Chapter 8 – Transfer of Title

Learning Goals:

- Explain voluntary alienation and list the ways property is transferred by this method.
- List and outline the basic requirements for a valid deed.
- Identify and describe each of the types of deeds listed

If sold, willed or gifted (voluntary alienation) – a Deed is used

A deed is the written instrument by which an owner of real estate intentionally conveys the right, title or interest in the parcel of real estate to someone else. The statute of frauds requires all deeds to be in writing. The owner who transfers the title is called the grantor. The person who acquires the title is called the grantee. The deed is executed (signed) only by the grantor.

Essential Elements of a Valid Deed

- Must be in writing
- Grantor signs (18/sane/alive)
- Grantee named (no signature required)
- Needs a legal description
- Needs consideration
- Requires words of conveyance
- Requires delivery & acceptance
Requirements for a Valid Conveyance (Deed)

Executing a deed is a specific, formal process. The grantor must have legal capacity to sign (execute) the deed, must be of lawful age, must be of sound mind and must be alive. The grantor’s name must be spelled correctly. Witnesses and/or a power of attorney are required. To transfer title in a community property state, a spouse’s signature is required to waive any marital or community property rights. The ‘acknowledgment’ is a formal declaration that the person who signs a written document does so voluntarily and that his/her signature is genuine.

The grantee must be named. If more than one grantee, all rights must be stated. There must be consideration. This consideration may be ‘love and affection’ or the consideration may be nominal consideration, ‘$10 and other good and valuable consideration’.

The deed must have a granting clause, also called words of conveyance. This affirms the grantor’s intention to convey the property.

The deed must have an habendum clause. This clause defines ownership taken by the grantee. The clause begins with the phrase, “to have and to hold” and also state any limitations and rights.

A deed must include an accurate legal description of the property conveyed. It also must include any relevant exceptions or reservations, restrictions, easements and C.C & R’s.

It must have delivery and acceptance. It could be accepted personally or through a 3rd party such as an escrow agent.

We will be covering 4 major deed types; (1) General Warranty Deed, (2) Special Warranty Deed, (3) Bargain and Sale Deed, and (4) Quit Claim Deed.

4 Major Deed Types

1) General Warranty Deed
2) Special Warranty Deed
3) Bargain and Sale Deed
4) Quit Claim Deed
(1) General warranty deed

A general warranty deed provides the greatest protections of any deed. 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 statutes. The deed usually includes the phrase "conveys and warrants". It also includes the following 5 warranties/covenants:

* The covenant of seisin
  * guarantees that the grantor owns the property and has the right to sell it

* The covenant against undisclosed encumbrances
  * prevents no unknown liens, encumbrances, encroachments, etc.

* The covenant of quiet enjoyment
  * guarantees that the grantee’s title will be good against 3rd parties who bring court actions to establish superior title to the property

* The covenant of further assurance
  * grantor promises to obtain and deliver any instrument needed to make the title good
    * maybe the grantor’s spouse has failed to sign away dower rights
    * a quitclaim deed may be needed to clear the title

* The covenant of warranty forever
  * the grantor promises to compensate the grantee for the loss sustained in the title fails at any time in the future

2) Special Warranty Deed

A special warranty deed only contains 2 basic warranties:

* the grantor received title, and
* the property was not encumbered during the time the grantor held title, except otherwise noted.

The grantor defends the title against himself or herself. It generally contains the words, “grantor remises, releases, alienates and conveys.” It may include additional warranties, specifically stated in the deed. It is usually used by fiduciaries such as:

* trustees,
* executors, and
* corporations.
WARRANTY DEED

For good consideration, we__________________________________ of_____________________________, County
of____________________ of_____________________, State 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, 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__________19____.
WITNESS the hands and seal of said Grantors this_____day of_______, 19____.

________________________________________
Grantor

________________________________________
Grantee

STATE OF
COUNTY OF }

On_________, personally appeared______________
the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature____________________________________

Affiant____Known____Unknown
ID Produced____________________
(Seal)

3) Bargain and sale deed
The third deed type is a bargain and sale deed. This deed type only implies that
the grantor holds title and possession of the property. Phrases in this type of
deed are "grants and releases" or "grants, bargains and sells". This type of deed is
often used in foreclosures and tax sales.
4) **Quit claim deed**

The 4th and final deed type provides the grantee with the least protection of any deed. It carries no covenants or warranties at all. The phrase found in this type of deed is, "remises, releases and quitclaims". It is the only type of deed that may be used to convey less than a fee simple estate. It is often used to cure a deft or a cloud on the title. It is also used to correct misspellings and community property claims. It is a 'quick fix' for clouds on the title.
QUITCLAIM DEED

THIS QUITCLAIM DEED, Executed this ___ day of _________________, 19___, by first party __________________ whose post office address is ______________________ to second party, __________________ whose post office address is ______________________

WITNESSETH, That the said first party, for good consideration and for the sum of $_______________ paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of ______________________, State of ________________, to wit:

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in presence of:

________________________________________  ______________________________
Witness  First Party

________________________________________  ______________________________
Witness  Second Party

STATE OF  }
COUNTY OF  }

On __________ before me, ____________________, personally appeared ____________________________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ________________________________

Affiant  Known  Unknown  
ID Produced_____________________
(Seal)

Business Ownership S Corp, C Corp,

Personal Property ownership
Homeowners' Insurance

Most transactions include payment of a homeowners’ insurance policy. Often times an insurance company will reduce other insurance premiums if the purchaser insures his home through the same insurance company. Coverage and claims include:

1. Basic form policy—provides coverage against fire or lightning, glass breakage, windstorm and hail, explosion, riot and civil commotion, damage by aircraft, damage from vehicles, damage from smoke, vandalism and malicious mischief, theft and loss of property removed from the premises when endangered by fire or other perils.

2. Broad-form policy—also covers falling objects; weight of ice, snow, or sleet; collapse of all or part of the building; bursting, cracking, burning, or bulging of a steam or hot water heating system; accidental discharge, leakage, or overflow of water or steam from within a plumbing, heating, or air conditioning system; freezing of plumbing, heating, or air conditioning system; injury to electrical appliances, devices, fixtures, and wiring from short circuits or other accidentally generated currents.

Federal Flood Insurance Program
If the property is located in a federal flood zone, federal flood insurance may also be required. Flood insurance is available through the Federal Emergency Management Agency (FEMA). This program subsidizes flood damage insurance. It is Required on all properties located in flood-prone area (“flood plains”) if property is financed with federally related mortgage loans. A map of flood-prone areas is prepared by Army Corps of Engineers.