



LESSON 3

**ACQUISITION
AND TRANSFER
OF PROPERTY**



1 ACCESSION - An addition to property by natural increase or growth; also by the installation of improvements.

2 ACCRETION - An addition to land from natural causes as, for example, from gradual action of the ocean or river waters.

3 ADVERSE POSSESSION - The open and notorious possession and occupancy under an evident claim or right, in denial or opposition to the title of another claimant.

4 ALIENATION - The transfer of property and possession of lands, or other things, from one person to another.

5 ALLUVIUM - Deposits of earth made by the natural action of the water, as through accretion.

6 APPURTENANCE - Something belonging to the land and transferred with it, such as buildings, fixtures, rights, easements, mutual water stock, etc.

7 AVULSION - The sudden tearing away or removal of land by the action of water flowing over or through it.

8 BILL OF SALE - A written instrument given to pass title of personal property from vendor to vendee.

9 BONA FIDE - In good faith, without fraud, genuine.

10 BUNDLE OF RIGHTS - Beneficial interests or right of ownership of real property.

11 CHATTELS - Goods of every species of property movable or immovable which are not real property. Personal property.

12 CHATTELS REAL - An interest in real estate less than freehold, such as estates for years, at will and by sufferance which are

personal property. A lease of real estate is called a chattel real which passes a present interest in real property.

13 CHOSE IN ACTION - A personal right to something not presently in the owner's possession, but recoverable by a legal action for possession. An example would be a right to money owed by a debtor.

14 CLOUD ON TITLE - Any conditions revealed by a title search which affect the title to property; usually relatively unimportant items but which cannot be removed without a deed or court action.

15 COLOR OF TITLE - That which appears to be good title but which is not actually title in fact. (Requires a written document.)

16 COMMON LAW - The body of law that grew from customs and practices developed and used in England and which forms the basis for real property law in the United States

17 CONSIDERATION - Anything of value given to induce entering into a contract; it may be money, personal services or even love and affection.

18 CONVEYANCE - The transfer of title to land from one to another. An instrument which carries or transfers an interest in land from one person to another.

19 CURTESY - In other than community property states it is the common law rights of a husband in his wife's property which arises from the marriage.

19a DECIDUOUS Shedding leaves annually not evergreen.

20 DEFEASANCE- A clause in a deed, lease or other written instrument the legal effect of which is to defeat, cancel or annul the title in whole or in part.

21 DEDICATION - The giving of land by its owner for the use of the public and sometimes accepted for such use by authorized officials on behalf of the public.

22 DEED - A written instrument which, when properly executed and delivered, conveys title to real property.

23 DEMISE, - The transfer of a right to, or title in, an estate; to lease.

24 DONEE - A person to whom a gift is made. DONOR - A person who makes a gift.

25 DOWER - In other than community property states, it is the legal right or interest which the wife acquires by marriage in the estate of her husband (Not applicable in California.)

26 DURESS Unlawful constraint exercised upon a person whereby he is forced to do some act against his will.

27 ELEEMOSYNARY - Charitable.

28 EMBLEMENTS - Ordinarily applied to annual crops produced by the labor and efforts of men. The term also can mean annual crops produced by nature alone.



29 EROSION - Condition caused by the gradual wearing away of soil by the action of the elements, i.e. flowing water.

30 ESCHEAT - The legal process by which title to property owned by one who dies intestate reverts to the state when there are no heirs or other successors.

31 ESTATE - The degree, quantity, nature and extent of interest which a person owns in real property.

32 ESTATE OF INHERITANCE - An estate which may descend to heirs. All freehold estates are estates of inheritance, except estates for life.

33 ESTATE FOR LIFE - A possessory, freehold estate in land held by a person (called the life tenant) only for the duration of his or her life or the life or lives of another or others. ("life estate")

34 ESTATE FOR YEARS - An interest in real property by virtue of a contract, possession of which is for a definite and limited period of time. A lease.

35 ESTOPPEL - The prevention by law of a person from making a given claim or assertion, whether true or not, because it is contrary to a previous claim, admission or conduct.

36 ET UX - A Latin term meaning "and wife."

37 FEE - An estate of inheritance in real property.

38 FEE SIMPLE - In modern estates, the terms "fee" and "fee simple" are substantially synonymous. The term "fee" is an ancient English derivation. "Fee simple absolute" is an estate in real property by which the owner has the greatest power over the title which it is possible to have, being an absolute estate. In modern use, it expressly establishes the title of real property in the owner, without limitation or end. He may dispose of it by sale, or trade, or will, as he chooses.

39 FIXTURES - Appurtenances affixed to buildings or land, usually in such a way that they cannot be moved without damage to themselves or the property; plumbing, electric fixtures, fences, trees, shrubbery, etc

40 FREEHOLD ESTATE - A quality of ownership indicating the holding of title. All other interests in real property are less than freehold.

41 GIFT DEED - A deed for which the consideration is love and affection and where there is no material consideration.

42 GRANT - A technical term used in deeds of conveyance of lands. When used all alone, title is to be warranted or guaranteed by implication.

43 GRANTEE - The person to whom a grant is made.

44 GRANTOR - The one who signs the deed. The one who makes the grant.

45 IMPLIED - Not expressed or stated; presumed or inferred.

46 INVOLUNTARY CONVEYANCE Sheriffs deed; tax deed; an instrument against the will of the owner.

47 LACHES - Delay or negligence in asserting one's legal rights.

48 LEGAL DESCRIPTION - A written description by which property can be definitely located by reference to government surveys, approved recorded maps or by metes and bounds descriptions.

49 LIFE ESTATE - A title ownership in real property terminating upon the death of some certain person.

50 LIFE TENANT - A person who has or holds a life estate.

51 LIS PENDENS A notice filed or recorded for the purpose of warning all persons that the title or the right to the possession of certain real property is in litigation: literally, it means "suit pending", the notice is usually recorded so as to give constructive notice of pending court action.

52 PATENT - A conveyance or grant of the title of government land (public land) to a private party.

53 PERSONAL PROPERTY Any property which is not real property.

54 PRESCRIPTION - The obtaining of title to or a right in property by adverse possession, i.e., by occupying it openly, notoriously and hostility for a five year period. By paying the real property taxes the fee can be claimed.

55 QUIET TITLE - A court action brought to establish title, or remove a cloud on title.

56 QUITCLAIM DEED - A deed used to remove clouds on title by relinquishing any right, title or interest that the grantor may have.

57 REMAINDER ESTATE - An estate which, after the termination of a prior estate (such as a life estate),



vests title in someone other than the original grantor or the grantor's successors in interest.

58 RESERVATION - A right reserved by the grantor in conveying property.

59 REVERSION - The right to future possession or enjoyment by the person or his heirs, creating the preceding estate, such as a life estate; an interest which vests in the creator of that previous estate after its termination

60 REVERSIONARY INTEREST - A type of interest a person may have in lands or other property upon the termination of the preceding estate.

61 SANDWICH LEASE - A leasehold interest which lies between the fee owner and the operating lease. It is created when the lessee enters into a sublease.

62 SHERIFF'S DEED - Deed given by court order in connection with the sale of property to satisfy a judgment.

63 SUBLEASE A lease given by a lessee.

64 TENANCY AT SUFFERANCE - A tenancy which arises when a tenant holds over after the termination of a lease without the consent of the landlord.

65 TENANCY AT WILL - A tenancy for an indefinite period which may be terminated at the will of either the landlord or the tenant.

66 TENEMENTS - All rights in land which pass with a conveyance of the land.

67 TITLE - The rights of ownership

68 TORT - A wrongful act; wrong; injury; violation a legal right.

69 UNDUE INFLUENCE - Taking any fraudulent or unfair advantage of another's weakness of mind, distress or necessity.

70 UNLAWFUL DETAINER - An action at law to evict a person or persons occupying real property unlawfully.

71 VALID - Having force, or binding force; legally sufficient and' authorized by law; enforceable.

72 VENDEE - A purchaser, buyer.

73 VENDOR - A seller; one who disposes of a thing in consideration of money.

74 VOID - To have no force or effect; that which is unenforceable

75 VOIDABLE - That which is capable of being adjudged void, but is not void unless action is taken to make it so.

76 WARRANTY DEED - A deed used to convey real property which contains express warranties of title and quiet possession and the grantor thus agrees to defend the premises against the lawful claims of third persons. In California it has been supplanted by the grant deed. The modern practice of securing title insurance has reduced the importance of warranty deeds.

PROPERTY

➔ 77 The California Civil Code defines property as “the thing of which there may be

ownership.” Ownership is defined as “the right



of one or more persons to possess and use property to the exclusion of others.”

→ 78 Property is divided in two classes:

- A. Real property that which is immovable.
- B. Personal property that which is movable.

REAL PROPERTY

→ 79 Real property, or real estate as it is often called, consists of:

- (1) Land
- (2) Anything affixed to it so as to be regarded as a permanent part of the land.(fixtures)

→ (3)That which is incidental or appurtenant to the land e.g. stock in a Mutual Water Company, easements.

- (4) That which is immovable by law.

→ 80 Real Property is land and all that which is attached thereto or contained therein. It includes rights in the minerals that are beneath the surface of the earth, water flowing upon it, and things of a permanent nature attached to the earth, such as buildings, trees and unsevered, unripened fruits of the soil.

→ 81 Land is though of primarily as the ground or soil upon which we walk or upon which we place structures. It also includes the air space above as a right to build to the height allowed by law and the right to defend against the encroachment of neighboring properties. The ownership of land also includes the right to the sub-adjacent support from adjoining land. The ownership of land is absolute and unconditional in ownership from the center of the earth to the outer reaches of space, except as against the right of the State to purchase land for public use by the power of eminent domain, and to enact regulations by virtue of its police powers.

PERSONAL PROPERTY

→ 82 According to the Civil Code, “Every kind of property that is not real property is personal property.”

→ 82a Personal property provides difficulties for real estate brokers because it can be hypothecated, alienated and could become real property.

→ 83 Therefore, when personal property becomes immovable, it must become real property. Often documents become confused e.g. although mortgages and trust deeds are legally tied to real, property the instruments themselves are considered to be personal property.

FIXTURES

→ 84 Anything is considered affixed to the land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent as by means of cement, plaster, nails bolts and screws. Rights by others to use real property called easements (including easements in gross,) are also a form of real property. They are called fixtures. Another name you need to know is Fructus Naturales. It defines crops that are a products of nature alone. These are generally classified as real property and include trees whether deciduous (leaf shedding) or evergreen, bushes, etc.

85 Disputes sometimes arise as to whether a thing is or is not a fixture. The law has devised some general tests to determine this point.

86 (1) The most important test is considered to be the INTENTION of the person who attached the property to the land.

→87 (2) The METHOD by which it was attached. Here the degree of permanence is important. If attached by cement, plaster, nails or bolts, it is likely To be classed as a “fixture.”

88 (3) The ADAPTABILITY of the property so attached for ordinary use in connection with the land.

89 (4) The existence of an AGREEMENT between the parties as to the property.

90 (5) The RELATIONSHIP of the person attaching the article to others with whom a dispute arises as to its character.



→91 These five tests can be remembered by using the memory tool: (MARIA):

- M-ethod of attachment
- A-daptability of the property
- R-elationship of the parties
- I-ntention of the parties
- A-greement between the parties

92 Sometimes there may be difficulty in establishing a thing to be a “fixture.” The prudent broker or salesperson will avoid discord and dispute by inquiring about, and clearly specifying in the deposit receipt agreement the intentions of the seller and buyer concerning potentially disputable items. Persons inspecting a property with the idea of buying, or making a loan, are entitled to assume that whatever is attached to the structure and essential for its use is a fixture, even though that particular item can be removed easily. It is important to specify the status of any doubtful items in the agreement, even such things as wall beds, screens, curtain rods, venetian blinds, and sometimes even appliances connected to the structure with pipes, such as a water softener.

93 Property which has been determined to be a fixture merges into the land and the owner of the land becomes the owner of the fixture. The only exception to this rule is in the case of “Trade Fixtures.”

TRADE FIXTURES

→94 Personal property affixed to real property for the purpose of trade, manufacture, business, etc., such as showcases permanently attached in a store, is a “trade fixture” and does not “run with the land” (become real property.) A trade fixture may be removed by an owner or a tenant. If the removal causes damage or injury, the premises must be restored to their original condition. Trade fixtures which have been installed by a tenant as necessary for his or her particular use to earn income, or which have been so designated by an agreement between the parties, should be removed from the rented premises before the expiration of the lease or within a reasonable time thereafter. Those fixtures which are not removed as prescribed may become the property of the landlord as “abandoned property.”

MINERAL, OIL & GAS RIGHTS

→95 Things contained in the land, such as coal, oil, minerals, etc., are real property until they are taken from the ground when they become personal property. A landowner may convey the land containing, or though to contain, such materials without reservation, in which event the person to whom the parcel is conveyed acquires the right to such substances. Or, the land owner may convey the land and reserve, in the grant deed, the right to all minerals contained therein, including oil, by a provision in the deed often referred to as a reservation or an exception.

96 When such rights have been reserved by the grantor in the conveyancing instrument, the “reserving” party has an implied easement to enter upon the conveyed land for the purpose of extracting the substances which he reserved, unless the reservation specifically states “without right of surface entry.”

EMBLEMENTS

97 Emblements can be identified as fructus naturales or fructus industriales. Fructus naturales would be trees, shrubs, vines and crops that are produced by nature alone, and are ordinarily considered to be a part of the land to which they are attached until they are removed, at which time they become personal property. Fructus naturales can be owned separately from the land. California Law provides that for purposes of sale, things attached to the land that are to be severed before sale, or are under contract of sale, are to be treated as goods, and governed by the rules regulating the sale of goods, which are personal property.

→ 98 The term “Emblements” is more frequently applied to crops such as grain, garden vegetables, fruit from orchards, and other growing crops that are the fruit or result of annual labor and industry. These latter are classed as fructus industriales and may be either real or personal property depending upon the circumstances in each case. When considering the buyer and seller of land where there are such crops, these crops are a part of the land until they are removed either physically or by agreement and their ownership will pass to the grantee (buyer) by a conveyance of the land to another. An agreement between the seller and buyer could change this understanding. Such industrial



crops are sold ordinarily by abiding by the code provisions regulating the sale of goods.

99 As between tenant and landlord, emblements are owned by the tenant, since they are the result of efforts of the tenant.

ACQUISITION AND TRANSFER OF REAL PROPERTY

99a Throughout the years of the growth in our capitalistic society, the relative non-liquidity of real estate as a form of capital continues to be the economic Achilles' heel of real estate investment. A person investing in real estate accepts such a fact and pays much more attention to the amount of his investment, to the cash flow the venture will produce, and the protection offered by urban land holdings and their capital improvement through inflationary trends. The 1990 through 1996 downturn in California Real estate prices did not affect the long term investor who has a 10 to 15 year goal of either holding or exchanging the property.

100 The title to real property may be acquired in a number of ways, the most common of which is by deed and delivery.

- 101 Title may also be acquired by
 - (2) adverse possession,
 - (3) accession, by
 - (4) dedication, by
 - (5) will or
 - (6) inheritance, by
 - (7) escheat and by
 - (8) various court actions (bankruptcy, condemnation and partition action).

TITLE INTANGIBLE, ABSTRACT

102 Title to property may be defined as the rights of ownership we have in anything. As such it is an abstract idea and cannot, of itself, be handed back and forth.

➔103 The principal rights an owner has in property is the right to occupy and use; to sell in whole or in part; refuse to sell; rent or lease; grant easements; give; abandon; improve; devise by will; or exclude others from using it. The owner of the title also has the right not to take any of these actions. All of the above rights are commonly known as the "bundle of rights." The owner is also said to hold the "equity interest."

104 All title to property is said, at least in theory, to originate in the sovereign. Today, the sovereign is the state, or in some cases, the federal government. In order to pass or convey these abstract rights of ownership known as "title" a written document is required. That document, called a "deed," is not title itself, but is only evidence of title.

DEED AND DELIVERY

➔105 When ownership of real property, or an interest in it, is transferred from one person to another, It is usually accomplished through a document called a deed. A deed is not a contract. It is a conveyancing instrument.

➔106 There are many kinds of deeds including grant deed, quitclaim deed, gift deed, tax deed, etc. Whatever the type, the purpose of a deed is to pass or "convey" title to real property, and a deed is often referred to as a "conveyance." To ALIENATE the title also means to transfer it, as by deed. The opposite of alienation is acquisition.

➔ 107 In addition to the obvious need for competent parties, to be VALID, a deed must: (1) Be in writing. (2) Contain the identity, by name or designated in such a way that it can be ascertained with certainty who the (grantor and grantee) are. (3) Have a granting clause. (4) Give a proper description of the property. (5) Be signed by the grantor. However a deed need not be acknowledged to be valid.

108 (1) IN WRITING. Briefly, a deed is described as a written instrument, executed and delivered, by which title to real property is transferred from one person to another.

➔ 109 (2) IDENTITY OF THE PARTIES. The GRANTOR must be competent to convey and the GRANTEE capable of receiving the grant of the title and the identity of these parties must be included in the deed. Should the name of the grantor change during the course of holding title the new deed must be signed identifying the grantor as both.

109a A deed to a fictitious person is void. However, a deed to an actual person by a name that he has assumed is valid. Thus, a distinction must be made between a fictitious name = valid, and a fictitious



person = void. A deed is also valid even though the grantee is not named, but is adequately described. A deed to “the wife” of a named person is valid to a person by the name of his or her office, such as “the pastor” of a named church is valid, to “all the children” of a specified person is valid.

110 (3) GRANTING CLAUSE. A deed must contain an action word or phrase denoting the intent of the grantor to convey the property to the grantee. A deed may read: “I hereby convey” or “transfer” or “quitclaim” or “deed” or “grant.” Or in a gift deed, “give” These are words of transfer and each kind of deed has its own special granting clause.

111 (4) DESCRIPTION. There are three formal methods of describing land: (a) By government survey; (b) by metes and bounds; (c) by recorded map.

112 Informal description of land, such as a street number or a name, such as “Blackacre Ranch” may be used, and a deed containing such informal description could be valid and convey title. Legal description is not required. However, unless the property is described by one of the formal methods known as a “legal description” it may be extremely difficult, if not impossible, to obtain a policy of title insurance or to record.

112a An ambiguity in a legal description of land on the face of a deed would be described as a patent ambiguity or defect. If the defect can be discovered only by reference to something other than the instrument, the ambiguity would be called latent. The ambiguity could create a cloud on the title to the property and could negate the effectiveness of the deed. It could be cured by parole or extrinsic evidence referring to admissible verbal evidence to clarify the ambiguity. There are numerous court cases where additional evidence has been accepted to remove an uncertainty in the description in a deed.

113 (5) SIGNATURE OF GRANTOR. The person signing the deed is known as the GRANTOR. A deed must be signed by the party or parties making the conveyance of the premises. If there is more than one owner, all must sign. Both man and wife must sign deeds to community property. All owners in a joint tenancy must sign to convey title to the entire holding. The same is true of tenants in common or partnership holdings, except that one may be appointed to act for the others and thus convey the property. If corporate property is sold the corporation bylaws and constitution would indicate the names of

the grantees who received the deed and who would become the grantors under a sale of the corporate property.

➔ **114** A forged deed is always void, even in the hands of an innocent purchaser.

DELIVERY

➔ **115** A deed, even though valid is of no effect unless delivered and accepted. Government deeds such as tax deeds and trustee's deeds, as well as reconveyance deeds that clear the record, must be recorded and give constructive notice.

➔ **116** Generally speaking, signing and delivery of a deed transfers title. Whether or not there has been a delivery sufficient to pass title depends upon the INTENTION of the grantor. Delivery, used in this connection, means more than simply turning over physical possession of the deed. The grantor must have the intention to pass title. Lacking intention to deliver, the title does not pass.

117 There are three basic kinds of delivery: manual, recording and conditional.

118 MANUAL DELIVERY is accomplished by the grantor handing the deed to the grantee, or mailing it to the grantee.

➔ **119** RECORDING the deed in the county recorder's office, thus putting the title of record in the grantee's name, even though the grantee may not have seen the document, would ordinarily be interpreted as evidence of a valid delivery of the deed and the title. Keep in mind that such a presumption is rebuttable in court with the presentation of sufficient evidence for the court to determine otherwise. The legal principle is “an unrecorded deed is valid between the parties but invalid as to any subsequent recorded interests without notice.”

120 CONDITIONAL DELIVERY is accomplished through a third person or agent. A deed delivered directly to a grantee upon condition that the title will not pass until a certain event takes place, transfers immediate title, unless the condition is mentioned in the deed, despite the intention of the grantor.

121 However, there may be such conditional delivery to a third party and the title would not pass until the



condition was met. If a deed is delivered to an agent with instructions that it is to be given to the grantee after a certain time or event, then the transfer is not effective until the event takes place.

122 This does not apply to a deed delivered into escrow with instructions to give it to the grantee upon performance by the grantee. When so delivered into escrow it becomes a proper delivery and the deed may not be recalled, although title does not pass until the grantee has performed his part of the agreement.

123 A deed found in possession of the grantee, or one that has been recorded, is presumed delivered. The presumption may be overcome upon proof of lack of intention to transfer title as we noted previously.

ADDITIONAL ITEMS IN DEEDS

124 While the law outlines certain specific requirements necessary to create a valid deed, there are procedures not essential to its validity which are a part of standard real estate practice, and for very good reasons.

125 DATE A deed should be dated although lack of a date does not invalidate the deed. If the date is missing, it is presumed to be dated on the day it was signed.

126 CONSIDERATION It will be noted that "consideration" is not listed as one of the essentials to a valid deed. The law presumes some kind of consideration for the transfer. Frequently a deed will state "for one dollar and other valuable consideration" to avoid mentioning the actual purchase price, but even this is not required to make the deed valid. However, lack of consideration could be of material concern where the rights of third persons are involved and such lack may adversely affect the conveyance.

127 Consideration may be anything of value given or promised by a party to induce another to enter into a contract. Money, services, personal or real property and even love and affection qualify. It may be a benefit conferred upon one party or a detriment suffered by the other.

➔ **128 ACKNOWLEDGMENT** A county recorder's office will not accept a deed for recording unless it has been acknowledged. This means that the person who executes (signs) the deed transferring his property to another, must appear before a duly authorized officer and

acknowledge (admit) he signed the deed of his own free will. The law requires this acknowledgment to protect the owner from having unwarranted or unauthorized instruments filed against his title, without his knowledge or consent.

129 RECORDING A deed need not be recorded to transfer title. Delivery constitutes transfer of title. However, for protection it is common practice to record deeds, and the recording of a deed is necessary for Title Insurance purposes. Failure to record a deed may result in the grantees losing their interest in the property to a subsequent good faith purchaser because they failed to seek the protection afforded by the recording act.

130 Before a deed can be recorded, the law demands that the amount of the Documentary Transfer Tax required be stated at the top of the instrument or in an attached document. The address to which future property tax statements are to be sent is also to be identified at the top of the deed in the space provided.

ASSIGNMENT PROHIBITED

➔ **131** A deed is non-assignable. It is not a contract. It is a conveyancing instrument. It can only be used once and therefore cannot be assigned to another party. If the property is sold, a new deed must be made. The reason for this is that a deed must be signed by the grantor. If a person has received a deed in which he is named as the grantee, he cannot hand that deed to another person to effect a transfer, as he thus becomes a grantor and must sign a new deed. This rule applies even where the title is being conveyed back to the original grantor.

TYPES OF DEEDS

132 There are several types of deeds in general use in California such as grant deed, quitclaim deed, gift deed, trustee's deed, sheriff's deed, etc. All are intended to accomplish one thing - the transfer of title to real property. It is the variation of the wording of the granting clause which determines the type of deed.

GRANT DEED

➔ **133** A deed in which the grantor uses only the words "I grant" as the action or transfer word is called a grant deed. A grant deed is used only once. It is not an assignable or negotiable



instrument. By reason of the magic word “grant” exclusively, this deed carries certain implied warranties as to the condition of the title which are not carried by other types of deeds. When a grantor uses the words “I grant” he is in effect warranting (guaranteeing) that: (1) He has not already conveyed the title to the property to any other person, and (2) that the estate conveyed is free from encumbrances. except for those disclosed to the grantee. A grant deed also conveys any after-acquired title, if any such is involved. This means that if the grantor subsequently acquires any title or claim of title to the real property which the grantor has by implication claimed to grant in fee simple, such after acquired interest passes by operation of law to the grantee or the grantee's successors in interest. The after acquired title would pass to the trustee as additional security. NOTE: The grantor does not warrant that he owns the title. In California the title insurance policy is generally demanded by the buyer for this assurance of receiving title.

134 To repeat, usually these warranties are not expressed (stated) in the grant deed form, but are known as IMPLIED WARRANTIES, as the law makes them effective, whether expressed (written) or not.

QUITCLAIM DEED

➔ 135 In this type of deed the grantor merely relinquishes any right or claim he has in the property. If he has absolute ownership, he conveys absolute ownership. If he has no actual claim or right in the property, the quitclaim deed transfers nothing. The granting clause contains the words “I quitclaim”, meaning I quit any claim I have on the title to this property.

➔136 Usually, quitclaim deeds are used to clear a land contract or some “cloud”, “color of title” or lis pendens action from the record; some minor defect which needs to be removed in order to perfect the title. A quitclaim deed is signed by the party of record.

➔ 137 A lis pendens is a Latin expression meaning “litigation pending”. It is recorded to cloud the title in a lawsuit affecting real property. The Lis pendens is effective until judgment has been rendered and the appeal

period has expired; or the plaintiff rescinds it by quitclaim deed; or it is dismissed by the court. To record a Lis Pendens action there must be evidence of litigation.

➔ 138 Any conditions revealed by a title search which affect the title to property; usually relatively unimportant items but which cannot be removed without a quitclaim deed or court (quiet title) action Is referred to as a “cloud on the title.”

139 That which appears to be good title but which is not title e.g. a forged deed.

➔ 140 A court action brought to establish title or to remove a cloud on title is called a quiet title action. In the event a quiet title action is necessary, it may take a considerable length of time for the court proceedings in the event the purchaser chooses to contest the action e.g. a contestant claiming title under adverse possession.

➔ 141 There are no implied warranties in a quitclaim deed. It guarantees nothing, not even that the grantor owns the property or any interest in it. It does not convey after acquired title. It is often used as a quick solution to a quiet title action.

GIFT DEED

142 A grantor may make a gift of the property to the grantee using a grant deed or quitclaim deed form for the purpose. He may, but need not say the transfer is made in consideration of “love and affection.” A gift deed is valid unless made to defraud creditors, in which event it may be voided by the creditors. The granting clause contains the word “give” or some similar word.

OTHER TYPES OF DEEDS

143 Usually given in connection with court proceedings, there are other deeds bearing such designations as sheriffs deed, tax deed, executor's deed, etc. These include:

144 TAX DEED. One given as a result of a tax sale of property.

145 SHERIFF'S DEED. The deed given by court order in connection with sale of proper to satisfy a judgment.



146 GUARDIAN'S DEED. Used by a duly appointed guardian to transfer the property of a minor child or incompetent person.

147 ADMINISTRATOR'S DEED. One used when selling property during the administration of the estate by a court appointed representative.

148 EXECUTOR'S DEED. Used when the property of a deceased person is sold by the executor named in the will of a deceased person.

➔ **149 WARRANTY DEED** - A deed used to convey real property which contains express warranties of title and quiet possession and the grantor thus agrees to defend the premises against the lawful claims of third persons. It is used commonly in other states but not in California, where it has been supplanted by the grant deed. The modern practice of securing title

insurance has reduced the importance of warranty deeds.

150 TRUST DEED. Conveys bare legal title (but no possession) of a property to a trustee (third party) as security for a loan and differs from other deeds in that the "legal title" only is thus conveyed. A trust deed is a "security device" in the nature of a lien and differs in one other respect from other deeds in that the trust deed and the note for which it was given as security may be assigned.

151 TRUSTEE'S DEED. Executed by the trustee named in a trust deed when the borrower has defaulted in repayment of a loan, the trust deed is foreclosed, and the property is sold to the highest bidder at a trustee's sale.

➔ **152 PATENT** A grant from a sovereign. In American Law, the instrument by which a state or government grants public land to an individual.

QUESTIONS ON GRANT DEED

1. Does the fact that the amount of consideration is not stated make the deed invalid?

NO Statement of consideration is not essential to a deed.

2. Is the property description sufficient to be recorded as a valid deed?

YES The deed may be valid for recording purposes, but not for title insurance purposes.



3. Can this deed be recorded?

YES Under recording laws, where two or more persons execute an instrument by which property rights are affected, such instruments are entitled to be recorded if acknowledged by any one of such persons.

4. What would be the effect if buyers do not record?

The title would remain of record in grantor's name. The buyer runs the risk of losing title to an innocent third party.

5. Is the deed properly signed?

YES Both grantors, husband and wife, have signed. Ordinarily, grantees do not sign.

6. How is title vested by this deed?

As Community Property.

7. The deed is not dated. Is this a good deed?

YES Since the deed was notarized on December 1, 1995, it must be presumed it was signed on that date.



**BESIDES A DEED OTHER METHODS OF
ACQUIRING TITLE
ADVERSE POSSESSION**

153 Adverse Possession is a method of acquiring title to property without a deed. Before this law was codified and written into the California statutes, title could be obtained by adverse possession by the adverse possessor using the property for 20 years.

154 The current law requires strict observance of certain provisions because the title is being transferred as an “operation of law” without the consent of the holder of the title and without any court action. For title to transfer by this method, the adverse possessor must comply with 4 requirements.

155 (1) COLOR OF TITLE OR CLAIM OF RIGHT.

The adverse possessor cannot simply choose a parcel of unoccupied land and take possession. He must have some basis for claiming title. This basis may be some defective written instrument (Color of Title) or some right, no matter how erroneous (Claim of Right).

➔ **156 (2) OPEN AND NOTORIOUS OCCUPANCY.** Physical occupation and use of the property as if it were owned by the adverse possessor is required. If it is a residence he must live in it. If a farm, he must farm it, fence it in, etc. Personal occupation is not essential; Possession may be by a tenant of the person claiming by adverse possession. In any case, the occupancy must be adverse and hostile to the owner.

157 (3) **FIVE YEARS.** The occupancy must be for five continuous years.

➔ **158 (4) PAYMENT OF PROPERTY TAXES** During the five year period, the adverse possessor must pay the real property taxes on the property as they become due. The fact that the record owner is also paying the taxes would not mean that the adverse possessor had not complied with this requirement.

159 Since title by adverse possession cannot be traced through county records, it is neither marketable or insurable until perfected by Court decree. To perfect his title, the adverse owner should institute a "Quiet Title Action" in court based upon his adverse possession and, when judgment is rendered, enter the judgment of record. Another method of perfecting title would be by receiving a Quitclaim Deed from the record title owner, though this is a somewhat remote possibility.

159a Over a period of years the laws of California have been interpreted that the land held. for public use cannot be taken under a claim of adverse possession.

ACCESSION

160 Title may be acquired by accession through annexation or accretion. Acquisition of title by annexation occurs when a person attaches his property to the land of another, without an agreement permitting him to remove, it. The thing so affixed belongs to the owner of the land unless the owner requires the former tenant to remove it. Until 1953 there was no compensation for the innocent improvement of another's land, but the legislature has now provided that, where such improvements are made in good faith, mistakenly believing there was a right to do so, the maker of the improvements may remove them upon payment of any damages resulting from the removal of the improvements.

➔ **161** Acquisition of title by accession may also be in the form of accretion, where from natural causes, land forms by imperceptible degrees upon the bank of a river or stream caused by the action of the water in washing up sand, earth and other materials on the shore. Such added land becomes the property of the owner of the waterfront property.

DEDICATION

162 A dedication may be defined as the devotion of the land to a PUBLIC USE (for streets, alleys, bridges, parks, squares, wharves, playgrounds, schools, etc.) made by the owner and accepted for such use by or on behalf of the public. Dedication may be by voluntary or by statutory procedure.

163 **VOLUNTARY DEDICATION** occurs when the public acquires the use of land through gratuitous act of a private land owner. No particular form of conveyance is required. It is accomplished by the act of the owner, indicated by his word or deed, in dedicating his land for public use and the acceptance by the public authority for such use.

164 **STATUTORY DEDICATION** is accomplished under, and in conformity with, the provisions of a statute regulating the subject. The vast majority of statutory dedications are done in compliance with subdivision laws. In order to comply with the procedure for statutory dedication, four requirements must be met.

165 (1) **MAP OF PROPERTY** A map of the property must be supplied, showing the portion of land to be dedicated, together with its legal description. The map would show the streets and other easements to be dedicated for "public use," including utility lines.

166 (2) **OFFER OF DEDICATION** Attached to the map there must be an Offer of Dedication, signed by every person who holds any interest in the property whatsoever. This would include the title holder or those who hold easements, trust deeds, etc.

167 (3) **ACCEPTANCE OF DEDICATION.** Attached to the map, along with the offer, must be a Certificate of Acceptance, signed by the local governing body (in the city, the city council; in the county, the board of supervisors).



➔168 (4) RECORDATION. The last act required to accomplish statutory dedication is the recording of the map with the “Offer and Acceptance” attached. If not recorded, dedication has not taken place.

169 Traditionally, dedication in either of these forms, voluntary or statutory, is not a conveyance of fee title, but rather an easement (right to use). If the land is abandoned for the specific public use for which it was dedicated, it reverts to the donor. Many local governmental bodies are now requesting a deed so that fee title, rather than an easement, may be acquired. Where property is acquired by deed, abandonment of the use of the property for which it was dedicated does not cause it to revert to the donor. Title remains in the governing body which may then use the property for other purposes, or even sell it.

WILL OR INTESTATE SUCCESSION

170 Titles acquired by will or intestate succession are those recognized and effected in the course of probate of an estate in the Probate Department of the Superior Court. Intestate succession is the acquisition of title to the property of one who dies without disposing of it by will. Special rules affect succession, depending upon the character of the property and the relationship of the heirs at law or next of kin.

ESCHEAT

➔171 The state may acquire the property of persons dying without a will and without heirs by a method called escheat. The title is said to “revert to the state.” The deceased must leave no heirs or have only alien heirs who do not reside in this country and who are citizens of a country which does not allow United States citizens to inherit property located in that country. However, the process of Escheat is not automatic. Legal proceedings must be held, instituted either by an action filed by the Attorney General, or by “Decree of Distribution” by the probate court. Once there has been such legal action, the distribution or decree does not become final for five years, during which time a claimant may bring legal proceedings to recover or “redeem” the property. Where the State gains title by escheat and later sells the property, the grantee receives a State Comptrollers Deed.

COURT ACTION

172 Courts are often called upon to establish legal title regardless of the desires of record owners, such as in a quiet title action, as explained under “adverse possession,” to clear the title of a seller under a forfeited recorded land contract of sale, or to remove easements or restrictions of record.

173 Courts are also called upon where a co-owner of a property requests a severance of the respective interests. If the property cannot be divided physically, the court may order a sale and divide the proceeds among the former owners. This is called a PARTITION ACTION. Such action may be brought by tenants in common and joint tenants, but not by owners holding as community property.

174 Court action is also required in the case of a mortgage foreclosure, foreclosure under a mechanic's lien, or a judgment lien, where the property is to be sold to produce money to pay the delinquent lien. Court action is not required to foreclose and sell property at a trustee's sale in the foreclosure of a trust deed, as the title is transferred to the buyer by the trustee and not by the court.

175 Another court proceeding that can bring about the transfer of title is one taken under the sovereign power of eminent domain. A public entity needs privately owned land for some necessary public use. Should the public entity be unsuccessful in negotiating with the owner for the purchase of such land it will then file a condemnation action in court against the property owner. If the court action is successful, title will pass to the public entity upon payment of the fair market value of the property determined by court.

175a Public buildings which have been acquired through eminent domain action occasionally must be disposed of by public authority. Such sales are usually conducted by sealed bids. Public notice is given inviting sealed bids for the purchase of excess public lands. The notice sets a date on which the bids will be opened. The sale will be concluded with the person submitting the highest sealed bid.

BANKRUPTCY PROCEEDINGS

176 The Federal Bankruptcy Act recognizes three types of proceedings:

- (1) straight bankruptcy (liquidation) Chapter 7
- (2) reorganizations - Chapter 11
- (3) consumer debt adjustments -Chapter 13.

177 This law also created a U.S. Bankruptcy Court in each federal judicial district in the county.



178 A liquidation proceeding, ordinarily referred to as a “straight bankruptcy” is introduced under Chapter 7 of the Bankruptcy Act. Such proceedings can be initiated voluntarily by the bankrupt party or involuntarily by the action of the bankrupt's creditors. In these proceedings debtors disclose all the assets they own (the bankruptcy estate) and deliver them to the bankruptcy trustee. The ownership of these assets passes to the trustee. The trustee identifies certain property which the debtor can retain and then administers, liquidates and distributes the remaining assets to the benefit of the creditors.

➔**179** The Bankruptcy Law provides a means for establishing the relative rights of creditors, for recovering any preferential payments made to creditors or improper transfers of property to others and for setting aside any preferential liens obtained by creditors. What normally happens is that if bankrupt parties have been honest in their business dealings and in the bankruptcy proceedings and there are no objections from creditors, they are usually given a discharge (relieved) of their debts. This relief is effective as of the date of the discharge by the Bankruptcy Court.

➔**180** The filing of a bankruptcy petition operates as an automatic stay (effective as of the date of filing to certain kinds of creditors' actions against the bankrupt debtors or their property. Some of these would be:

181 (1) actions to begin or continue judicial proceedings against the debtor,

➔ **182** (2) actions to create, perfect or enforce a lien against the debtors' property (foreclosure actions); without court permission.

183 (3) actions to set off indebtedness owed the debtor that arose before the start of the bankruptcy proceeding.

184 You should recognize that certain obligations are not affected by the discharge of a bankrupt debtor. Among non-dischargeable debts would be:

185 (1) debts due as a tax or fine to any federal, state or local government unit;

186 (2) debts which result from liabilities for obtaining money by false pretenses and misrepresentation;

187 (3) debts which are due for alimony or child support;

188 (4) debts not scheduled in time for proof because the creditor was not notified of the bankruptcy proceeding even though the debtor knew that he owed the money to the creditor.

188a (5) debts incurred after the bankruptcy proceeding was initiated.

➔**189** Should bankrupt debtors transfer property or incur obligations with intent to hinder, delay or defraud creditors, such transfers are voidable by the bankruptcy trustee. Examples of this would be transfers of property for less than its reasonable value within a year of filing the petition in bankruptcy