbenefitting taxpayers should not bear the burden of paying for improvements that they did not receive. Revenue bonds may help with the initial financing, but their issuance does not result in the ultimate payment for the improvements. Raising utility rates does not apply because curbs and gutters are not utilities,



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9. b. Assessed value is the value that the taxing officials place on a property. It need not resemble market value or appraised value, although, in many states, it must be a percentage of market value. Equalization is the process of applying a factor to assessed value to achieve uniformity of assessments between counties. Choice "b" is the only logical choice.
10. b. Subordination agreements are entered into by lienholders to change priorities of liens in certain situations. The lienholder taking a lesser priority is usually compensated in money as consideration for entering into the agreement. A purchase-money lender would most likely demand that its lien be first in priority before making such a loan.
11. b Real estate taxes become liens automatically without being specifically recorded against each parcel.
12. d. The mechanic's lien has third priority due to the contract date, or lacking a contract date, the first day either labor or material was provided. The second mortgage was recorded later.
13. a **Ad valorem** means "according to the value" and is the system used for assessing general real estate taxes.