

KEY POINT REVIEW

Title is the right to or ownership of land, and can also be evidence of that ownership.

Voluntary alienation is the transfer of title to real estate by **gift** or **sale during one's life**, using some form of **deed**. To create a valid deed, the **grantor** (person who transfers title) must be of legal age and legally competent to execute (sign) the deed. A deed executed by a **minor** is **voidable**. The **grantee** must be identifiable with sufficient certainty.

Consideration (payment) of some form must be stated to record a deed. The **granting clause** (words of conveyance) must be used. The **habendum clause** defines the ownership interest taken by the grantee. An accurate **legal description** of the property conveyed is essential. **Exceptions** or **reservations** to the full transfer of all of the rights of ownership must be noted.

The **signature of the grantor(s)** must be **acknowledged** by a notary public or other official authorized by the state in which the property is located. Finally, there must be a **delivery** of the deed **and its acceptance** by the grantee.

Types of deeds include the **general warranty deed**, which provides the greatest protection to the grantee and includes the **covenant of seisin**, **covenant against encumbrances**, **covenant of further assurances**, **covenant of quiet enjoyment**, and **covenant of warranty forever**.

The **special warranty deed** includes the warranties that the grantor received title and that the property was not encumbered during the time the grantor held title, except as otherwise noted.

The **bargain and sale deed** implies that the grantor holds title and possession of the property, but there are no express warranties against encumbrances.

The **quitclaim deed** provides the least protection of any deed as it carries no covenants or warranties, and conveys only whatever interest the grantor may have when the deed is delivered.

With a **deed of trust**, a **trustor** conveys real estate to a **trustee** for the benefit of a **beneficiary**. A **reconveyance deed** is used by the trustee to return title to the trustor, but a **trustee's deed** conveys the property to someone other than the trustor. There may also be a **deed executed pursuant to a court order**.

Transfer tax stamps may be required to record a deed.

Involuntary alienation (transfer) of title to property is usually by operation of law. Using the government's power of **eminent domain**, property can be taken for a public purpose, with just compensation paid to the owner. In a **foreclosure**, property is taken by a creditor for nonpayment of a debt secured by real property. In the process called **escheat**, property is taken by the state when no heirs of the deceased can be found.

Property can be acquired by adverse possession when someone who is not the lawful owner takes exclusive possession of the property for the length of time specified by state law in a way that is ONCHA: **open**, **notorious**, **continuous**, **hostile**, and **adverse to the interest of the true owner**.

Transfer of title by will occurs when someone dies **testate** (leaving a valid will, prepared as required by state law). A will takes effect only after death and can be changed by **codicil** or revoked while the **testator** is still alive.

A **devise** is a gift of real property by will to the **devisee**. A **bequest** or **legacy** is a gift of personal property.

To pass title to property on death, a will must be **filed with the court** and **probated**.

Wills cannot supersede state laws protecting inheritance rights of a surviving spouse (**dower** or **curtesy**, or benefits granted by homestead laws).

Probate Transfer of title under a state's **statute of descent and distribution** occurs when a person dies **intestate** (without a valid will). The laws of the state where real property is **located** govern property distribution.