

**Real Estate Principles of Georgia**

**Lesson 4:  
Transferring  
Ownership**

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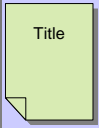
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**Title**

**Title:** Abstract concept referring to real property ownership rights.

**Cloud on title:** Problem with owner's title (such as interest claimed by someone else). Also called a title defect.



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**Alienation**

**Alienation:** Process of transferring real property ownership (title) from one party to another.

- May be voluntary or involuntary.



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## Alienation

### Voluntary alienation

**Voluntary alienation:** Owner voluntarily transfers interest in land to someone else.

Examples:

- Patents
- Deeds
- Wills



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## Voluntary Alienation

### Patents and deeds

**Patent:** Instrument used to convey government land to a private individual.

**Deed:** Instrument used to convey title to real property from a grantor to a grantee.

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## Deeds

### Parties to a deed

▶ **Grantor:** One who grants interest in real property to another.

▶ **Grantee:** One who receives grant of real property.



Grantor



Grantee

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## Deeds

### Types of deeds

- ▶ General warranty deed
- ▶ Special warranty deed
- ▶ Grant deed
- ▶ Bargain and sale deed
- ▶ Quitclaim deed
- ▶ Deeds executed by court order

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## Types of Deeds

### General warranty deed

General warranty deed contains grantor's covenants to grantee:

- covenant of seisin
- covenant of right to convey
- covenant against encumbrances
- covenant of quiet enjoyment
- covenant of further assurance
- covenant of warranty forever

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## Types of Deeds

### General warranty deed

**Covenant of seisin:**  
Promise that grantor actually owns property interest being transferred.

**Covenant of right to convey:** Promise that grantor has legal power to make conveyance.



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## Types of Deeds

### General warranty deed

#### Covenant against encumbrances:

Promise that property is not burdened by undisclosed easements, liens, etc.

#### Covenant of quiet enjoyment:

Promise that grantee will be able to enjoy property in peace, free from lawful claims by third parties.



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## Types of Deeds

### General warranty deed

#### Covenant of further assurance:

Promise that grantor will take any necessary steps to make grantee's title good.

#### Covenant of warranty forever:

Promise that grantor will defend grantee's title against claims that existed at time of conveyance.

GENERAL WARRANTY DEED

THIS INDENTURE, Made the \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand \_\_\_\_\_ between \_\_\_\_\_ and the State of \_\_\_\_\_ hereinafter called the GRANTOR, and \_\_\_\_\_ residing at \_\_\_\_\_ hereinafter called the GRANTEE.

WITNESSETH that in consideration of the sum of ten dollars (\$10.00) and other valuable consideration in hand paid by the GRANTEE to the GRANTOR, the GRANTOR conveys and warrants unto the GRANTEE, the GRANTEE's heirs, successors and assigns forever, the following described land, situated in the County of \_\_\_\_\_ State of Georgia.

Subject to (its encumbrances the property will be subject to: w/ mortgages, assessments, etc.)

The GRANTOR shall lawfully defend in the simple of the above property, and has good right to convey the same.

The GRANTEE shall lawfully defend and quieten the title to the above property against the lawful claims and demands of all persons.

TO HAVE AND TO HOLD the same, together with all the buildings, improvements and appurtenances belonging thereto, if any, to the GRANTEE and GRANTEE's heirs, successors and assigns forever.

IN WITNESS WHEREOF, GRANTOR has signed and sealed this deed, the day and year above written. Signed, sealed, and delivered in the presence of:

Witness \_\_\_\_\_  
Grantor \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My appointment expires \_\_\_\_\_

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## Types of Deeds

### General warranty deed

If covenant is breached, grantee can sue grantor for compensation.

But grantees tend to rely on title insurance or another form of title protection.



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## Types of Deeds

### Special warranty deed

Same covenants as general warranty deed, but scope **limited to defects that arose during grantor's ownership.**

- Special warranty deed conveys after-acquired title.



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## Types of Deeds

### Bargain and sale deed

Bargain and sale deed:

- contains no warranties or covenants
- does not convey after-acquired title
- rarely used



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## Types of Deeds

### Quitclaim deed

Quitclaim deed:

- contains no warranties
- does not convey after-acquired title
- conveys only the interest held by grantor at the time it is given

Quitclaim deed is often used to "cure" clouds on title.

**QUITCLAIM DEED**

AFTER RECORDING MAIL TO:  
 Filed for Record at Request of \_\_\_\_\_  
 Escrow Number: \_\_\_\_\_

Grantor(s): \_\_\_\_\_ Grantee(s): \_\_\_\_\_  
 Abbreviated Legal Address(es): \_\_\_\_\_ Additional Legal(s) on page: \_\_\_\_\_  
 Assessor's Tax Parcel Number(s): \_\_\_\_\_

THE GRANTOR for and in consideration of \$1 releases and quitclaims to \_\_\_\_\_  
 the following described real estate, situated in the County of \_\_\_\_\_,  
 State of Georgia:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 By \_\_\_\_\_  
 By \_\_\_\_\_  
 By \_\_\_\_\_  
 STATE OF \_\_\_\_\_  
 County of \_\_\_\_\_  
 I certify that I know or have satisfactory evidence \_\_\_\_\_  
 the person(s) who appeared before me, and said person(s) acknowledged that \_\_\_\_\_ signed this instrument  
 and acknowledged it to be \_\_\_\_\_ free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_ Notary Public in and for the State of \_\_\_\_\_ Residing at \_\_\_\_\_  
 My appointment expires: \_\_\_\_\_

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## Types of Deeds

### Deed executed by court order

Deed executed by court order is used to convey title after a court-ordered sale.

Example: sheriff's sale after court-ordered foreclosure.



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## Summary Patents and Deeds

- ▶ Patent
- ▶ General warranty deed
- ▶ Special warranty deed
- ▶ Grant deed
- ▶ After-acquired title
- ▶ Bargain and sale deed
- ▶ Quitclaim deed
- ▶ Deeds executed by court order

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## Requirements of a Valid Deed

Deed must:

- ▶ Be in writing
- ▶ Identify the parties
- ▶ Be signed by competent grantor
- ▶ Grantee must be clearly identified
- ▶ Contain adequate description of the property

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## Requirements of a Valid Deed, cont.

### Deed must:

- ▶ Recite consideration exchanged
- ▶ Contain words of conveyance (granting clause)
- ▶ Typically deeds also
  - Define.....
  - State.....
- ▶ Define interest conveyed (habendum clause)
- ▶ State any reservations or exclusions

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## Requirements of a Valid Deed In writing

Under statute of frauds, deed to real property must be in writing.

### Statute of frauds:

Law requiring certain contracts and other legal transactions to be in writing and signed.



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## Requirements of a Valid Deed Identify parties

Both grantor(s) and grantee(s) must be clearly identified in deed.



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## Requirements of a Valid Deed Signed by competent grantor

Deed must be signed by legally competent **grantor(s)**: individual(s) who will be bound by transfer.



**Competent:** Of sound mind for purposes of entering into a contract, and age of majority (18 in Georgia and most states).

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## Requirements of a Valid Deed Signed by competent grantor



Illiterate or disabled grantor can sign deed by making mark, but mark must be accompanied by signatures of witnesses.

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## Requirements of a Valid Deed Power of attorney

**Power of attorney:** Document authorizing a party (attorney in fact) to act on behalf of another.

To allow signature of deed on grantor's behalf, power of attorney must:

- specifically authorize attorney in fact to do so, and
- be recorded in county where property is located.

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## Requirements of a Valid Deed Transfer by corporation

- ▶ Deed transferring title to property owned by corporation must be signed by authorized official, with signature and corporate seal.
- Authorization must come from resolution by board of directors.



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## Requirements of a Valid Deed More than one grantor

All grantors must sign deed.

- Deed lacking necessary signature is invalid.
- Unnecessary signature does not invalidate transfer.

Signatures of both husband and wife are required to convey community property.

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## Requirements of a Valid Deed Grantee must be alive

Deed recipient must be alive, but need not be competent.

- Child (or mentally incompetent person) can receive title but can't convey title.
- Corporation is legal entity and can receive title to property.



Child can receive but not convey



Corporation can receive and convey

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## Requirements of a Valid Deed

### Adequate property description

Legal description is not an absolute requirement but will ensure an adequate property description.

Merely including the street address is inadequate.

A reference to a lot number on a recorded plat map is sufficient.



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## Requirements of a Valid Deed

### Recital of consideration

Deed usually must state consideration given to grantor by grantee in exchange for property.



Consideration may simply be a nominal dollar amount or for "love and affection."



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## Requirements of a Valid Deed

### Contain words of conveyance

Words of conveyance are often referred to as the **granting clause**: words indicating grantor's intent to transfer interest in property.



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## Typical Deed Provisions

### Habendum clause

Habendum clause describes interest being transferred.

Typically begins with words “to have and to hold.”

Fee simple absolute
Life estate

Joint tenancy
Tenancy in common

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## Typical Deed Provisions

Exclusions and reservations clause lists encumbrances grantee will be taking title subject to.

**Encumbrances:**

- Liens
- Easements

(Valid encumbrances may still remain in force even if they aren't listed in deed.)

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## Requirements of a Valid Deed

### Delivery and Acceptance

For conveyance to occur, deed must be delivered by grantor and then accepted by grantee.



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## Acknowledgment

Acknowledgment: Grantor declares to authorized official (i.e., notary public) he signed deed voluntarily; official attests that signature is voluntary and genuine.

- Official can't have interest in transfer.
- Without acknowledgment, deed may be valid—but cannot be recorded.



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## Requirements of a Valid Deed

### Delivery

**Delivery:** Legal transfer of deed from grantor to grantee, resulting in transfer of title.

- Delivery must take place while grantor is alive.
- Grantor must intend to immediately transfer title to grantee.



Grantor



Grantee

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## Requirements of a Valid Deed

### Acceptance

Conveyance is completed when grantee accepts deed.

- Deed may be accepted by an agent.



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## Voluntary Alienation Wills

**Will:** A written instrument disposing of property upon death of maker (testator).

In Georgia, a will must be:

- in writing
- signed by testator with legal capacity (meaning she is competent and at least 14 years old)
- attested to by at least two competent witnesses

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## Wills

### Holographic will

**Holographic will:** A will written, dated, and signed entirely in testator's handwriting; and which was not witnessed.

- Only recognized in certain states; **not recognized in Georgia.**
- Any typewritten or pre-printed provisions in a holographic will are disregarded.



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## Wills

### Nuncupative will

**Nuncupative will:** Oral will made when testator is near death, in front of at least one witness.

- Witness writes out what testator said and signs document.
- If testator recovers, will is invalid.
- Only valid in some states.
- **Georgia does not recognize nuncupative wills** for real or personal property.

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## Wills

### Will terminology

- Person who receives property under terms of a will is called a **beneficiary**.
- Personal property is **bequeathed** to a **legatee**.
- Real property is **devised** to a **devisee**.
- **Probate** is the process in which a will is proved valid and executed.
- Person who carries out will and settles estate is an **executor, administrator, or personal representative**.

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## Summary Voluntary Alienation

- ▶ Statute of frauds
- ▶ Grantor
- ▶ Grantee
- ▶ Competence
- ▶ Words of conveyance
- ▶ Acknowledgment
- ▶ Delivery
- ▶ Acceptance
- ▶ Wills

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## Alienation

### Involuntary alienation

**Involuntary alienation:** Transfer of property interest against will of owner, or without action by owner.

May occur through:

- rule of law
- adverse possession
- accession



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## Alienation

### Involuntary alienation

**Alienation by rule of law:**

- dedication
- intestate succession and escheat
- condemnation
- court order



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## Involuntary Alienation

### Dedication

**Dedication:** Private party transfers land to the public.



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## Involuntary Alienation

### Intestate succession and escheat

**Intestate succession:** When someone dies without a valid will, decedent's property passes according to Georgia's laws of descent (to surviving spouse and children or next of kin).



When property owner dies without a will or any surviving heirs, property ownership **escheats** (reverts) to state.

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## Involuntary Alienation Condemnation

**Condemnation:** Taking private property for public use through power of **eminent domain**.

- Use must be a public use.
- Owner must receive just compensation.



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## Involuntary Alienation Condemnation

**Inverse condemnation:** If a property owner feels his property has been taken or damaged by a public entity, he may sue government for compensation.



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## Involuntary Alienation Court order

Most common examples:

- quiet title actions
- suits for partition
- foreclosures
- bankruptcies



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## Court Order

### Quiet title actions

**Quiet title action:** Court action intended to settle dispute about title to a property.



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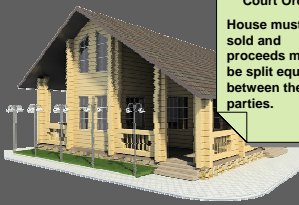
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## Court Order

### Suits for partition

**Partition action:** Lawsuit by a co-owner to have property divided. Once divided, each co-owner owns his part in severalty.



**Court Order**  
House must be sold and proceeds must be split equally between the two parties.

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## Court Order

### Foreclosure

**Judicial foreclosure:** Sale of property pursuant to court order to satisfy a lien.

**Deed of trust foreclosure:** Sale of property at a trustee's sale under a power of sale (only available for deed of trust liens).



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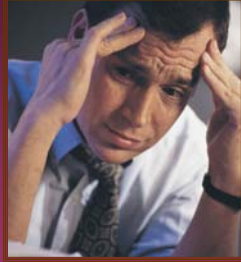
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## Court Order Bankruptcy

**Bankruptcy:** Court may order distribution of debtor's real property to satisfy claims of mortgage lenders or other creditors.



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## Involuntary Alienation Adverse possession

**Adverse possession:** Person other than owner on record can acquire title to property through a long period of continuous possession (also called **title by prescription**).



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## Involuntary Alienation Adverse possession

Adverse possession typically must be:

- ▶ actual
- ▶ open and notorious
- ▶ hostile to the owner's interest
- ▶ exclusive
- ▶ continuous and uninterrupted for a specific period of time (20 years in Georgia)



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## Adverse Possession

### Actual

**Actual possession:** Occupation and use of property in an appropriate manner.

Residence is not required unless that is the appropriate use.



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## Adverse Possession

### Open and notorious

**Open and notorious possession:** Must put true owner on notice that her property interest is being threatened.



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## Adverse Possession

### Hostile

**Hostile possession:** Possession without owner's permission. Adverse possessor must intend to claim ownership and defend that claim against all parties.



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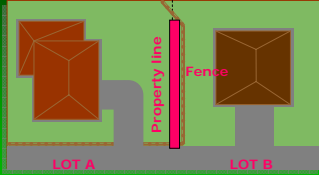
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## Adverse Possession

### Exclusive possession

Exclusive possession: True owner must be completely excluded from possession.



Exclusive use of property (here the strip between Lot A's fence and the true property line) can mature into title by the process of adverse possession if all the required elements are satisfied.

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## Adverse Possession

### Continuous and uninterrupted

Adverse possessor may have to:

- have **continuous and uninterrupted possession** for statutory period (5 to 30 years, depending on state law; **20 in Georgia**)
- pay property taxes (in some states; **not in Georgia**)

Intermittent use may sometimes be sufficient (such as seasonal use).

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## Adverse Possession

### Continuous and uninterrupted

**Tacking:** Successive adverse possessors can add together their periods of possession to satisfy time period.

In Georgia, tacking requires **privity**, meaning that the adverse possessors must have some continuity of interest or relationship.

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## Adverse Possession

### Claim of right/color of title

In some states, an adverse possessor must have **claim of right/color of title**: title that appears to be good, but which in fact is not.

In Georgia, color of title is not an absolute requirement, but it does shorten the statutory period from 20 years to 7 years.

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## Involuntary Alienation

### Accession

**Accession:** Addition to real property from natural or man-made causes. May involve involuntary alienation of another's property.

Causes:

- Accretion
- Reliction
- Erosion
- Avulsion



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## Accession

### Accretion

**Accretion:** When waterborne soil (called alluvion or alluvium) is deposited on land beside a body of water.



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## Accession

### Reliction (aka Dereliction)

**Reliction:**  
When water recedes from stream or lake, exposing new land.



Like accretion, process must be extremely gradual.

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## Accession

### Erosion

**Erosion:** Wearing away of land by natural processes (wind, rain, flowing water, etc.).

Soil that moves becomes part of land where it settles.



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## Accession

### Avulsion

**Avulsion:** Sudden movement of land by heavy rain, flowing water, waves, etc. (unlike the other gradual processes).

Does **NOT** automatically result in involuntary alienation: original owner still has title to the land, if there is a way to claim it.



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## Summary Involuntary Alienation

- ▶ Dedication
- ▶ Intestate succession
- ▶ Escheat
- ▶ Condemnation
- ▶ Quiet title
- ▶ Partition
- ▶ Adverse possession
- ▶ Accession

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## The Recording System

**Recording:** Placing document in public record so its information is available to general public.

Documents transferring title, establishing interest in property, or creating/removing encumbrances should be recorded.



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## The Recording System Procedures

In Georgia, a document is recorded by filing a copy with the clerk of the superior court in the county where the property is located.



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## The Recording System Procedures

Grantor and grantee indexes are used for title searches.



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## Title Protection Torrens system

Certain states use the Torrens system of land title registration.

Torrens certificate of title provides evidence of ownership and condition of title.

Georgia does not use the land registration system; title is verified using standard property title searches.

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## The Recording System Title searching

**Title search:** used to determine who holds what interest in a particular piece of property.

- Tracing the **chain of title** back through several owners establishes validity of seller's title.
- Some clerk's offices also maintain a **plat index**, in which all documents affecting a particular plat are listed together.



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## The Recording System Notice

**Actual notice:** Person has actual notice of a fact if she is aware of it.

**Constructive notice:** A person has constructive notice of a fact if she should be aware of it, even if she is not.



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## Notice Constructive notice

Recording a document with the clerk of the court provides constructive notice of a property interest.

Occupying or using a property in some fashion might also provide constructive notice.

Anyone who later acquires the property interest is considered to have constructive notice (even if there's no actual notice).



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## Recording Priority

Recording a document concerning a property interest establishes priority of that interest.

General rule: "First to record, first in right."

If deed isn't recorded, grantee may lose title to a subsequent **good faith purchaser without notice.**

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## Summary The Recording System

- ▶ Recording procedures
- ▶ Title search
- ▶ Actual notice
- ▶ Constructive notice
- ▶ Inquiry notice

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## Title Protection

Seller is typically required to deliver marketable title to buyer at closing.

**Marketable title** = free from serious defects, and seller has unrestricted ability to convey



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## Title Protection Title search

**Title search:** Examination of public records in county where property is located, looking for all recorded documents and other records that may affect property's title. This title search in Georgia remains the Buyer's responsibility.

A complete title search will include checking other public records, such as tax records, probate records, judgments, and divorce decrees.

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## Title Protection Title search

In Georgia, a title examiner will generally search back as far as 40 years, but valid claims could be based on something that occurred earlier (although it is unlikely that someone would pursue such a claim).



40 years

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## Title Protection

Type of title protection:

- Abstracts of title
- Opinions and certificates of title
- Title insurance



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## Title Protection Abstract of title

**Abstract of title:** Chronological summary of all documents that may affect title.

- Contains each document's source and location.



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## Title Protection

### Opinions and certificates of title

**Opinion (certificate) of title:** Formal opinion as to who true owner of property is and who else holds legitimate interests in property.



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## Title Protection

### Title insurance

- Buyer's "evidence" of a clear and marketable title

**Title insurance policy:** Title insurance company agrees to reimburse policyholder for financial losses resulting from title defects covered by policy.

- If someone makes adverse claim against title, title company will defend against claim.



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## Title Insurance

### Types of policies

- ▶ A title policy issued to a buyer is called an **owner's policy**.
- ▶ A title policy protecting a lender's security interest is called a **lender's policy**.



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## Title Insurance Obtaining a policy

Title company first performs title search.

Based on title search, company issues title report.

- All defects and encumbrances found in public record are listed in report and excluded from coverage.



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## Title Insurance Obtaining a policy

If title report reveals problems, buyer or lender may require seller to clear them up before transaction proceeds.

Title insurance policy lasts as long as the policyholder has legal interest in property.

- Subsequent defects or encumbrances will not be covered.

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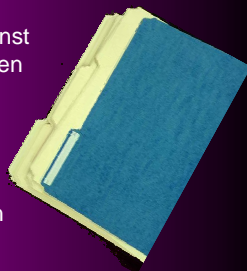
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## Title Insurance Standard coverage

Standard coverage title insurance policy insures against defects in title, including hidden risks such as forgery.

- It doesn't insure against claims by parties in possession, defects known by the owner, or encroachments.



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## Title Insurance Extended coverage

Extended coverage policy (ALTA policy): covers same things as a standard policy, plus matters not of public record (such as rights of parties in possession, etc.)



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## Title Insurance Government action

Neither type of title insurance policy insures against losses due to government action, such as condemnation or zoning changes.



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## Summary Title Protection

- ▶ Abstract of title
- ▶ Certificate/opinion of title
- ▶ Title insurance policy
- ▶ Owner's policy
- ▶ Lender's policy
- ▶ Title report
- ▶ Standard coverage of title
- ▶ Extended coverage
- ▶ Torrens certificate

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