

6 Transferring & Recording Title To Real Estate

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TITLE TO REAL ESTATE

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Legal and equitable title

Owning title to real property commonly connotes owning the complete bundle of rights that attach to the property, including the right to possession. More accurately, someone who possesses all ownership interests owns **legal title** to the property. Legal title is distinct from **equitable title**, which is the interest or *right to obtain legal title* to a property in accordance with a sale or mortgage contract between the legal owner and a buyer or creditor. During the contractual period of time when ownership of legal title is contingent upon the contract, the buyer or lender owns equitable title to the property.

For example, a buyer enters into a contract for deed to purchase a house. The seller lends the bulk of the purchase price to the buyer for a term of three years. The buyer takes possession of the property, and makes payments on the loan. During this period, the seller retains legal title, and the buyer owns equitable title. If the buyer fulfills the terms of the agreement over the three year period, the buyer has an enforceable contract to obtain legal title.

Another common example is a mortgage loan transaction that gives the lender the right to execute a strict foreclosure, which transfers legal title to the lender in the event of a default. With this contractual right, the lender has equitable title to the property.

In practice, the terms "title" and "legal title" are often used interchangeably.

Notice of title

In any legal system that permits private ownership of real property, there will always be disputes as to who truly owns a particular parcel of real estate. For example, an owner might "sell" his property to three unrelated parties. The first party buys the property at the earliest date, the second party pays the highest price, and the third party receives the best deed, a warranty deed. Who owns legal title to the property?

Ownership of legal title is a function of evidence. A court will generally rule that the person who has the preponderance of evidence of ownership is the owner of the property. In the example, if the first two buyers did not receive a deed while the third party did, the third party may have the best evidence and be ruled the legal title-holder. However, what if the first buyer had moved into the house and occupied it for six months before the original owner sold the property to the second and third buyers? And what if the second buyer, after searching title records, reports that the seller never really owned the property and therefore could not legally sell it to anyone! Now who owns the property?

The illustration underscores the difficulty of proving title to real estate: there is no absolute and irrefutable proof that a party holds legal title. Our legal system has developed two forms of title evidence-- actual notice and constructive notice-- to assist in the determination.

Actual notice. The term "notice" is synonymous with "knowledge." A person who has received *actual* notice has *actual knowledge* of something. Receiving actual notice means learning of something through direct experience or communication. In proving real estate ownership, a person provides actual notice by producing direct evidence, such as by showing a valid will. Another party receives actual notice by seeing direct evidence, such as by reviewing the deed, reading title records, or physically visiting the property to see who is in possession. Thus if Mary Pierce drives to a property and sees directly that John Doe is in possession of the home, Mary then has received actual notice of John Doe's claim of ownership. Her knowledge is obtained through direct experience.

Constructive notice. Constructive notice, or **legal notice**, is knowledge of a fact that a person *could have or should have obtained*. The foremost method of imparting constructive notice is by recordation of ownership documents in public records, specifically, *title records*. Since public records are open to everyone, the law generally presumes that when evidence of ownership is recorded, the public at large *has received constructive notice* of ownership. By the same token, the law presumes that the owner of record is in fact the legal owner. Thus, if John Doe records the deed of conveyance, he has imparted, and Mary Pierce has received, constructive notice of ownership. Possession of the property can also be construed as constructive notice, since a court may rule that Mary *should have visited the property* to ascertain whether it was occupied.

A combination of actual and constructive notice generally provides the most indisputable evidence of real property ownership.

Transferring title

Transfer of title to real estate, also called **alienation**, occurs voluntarily and involuntarily. When the transfer uses a written instrument, the transfer is called a **conveyance**.

Exhibit 6.1 Transferring Title to Real Estate

Voluntary	Involuntary
public grant deed will	descent escheat foreclosure eminent domain adverse possession estoppel

Voluntary alienation. Voluntary alienation is an unforced transfer of title by sale or gift from an owner to another party. If the transferor is a government entity and the recipient is a private party, the conveyance is a **public grant**. If the transferor is a private party, the conveyance is a **private grant**.

A living owner makes a private grant by means of a **deed of conveyance**, or **deed**. A private grant that occurs when the owner dies is a **transfer by will**.

Involuntary alienation. Involuntary alienation is a transfer of title to real property without the owner's consent. Involuntary alienation occurs primarily by the processes of descent and distribution, escheat, foreclosure, eminent domain, adverse possession, and estoppel.

DEEDS OF CONVEYANCE

Delivery and acceptance

Validity

Deed clauses and covenants

Statutory deeds

Special purpose deeds

Transfer tax

Delivery and acceptance

A deed is a legal instrument used by an owner, the **grantor**, to transfer title to real estate voluntarily to another party, the **grantee**.

Execution of a valid deed in itself does not convey title. It is necessary for the deed to be *delivered to and accepted by the grantee* for title to pass. To be legally valid, delivery of the deed requires that the grantor

- ▶ be *competent* at the time of delivery
- ▶ *intend to deliver* the deed, beyond the act of making physical delivery

Validity of the grantee's acceptance requires only that the grantee have physical possession of the deed or record the deed.

Once accepted, title passes to the grantee. The deed has fulfilled its legal purpose and it cannot be used again to transfer the property. If the grantee loses the deed, there is no effect on the grantee's title to the estate. The grantor, for example, cannot reclaim the estate on the grounds that the grantee has lost the deed after it was delivered and accepted. Nor can the grantee return the property by returning the deed. To do so, the grantee would need to execute a new deed.

In states that use the Torrens system, title passes only when the *deed has been registered on the certificate of title and a transfer certificate has been issued to the new owner*.

Validity

Depending on state law, a deed must meet the following requirements for validity. The deed must:

- ▶ be delivered and accepted
- ▶ have a competent grantor and legitimate grantee

The grantor must be living, of legal age, and mentally competent. If grantor is a corporation, the signing party must be duly authorized. The grantee must be living or have legal existence, but need not be of legal age or mentally competent.

- ▶ be in writing
- ▶ contain a legal description
- ▶ contain a granting clause

The deed must express the grantor's present desire and intention to transfer legal title to the grantee.

- ▶ include consideration

The deed must be accompanied by valuable (monetary) or good (love and affection) consideration, but the amount need not reflect the actual price in most cases.

- ▶ be signed by the grantor

The deed must be signed by the grantor, but need not be signed by the grantee unless the deed contains special provisions requiring the grantee's acceptance. Grantors may give power of attorney to other parties, authorizing them to execute deeds on

their behalf. The power of attorney authorization should be recorded to ensure a valid conveyance.

- ▶ be acknowledged

The grantor must declare before a notary or other authorized person that the grantor's identity and signature are genuine, and that the deed execution was a free, voluntary act. The grantor then receives a certificate of acknowledgment signed by the notary. Some states require acknowledgment to complete a valid conveyance. Most states require it before they will record the deed. A deed without an acknowledgement, therefore, tends to endanger one's claim to a property.

Recording. Recording is *not* necessary to make a deed valid. However, it is in the grantee's best interests to do so. Recording the deed gives the public constructive notice of the grantee's ownership.

Deed clauses and covenants

Conveyance clauses and covenant, or warrant clauses set forth all the necessary provisions of the conveyance.

Conveyance clauses. Conveyance clauses describe the details of the transfer. The principal conveyance clauses are:

- ▶ **granting clause, or premises clause**

the only required clause; contains the conveyance intentions; names the parties; describes the property; indicates nominal consideration

- ▶ **habendum clause**

describes the type of estate being conveyed (fee simple, life, etc.)

- ▶ **reddendum clause, or reserving clause**

recites restrictions and limitations to the estate being conveyed, e.g., deed restrictions, liens, easements, encroachments, etc.

- ▶ **tenendum clause**

identifies property being conveyed in addition to land

Covenant, or warrant, clauses. Covenant clauses present the grantor's assurances to the grantee. A deed of conveyance usually contains one or more of the following covenants, depending on the type of deed.

- ▶ **warrant of seisin**

assures that the grantor owns the estate to be conveyed, and has the right to do so

▶ **warrant of quiet enjoyment**

assures that the grantee will not be disturbed by third party title disputes

▶ **warrant of further assurance**

assures that the grantor will assist in clearing any title problems discovered later

▶ **warranty forever; warranty of title**

assures that the grantee will receive good title, and that grantor will assist in defending any claims to the contrary

▶ **warrant of encumbrances**

assures that there are no encumbrances on the property except those expressly named

▶ **warranty against grantor's acts**

states the assurance of a trustee, acting as grantor on behalf of the owner, that nothing has been done to impair title during the fiduciary period

Statutory Deeds

A deed of conveyance can make a variety of warranties and convey a range of interests. The most common deeds are statutory deeds, in which the covenants are defined in law and do not need to be fully stated in the deed. The prominent types are the following.

Bargain and sale deed. In a bargain and sale deed, the grantor covenants that the title is valid but may or may not warrant against encumbrances or promise to defend against claims by other parties. If there *is* a warrant of defense, the deed is a full warranty bargain and sale deed.

The overall bargain and sale covenant is: *"I own, but won't defend."*

General warranty deed. The general warranty deed, or **warranty deed** for short, is the most commonly used deed. It contains the fullest possible assurances of good title and protection for the grantee. The deed is technically a bargain and sale deed in which the grantor promises to defend against any and all claims to the title.

The overall general warranty covenant is: *"I own and will defend."*

Special warranty deed. In a special warranty deed, the grantor warrants only against title defects or encumbrances not noted on the deed that may have occurred during the grantor's period of ownership or trusteeship. The deed does not protect the grantee against claims that predate the owner's period of ownership. Special warranty deeds are often used by trustees and grantors who acquired the property through a tax sale.

The overall special warranty covenant is: *"I own and will defend against my acts only."*

Quitclaim deed. A quitclaim deed transfers real and potential interests in a property, whether an interest is known to exist or not. The grantor makes no claim to any interest in the property being conveyed and offers no warrants to protect the grantee.

The quitclaim is typically used to clear title rather than convey it. Where there is a possibility that prior errors in deeds or other recorded documents might **cloud** (encumber) the title, the relevant parties execute a quitclaim deed to convey "any and all" interest to the grantee.

If a party responsible for encumbering title refuses to quitclaim the interest, the owner may file a **quiet title suit**. This requires the lienor to prove the validity of an interest. If the defendant is unable to do so, the court removes the cloud by decree.

The overall quit claim covenant is: *"I may or may not own, and I won't defend."*

Special purpose deeds

A special purpose deed is one tailored to the requirements of specific parties, properties, and purposes. The principal types are:

- ▶ **personal representative's deed**

used by an executor to convey a decedent's estate; also called an executor's deed

- ▶ **guardian's deed**

used by a court-appointed guardian to transfer property of minors or mentally incompetent persons

- ▶ **sheriff's deed**

used to convey foreclosed property sold at public auction

- ▶ **deed *of* trust**

used to convey property to a third party trustee as collateral for a loan; on satisfaction of the loan terms, the trustee uses a **reconveyance deed** to convey the property back to the borrower

- ▶ **deed *in* trust**

used to convey property to the trustee of a land trust. not to be confused with deed *of* trust

- ▶ **master deed**

used to convey land to a condominium developer; accompanied by the condominium declaration when recorded

▶ **partition deed**

used to convey co-owned property in compliance with a court order resulting from a partition suit; a partition suit terminates an estate when one or more co-owners want to dissolve their relationship and are unable to do so without the assistance of a court.

▶ **patent deed**

used to transfer government property to private parties

▶ **tax deed**

used to convey property sold at a tax sale

Transfer tax

State law usually requires payment of a **documentary stamp tax** on a conveyance of real property. The tax is based on the actual price of the property conveyed, thus enabling taxing authorities to ascertain current market value for ad valorem tax purposes. Payment of the tax is evidenced on the deed.

Exemptions from transfer tax include:

- ▶ transfer within the immediate family
- ▶ consideration less than a certain amount
- ▶ transfer between government entities or non-profit organizations
- ▶ trust deed transfer and reconveyance
- ▶ tax deed

WILLS

Types of will **Validity** **Probate**

A will, or more properly, a **last will and testament**, is a legal instrument for the voluntary transfer of real and personal property after the owner's death. It describes how the maker of the will, called the **testator** or **devisor**, wants the property distributed. A beneficiary of a will is called an **heir** or **devisee**. The property transferred by the will is the **devise**.

A will takes effect only after the testator's death. It is an **amendatory** instrument, meaning that it can be changed at any time during the maker's lifetime.

Commonly, the testator names an **executor**, or **personal representative**, to oversee the settlement of the estate. If a minor is involved, the testator may identify a **guardian** to handle legal affairs on behalf of the minor.

Types of will

A will generally takes one of the following forms:

- ▶ **witnessed**
in writing and witnessed by two people
- ▶ **holographic**
in the testator's handwriting, dated and signed
- ▶ **approved**
on pre-printed forms meeting the requirements of state law
- ▶ **nuncupative**
made orally, and written down by a witness; generally *not valid* for the transfer of real property

Validity

State law establishes requirements for a valid will. The law generally requires that:

- ▶ the testator be of legal age and mentally competent
- ▶ the testator indicate that the will is the "last will and testament"
- ▶ the will be signed
- ▶ the completion of the will be witnessed and signed by the witnesses
- ▶ the will be completed voluntarily, without duress or coercion

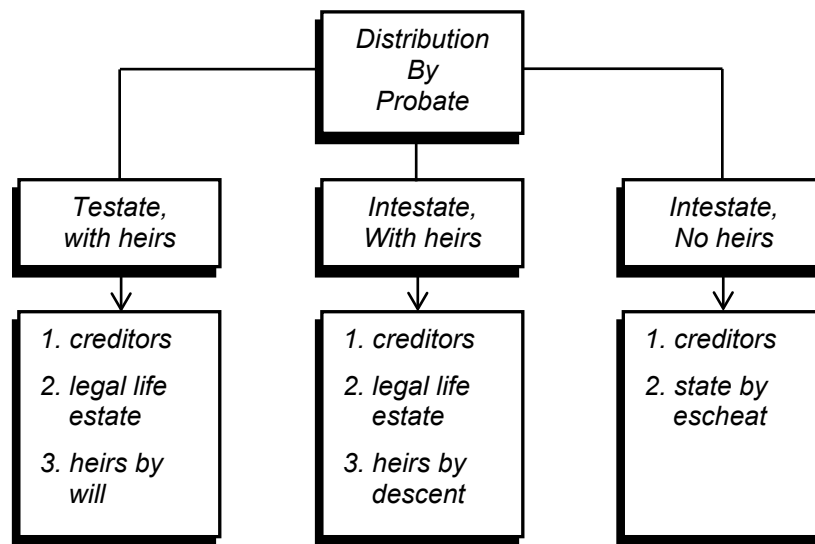
Probate

A court proceeding called **probate** generally settles a decedent's estate, whether the person has died **testate** (having left a valid will) or **intestate** (having failed to do so). Real property may be exempted from probate if it is held in a land trust. Probate of real property occurs *under jurisdiction of courts in the state where the property is located, regardless of where the deceased resided*.

The probate court's objectives are to:

- ▶ validate the will, if one exists
- ▶ identify and settle all claims and outstanding debts against the estate
- ▶ distribute the remainder of the estate to the rightful heirs If the will does not name an executor, the court will appoint an **administrator** to fulfill this role.

Exhibit 6.2 Transfer of a Decedent's Estate by Probate



The exhibit shows three possible channels of probate deliberation, depending on whether there is a will and heirs.

Testate proceeding. If the decedent died with a valid will, the court hears the claims of lienors and creditors and determines their validity. First in line are the superior liens: those for real estate taxes, assessment taxes, federal estate taxes, and state inheritance taxes. If the estate's liquid assets are insufficient to pay all obligations, the court may order the sale of personal or real property to satisfy the obligations.

The court must also hear and satisfy legal life estate claims, including those for dower, curtesy, homestead, and elective share. These interests may prevail even if the will does not provide for them.

Once all claims have been satisfied, the balance of the estate's assets passes to the rightful heirs *free and clear of all liens and debts*.

Intestate proceeding with heirs. If the decedent died without a valid will, the estate passes to lawful heirs according to the state's laws of **descent and distribution**, or **succession**. Laws of descent stipulate *who inherits and what share they receive*, without regard to the desires of the heirs or the intentions of the deceased.

For example, John Astor dies intestate, leaving a wife and four children. The laws of descent in his state provide that the surviving spouse receives one-third of the estate, and the four children receive equal shares of the remaining two thirds.

Intestate proceeding with no heirs. If an intestate decedent has no heirs, the estate **escheats**, or reverts, to the state or county after all claims and debts have been validated and settled.

INVOLUNTARY TITLE TRANSFER

Laws of descent

Abandonment

Foreclosure

Eminent domain

Adverse possession

Estoppel

State law regulates all forms of involuntary alienation, whether such transfer occurs by the laws of descent, abandonment, foreclosure, eminent domain, adverse possession, or estoppel.

Laws of descent

Involuntary alienation occurs when a title-holder dies without a valid will. The state's statutes of descent and distribution identify heirs and the respective shares of the estate they will receive. In the absence of heirs, title transfers to the state or county by escheat.

Abandonment

Property that has been abandoned for a statutory period may also escheat to the state or county.

Foreclosure

A property owner who fails to fulfill loan obligations or pay taxes may lose an estate through foreclosure.

Eminent domain

Various government and public entities can transfer private property to the public sphere by the power of eminent domain. The transfer is involuntary, even though the owner receives compensation. For example, a city government wants to widen a highway to accommodate growth. The government uses eminent domain to condemn and purchase all properties abutting the thoroughfare in order to complete the construction project.

Adverse possession

State laws may allow a real property owner to lose legal title to an **adverse possessor**. An adverse possessor is someone who enters, occupies, and uses another's property without the knowledge or consent of the owner, or with the knowledge of an owner who fails to take any action over a statutory period of time.

To claim legal title, the adverse possessor must:

- ▶ be able to show a **claim of right** or **color of title** as reason for the possession
- ▶ have **notorious possession**, which is possession without concealment
- ▶ maintain a consistent claim of **hostile possession**, which is a claim to ownership and possession regardless of the owner's claims or consent
- ▶ occupy the property *continuously* for a statutory period of time
- ▶ in some states, *pay taxes*

A **claim of right** is based on the adverse possessor's occupying and maintaining the property as if he or she were the legal owner. **Color of title** results when a grantee has obtained defective title, or received title by defective means, but occupies the property as if he or she were the legal owner. A court may hold that a claim of right or a claim of colored title is a valid reason for the possession.

Notorious possession and **hostile possession** give constructive notice to the public, including the legal owner, that a party other than the legal owner is occupying and claiming to own the property. It is possible for such notice to prevail over notice by recordation as the dominant evidence of legal ownership, provided the possessor has occupied the property continuously for the statutory period of time.

In some states, the possessor must have paid taxes over a prescribed period to obtain title. However, if the possessor has paid rent of any kind, the claim of ownership might be refuted.

Avoiding adverse possession. An owner can avert the danger of involuntary alienation by adverse possession by *periodically inspecting the property within statutory deadlines* and evicting any trespassers found. The owner may also sue to quiet title, which would eliminate the threat of the adverse possessor's claim to legal title.

A property registered in the Torrens system cannot be lost to adverse possession.

Estoppel

Estoppel prevents a person from claiming a right or interest that is inconsistent with the person's previous statements or acts. As a basis for involuntary alienation, the doctrine of estoppel can prevent an owner from re-claiming a property that was transferred under false pretenses. For example, an owner conveys a property with a defective title. The grantor is fully aware of the defect but makes no disclosure to the grantee. The grantor later cures the defect and then claims to be the rightful owner of the property on the basis of the effort and expense of clearing the title. Estoppel disallows the grantor's claim because of the prior conveyance action. The grantee remains legal owner and benefits from the cleared title as well.

TITLE RECORDS

Chain of title Recording system Title evidence

State laws require the recording of all documents that affect rights and interests in real estate in the public real estate records of the county where the property is located. These public records, or **title records**, contain a history of every parcel of real estate in the county, including names of previous owners, liens, easements, and other encumbrances that have been recorded.

Deeds, mortgages, liens, easements, and sale contracts are among the documents that must be recorded. Other public records that affect real estate title are marriage, probate, and tax records.

Generally, a County Recorder's Office or other similarly named office maintains the title records.

Title records serve a number of purposes, not the least of which is to avoid ownership disputes. Other important purposes are:

- ▶ **Public notice**

Title records protect the public by giving all concerned parties **constructive notice** of the condition of a property's legal title: who owns the property, who maintains claims and encumbrances against the property.

- ▶ **Buyer protection**

Title records protect the buyer by revealing whether a property has **marketable title**, one free of undesirable encumbrances. The buyer is legally responsible for knowing the condition of title, since it is a matter of public record. Recording a transaction also protects a buyer by replacing the deed as evidence of ownership.

- ▶ **Lienholder protection**

Title records protect the lienholder by putting the public on notice that the lien exists, and that it may be the basis for a foreclosure action. Recording also establishes the lien's priority.

Chain of title

Chain of title refers to the succession of property owners *of record* dating back to the original grant of title from the state to a private party. If there is a missing link in the chronology of owners, or if there was a defective conveyance, the chain is said to be broken, resulting in a **clouded title** to the property. To remove the cloud, an owner may need to initiate a **suit to quiet title**, which clears the title record of any unrecorded claims.

Abstract of Title. An abstract of title is a written, chronological summary of the property's title records and other public records affecting rights and interests in the property. It includes the property's chain of title and all current recorded liens and encumbrances, by date of filing. A title abstractor or title company analyst conducts the search of public records, called a **title search**, needed to produce an abstract. Insurers and lenders generally require the search to identify title defects and ascertain the current status of encumbrances.

A **title plant** is a duplicate set of records of a property copied from public records and maintained by a private company, such as a title company.

Recording system

There are no federal recording standards. Each state prescribes procedures and requirements for recording in public title records: forms, proper execution, acknowledgment, and witnessing.

The Torrens system. Certain states and counties use the Torrens system of recording. The Torrens system differs from other title recording systems in that *title passes only when the conveyance has been duly registered on the title certificate itself*. Encumbrances likewise have no legal effect until they are recorded. In effect, the Torrens title record is the title itself. It is not necessary to search public records to ascertain the status of title; it is all reflected on the title certificate.

To enter a property in the Torrens system, a court action must first clear title by giving notice to all potential interest holders that they must express their claims. At the end of the proceeding, the court decrees that the title is accepted into Torrens registration. The Torrens registry retains the original registration documents and provides copies to the recorder or other appropriate office. All subsequent transactions affecting title must follow the proper Torrens recording procedures and requirements.

Title evidence

Marketable title. Since the value of a property is only as good as the marketability of its title, the evidence supporting the status of title is a significant issue. To demonstrate marketable title to a buyer, a seller must show that the title is free of

- ▶ doubts about the identity of the current owner
- ▶ defects, such as an erroneous legal description
- ▶ claims that could affect value
- ▶ undisclosed or unacceptable encumbrances

In the conventional residential transaction, a buyer's best assurance of marketable title is the title company itself. The title company's due diligence in preparing for closing is to investigate the status of the property's title, complete with liens, claims and encumbrances. This process involves various forms of title search and chain-of-title investigation. In essence, if any of these activities uncover title clouds or claims prior to closing, the title company will stop the closing process until the problem is cleared up.

The culmination of the pre-closing title work is obtaining a completed title insurance policy, which in itself is one of the best available assurances of clear, marketable title.

The four principal forms of evidence in support of the status of marketable title are:

- ▶ a Torrens certificate
- ▶ a title insurance policy
- ▶ an attorney's opinion of the title abstract
- ▶ a title certificate

Torrens certificate. If available, the Torrens certificate is the best evidence, for the reasons given earlier-- it is not merely a record, but is the title itself.

Title insurance. In the absence of Torrens registration, a title insurance policy is commonly accepted as the best evidence of marketable title. A title insurance policy indemnifies the policy holder against losses arising from defects in the insured title.

The common policy types are the lender's policy and the owner's policy, which protect the respective policy holders' interests in the property. Thus, a lender who holds an \$80,000 mortgage on a property will obtain protection worth \$80,000 against the possibility that the lender's lien cannot be enforced. The owner's policy will insure against defective title to the extent of the property's initial or appreciated value.

An owner's policy may have *standard coverage* or *extended coverage*. Standard coverage protects against title defects such as incompetent grantors, invalid deeds, fraudulent transaction documents, and defects in the chain of title. Extended coverage protects against liabilities that may not be of public record, including fraud, unrecorded ownership claims, unintentional recording errors, and unrecorded liens. Extended coverage may also protect against adverse possessors, boundary disputes, and prescriptive easements. Neither standard nor extended coverage insures against defects expressly excluded by the policy or defects that the owner might have been aware of but did not disclose.

Before issuing a title insurance policy, a title company conducts a *title search* to uncover defects in title or unrecorded breaks in the chain of title. If the search fails to discover any uninsurable defects, the company issues a **binder**, or commitment to insure. The binder recapitulates the property description, interest to be insured, names of insured parties, and exceptions to coverage.

Attorney's opinion of abstract. An attorney's opinion of abstract states that the attorney has examined a title abstract, and gives the attorney's opinion of the condition and marketability of the title. Generally, an opinion is not a proof or guarantee of clear title. Further, it offers no protection in the event title turns out to be defective. Also known as *opinion of title*.

Title certificate. A title certificate is a summary of the condition of title as of the date of the certificate, based on a search of public records by an abstractor or title analyst. The certificate does not guarantee clear title against defects, unrecorded encumbrances or encroachments.

6

Transferring and Recording Title to Real Estate Snapshot Review

TITLE TO REAL ESTATE

- Legal and equitable title**
- legal title: ownership of the bundle of rights
 - equitable title: a conditional right to legal title subject to an owner's agreements with buyers and creditors
- Notice of title**
- how ownership is evidenced to the public
 - actual notice: knowledge acquired or imparted directly through demonstrable evidence, e.g., presenting or inspecting a deed, visiting a party in possession
 - constructive notice: knowledge one could or should have obtained, as presumed by law; imparted by recording in public records "for all to see"
- Transferring title**
- voluntary by grant, deed, or will
 - involuntary by descent, escheat, eminent domain, foreclosure, adverse possession, estoppel

DEEDS OF CONVEYANCE

- Delivery and acceptance**
- legal title transfers upon competent grantor's intentional delivery and grantee's acceptance; in Torrens, title transfers upon registration

- Validity**
- grantor, grantee, in writing, legal description, granting clause, consideration, grantor's signature, acknowledgement, delivery and acceptance

Deed clauses and covenants

- premises clause: granting
- habendum clause: type of estate
- reddendum clause: restrictions
- tenendum clause: other property included
- warrants: seizen; quiet enjoyment; further assurance; forever; encumbrances; grantor's acts

Statutory deeds

- bargain and sale: "I own but won't defend"
- general warranty: "I own and will defend"
- special warranty: "I own and warrant myself only"
- quitclaim: "I may or may not own, and won't defend"

- Special purpose deeds**
- used for different purposes, to convey certain interests, or by certain parties

- Transfer tax**
- state tax on conveyances based on price

WILLS

- last will and testament: voluntary transfer to heirs after death
- maker: deviser or testator; heir: devisee; estate: devise

- Types of will**
- witnessed; holographic; approved; nuncupative

Validity	• adult; competent; indicates "last will and testament"; signed; witnessed; voluntary
Probate	• if testate, estate passes to heirs; if intestate, to successors by descent; if intestate with no heirs, estate escheats to state or county • process: validate will; validate, settle claims and pay taxes; transfer balance of estate to heirs
INVOLUNTARY TITLE TRANSFER	• descent and escheat: no will • foreclosure: lose title by forfeiture • eminent domain: lose title to public for the greater good • adverse possession: by claim of right or color of title; continuous, notorious, hostile possession; may have to pay taxes • estoppel: barred by prior acts or claims
TITLE RECORDS	• all instruments affecting title must be recorded • give public notice; protect owners; protect lienholders' claims
Chain of title	• successive property owners from original grant to present owner • abstract of title: chronology of recorded owners, transfers, encumbrances
Recording system	• local property recording system governed by state law • Torrens registry: requires court action initially: legal title does not pass until recordation occurs
Title evidence	• needed to prove marketable title as well as who owns • forms of evidence: Torrens; title insurance; attorney's opinion of abstract; title certificates