

1 ☐ Real Estate Principles of Georgia

Lesson 4: Transferring Ownership

2 ☐ 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.

3 ☐ Alienation

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

- May be voluntary or involuntary.

4 ☐ Alienation

Voluntary alienation

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

Examples:

- Patents
- Deeds
- Wills

5 ☐ 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.

6 ☐ Deeds

Parties to a deed

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

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

7 ☐ Deeds

Types of deeds

- ▶ General warranty deed
- ▶ Special warranty deed

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

8 **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

9 **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.

10 **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.

11 **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.

12 **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.

13 **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.

14 **Types of Deeds**

Bargain and sale deed

Bargain and sale deed:

- contains no warranties or covenants
- does convey after-acquired title
- rarely used

15 **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.

16 **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.

17 **Summary**

Patents and Deeds

- ▶ Patent
- ▶ General warranty deed
- ▶ Special warranty deed
- ▶ Grant deed

18 **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

19 **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

20 **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.

21 **Requirements of a Valid Deed**

Identify parties

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

22 **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).

23 **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.

24 **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.

25 **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.

26 **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.

27 **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.

28 **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.

29 **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."

30 **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.

31 **Typical Deed Provisions**

Habendum clause

Habendum clause describes interest being transferred.

Typically begins with words "to have and to hold."

32 **Typical Deed Provisions**

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

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

33 **Requirements of a Valid Deed**
Delivery and Acceptance

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

34 **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.**

35 **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.

36 **Requirements of a Valid Deed**
Acceptance

Conveyance is completed when grantee accepts deed.

- Deed may be accepted by an agent.

37 **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

38 **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.

39 **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.

40 ☐ **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.

41 ☐ **Summary**

Voluntary Alienation

- ▶ Statute of frauds
- ▶ Grantor
- ▶ Grantee
- ▶ Competence
- ▶ Words of conveyance

42 ☐ **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

43 ☐ **Alienation**

Involuntary alienation

Alienation by rule of law:

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

44 ☐ **Involuntary Alienation**

Dedication

Dedication: Private party transfers land to the public.

45 **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.

46 **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.

47 **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.

48 **Involuntary Alienation**
Court order

Most common examples:

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

49 **Court Order**
Quiet title actions

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

50 **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.

51 **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).

52 **Court Order**
Bankruptcy

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

53 **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).

54

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)

55 **Adverse Possession**

Actual

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

Residence is not required unless that is the appropriate use.

56 **Adverse Possession**

Open and notorious

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

57 **Adverse Possession**

Hostile

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

58 **Adverse Possession**

Exclusive possession

59 **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).

60 **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.

61 **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.

62 **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

63 **Accession**
Accretion

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

64 **Accession**
Reliction (aka Dereliction)

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

Like accretion, process must be extremely gradual.

65 **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.

66 **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.

67 **Summary**

Involuntary Alienation

- ▶ Dedication
- ▶ Intestate succession
- ▶ Escheat
- ▶ Condemnation

68 **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.

69 **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.

70 **The Recording System Procedures**

Grantor and grantee indexes are used for title searches.

71 **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.

72 **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.

73 **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.

74 **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).

75 **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.

76 **Summary
The Recording System**

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

77 **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

78 **Title Protection
Title search**

79 **Title Protection
Title search**

80 **Title Protection**

Type of title protection:

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

81 **Title Protection**
Abstract of title

82 **Title Protection**
Opinions and certificates of title

83 **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.

84 **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.

85 **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.

86

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.

87 **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.

88 **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.)

89 **Title Insurance**

Government action

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

90 **Summary**

Title Protection

- ▶ Abstract of title
- ▶ Certificate/opinion of title
- ▶ Title insurance policy
- ▶ Owner's policy
- ▶ Lender's policy