9 Title to Real Property

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Key Terms

- Alienation
- Deed
- Grantor/grantee
- Conveyance
- Granting clause
- Power of attorney
- Attorney in fact
- Acknowledgment
- Donative intent
- Acceptance
- General warranty deed
- Covenant of seisin
- Covenant of right to convey
- Covenant against encumbrances
- Covenant of quiet enjoyment
- Covenant of warranty
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Chapter Overview

The process of transferring ownership of real property from one person to another is called **alienation**. A property owner may voluntarily transfer property by a number of different methods, such as selling it to a buyer or leaving it to friends in a will. Property may also be transferred involuntarily (against the owner's wishes), as in a foreclosure sale or when the property is condemned. This chapter describes the various types of transfers. It also explains title insurance and the recording system.

Voluntary Alienation

Deeds

The most common method of voluntary alienation is by deed. A **deed** is a document used by an owner of real property (the **grantor**) to transfer all or part of an interest in the property to another party (the **grantee**). This process of transferring (alienating) real property by deed is called **conveyancing**.

In order to be valid, a deed must meet specific requirements and contain certain elements. It must:

1. be in writing,
2. contain words of conveyance and a description of the property,

3. identify the grantee,
4. be signed and acknowledged by a competent grantor, and
5. be delivered to and accepted by the grantee.

Written. The statute of frauds requires any transfer of an interest in real property to be in writing. A transfer of real property cannot be accomplished orally.

Words of Conveyance. The core of a deed is the granting clause. This is the portion of the deed that sets forth words that actually convey the property to the new owner. The **granting clause** must express the intention to transfer ownership of the property or an interest in the property.

The requirement for words of conveyance is easily satisfied. Usually one word, such as "convey," is sufficient. However, deeds often contain several words of conveyance. (Attorneys sometimes like to use five or six words when one would do.) A typical granting clause might state:

> "Grantors . . . do hereby give, grant, bargain, sell, and convey unto the said grantees forever . . ."

Description of Property. The property being conveyed must be adequately described in the deed. A legal description should always be included.

Identifiable Grantee. For a deed to transfer title, it must name an existing and identifiable grantee.

> **Example:** A deed to "Tom Jones and his wife" is adequate to transfer the property to Tom and his wife. Even though the wife was not actually named in the deed, she was identifiable as Tom's wife.

Note that the grantee does not have to be competent. Property can be transferred to someone who is a minor or mentally incompetent. Essentially, the only requirement is that the grantee be alive and identifiable.

> **Example:** John executes a deed to transfer his property to Mary. Unknown to John, Mary had recently passed away. Mary's heirs argue that they are entitled to the property. However, they have no legal right to the property because it never transferred to Mary. A deed cannot transfer property to a dead grantee. The deed is void and the property remains John's. If he wishes it to go to Mary's heirs, he must deed it to them.

The grantee may be a corporation or other legal entity (such as a partnership or trust), rather than a human being. Normally, these entities are adequate grantees so long as they legally exist. In other words, they must meet the requirements for incorporation, or be licensed, or have the proper certificates on file, so that they can be recognized as an existing legal entity.

Competent Grantor. Every deed must name an identifiable grantor. The grantor is the person who conveys or transfers the property or an interest in the property. If a mistake is made in the spelling of the grantor's name or it is spelled differently in different parts of the deed, it will not invalidate the deed, as long as it is clear who the grantor is meant to be.

> **Example:** In the body of the deed the name of the grantor is spelled "Reily," but the signature at the bottom of the deed is spelled "Reilly." A deed names the grantor as "Jane Elizabeth Hawthorne," but the signature is written as "Jane E. Hawthorne." Both of these deeds would probably be valid.

In addition to being clearly identifiable, the grantor must also be competent (of legal age and sound mind). If the grantor is mentally incompetent or under legal age, the deed is void or voidable by the grantor.

Marital status. Marital status can affect the grantor's right to convey the property, since Washington is a community property state. So it's a good idea to state clearly in the deed whether the grantor is married or single, although that is not a legal requirement.

Corporate grantor. Under the law, a corporation is considered a person for certain purposes. A corporation has the right to transfer real property. There are specific rules governing the transfer of real property by a corporation. Normally, a resolution of the board of directors is required before a corporate officer can execute a deed.

Signature of Grantor. To be valid, a deed must be signed by the grantor. (The grantee's signature is not required.) Although the grantor's signature is not required to be in any certain place, it is important to make it clear that the signature applies to the entire document. Usually the signature is found at the end of the document.

In certain situations, the deed may be signed by a mark. A mark may be used if the grantor is illiterate or physically disabled and cannot write his own name. If the grantor signs by a mark, his name should be written or typed near the mark, and the act of making the mark should be witnessed.

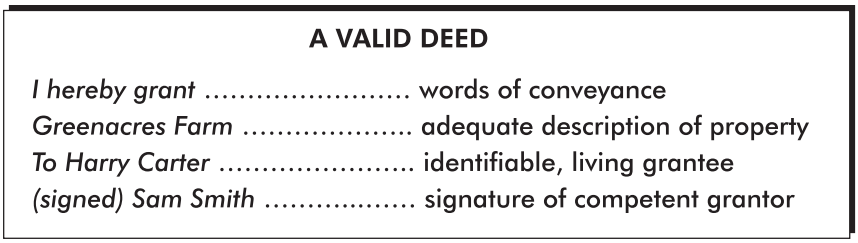
Power of attorney. A deed may be signed by the grantor's **attorney in fact**: someone the grantor has authorized to act on her behalf. The grantor gives the attorney in fact (not necessarily a lawyer) this authority to act in a written document called a **power of attorney**. A power of attorney may be revoked by the grantor at any time.

When the attorney in fact is signing a deed or other document for the grantor, she usually prints the grantor's name and then signs her name beneath it.

> **Example:** *Andrew C. Thompson*
> by *Margaret L. Pierson*, his Attorney in Fact

A power of attorney is automatically revoked if the principal dies. It's also automatically revoked if the principal becomes mentally incompetent, unless it's a **durable power of attorney**—one that specifically provides that it will remain effective despite the principal's incompetence. Before accepting a deed signed by an attorney in fact, the grantee should make sure that the power of attorney is still in effect and that the grantor is still alive.

Fig. 9.1 Requirements for a valid deed



In Chapter 8, we explained that an individual who is representing an entity, such as a trust or estate, must be properly authorized to sign a contract involving real estate. That is also true when an entity wishes to convey property. The entity's representative must be properly authorized to sign the deed.

Acknowledgment. A legal document is **acknowledged** when the person executing it makes a formal declaration that he has signed it voluntarily. Acknowledgment of a deed usually occurs when the grantor signs the document in front of a notary public, but certain other officers or public officials (such as a judge, court clerk, or county auditor) are also authorized to take acknowledgments.

In Washington, a deed can be valid and effective—transferring title to the property—even though it hasn't been acknowledged by the grantor. However, an unacknowledged deed cannot be recorded to provide constructive notice of the transfer to other parties. (Recording and notice are discussed later in this chapter.)

When a deed is acknowledged, the notary or other official who takes the acknowledgment fills in a **certificate of acknowledgment**, which states that the grantor appeared and acknowledged that she executed the instrument as a free and voluntary act.

Someone who has an interest in the property may not take the acknowledgment. For instance, if you are deeding property to your nephew (who is a notary public), he may not acknowledge the deed, because he is the grantee and therefore has an interest in the property.

The document must be read to a blind grantor before the acknowledgment is taken. Similarly, if the grantor does not speak or understand English, the acknowledgment should not be taken until it is clear that the document has been translated into a language that the grantor understands.

Delivery, Donative Intent, and Acceptance. Even if a deed contains all of the required elements, it will not transfer title until it is delivered by the grantor, with the intent to pass title, and is accepted by the grantee. Actual physical delivery of the deed is usually necessary, although the grantee may accept delivery of the deed through an agent.

Valid delivery cannot occur without **donative intent**: the grantor must intend to pass title to the grantee and surrender control. It is the grantor's intention that governs.

Case Example:

Norman Proctor, a married man, ran a real estate brokerage. In 1964, he hired Zee Forsythe as an agent, and they became personally involved. In 1967, Forsythe signed a contract for the purchase of a parcel of land, and Proctor supplied the downpayment. They planned to construct a home there. Forsythe also signed a $10,000 mortgage; the loan funds were paid to Proctor, who applied the money to construction costs. He also contributed $12,000 to the construction and made the mortgage payments.

Proctor asked Forsythe to marry him, told her he loved her, gave her a variety of gifts, and purchased a plaque to be installed in the home which read, "From Norman to Zee with love."

During their relationship, there were several dealings by Proctor on Forsythe's behalf that required her to sign lots of papers, some of them in blank (in other words, even though they had not been completely filled out yet).

At some point the relationship soured, and a dispute arose concerning ownership of the property. Proctor claimed ownership based on two quitclaim deeds and a mortgage bearing Forsythe's signature, which showed that she had transferred ownership of the property from herself to Proctor. Forsythe claimed that she had not intentionally or knowingly signed these documents, and she requested that they be set aside. On one of the quitclaim deeds, two typewriters were used at separate times to complete the instrument, evidence supporting Forsythe's claim that she had signed it in blank.

The court found an express intent by Proctor to make a gift of the home to Forsythe. It further found a lack of intent by Forsythe to convey title back to Proctor, because the documents were not knowingly or intentionally signed. This lack of donative intent rendered the deeds to Proctor void, so the court ruled that Forsythe was the owner of the property. *Proctor v. Forsythe*, 4 Wn. App. 238, 480 P.2d 511 (1971).

Case Example:

Susan Fenich quitclaimed 80 acres to her granddaughter, Helene Bull. The purpose of this deed was to transfer the property to Helene if Helene's mother (Mary) predeceased the grandmother (Susan). The deed was given to an attorney for safekeeping.

Susan died in 1949, while Mary was still living. Susan's will left almost all of her property to Mary. A lawsuit arose regarding the 80 acres. One of the issues was whether the quitclaim deed from Susan to Helene was valid and properly delivered.

The court found that at the time the deed was given to the attorney, Susan did not intend to make a present transfer of title to Helene, because the instrument was to be effective only if Mary predeceased Susan. Since the deed from Susan to Helene was not delivered to Helene with donative intent, it did not transfer title to Helene. Thus, Susan still owned the property at the time of her death, and ownership of the 80 acres passed to Mary under the terms of Susan's will. *Bull v. Fenich*, 34 Wn. App. 435, 661 P.2d 1012 (1983)

Although it is rare, a court may rule that a deed was delivered constructively or by implication, if the intention of the grantor can be adequately shown. Also, as was mentioned earlier, a deed may be properly delivered if it is given to an agent of the grantee rather than directly to the grantee, as long as the grantor has donative intent at that time.

> **Example:** Appleby signs a deed to Bertinelli as grantee and hands the deed to Bertinelli's lawyer, with the intention of transferring ownership to Bertinelli here and now. This is delivery to an agent of the grantee, and it is effective to transfer title.

Putting a deed in escrow is also a form of delivery. For escrow to be valid, complete and irrevocable delivery must occur. When a deed is placed in escrow, the depositor must give up possession and all control over the deed.

As a general rule, delivery of a deed must occur while the grantor is alive.

> **Example:** After Garrett dies, a properly executed deed is found in his safe deposit box. The deed grants title to Garrett's land to his niece. The deed is void for lack of delivery, since Garrett was dead before his niece received the deed.

However, Washington law now allows transfer on death deeds. A **transfer on death deed** will transfer title to the grantee automatically and without probate when the grantor dies. The deed must state that the transfer will take place upon the grantor's death, and it must be recorded. The grantor can revoke the deed at any time before dying.

As we said, even when a grantor delivers a valid deed with donative intent, in order for ownership to transfer it's also necessary for the grantee to accept the deed. If there is a dispute concerning acceptance, the courts generally try to find in favor of acceptance. But in some circumstances the grantee may not want to accept, either for personal reasons or because it would not be in his best interest.

> **Example:** Moynihan owns property worth $10,000 that she wants to deed to her son. However, the property has a tax lien on it for $12,000. The son does not want to accept ownership of the property because of the tax liability.

Other Elements. Many deeds contain other elements that seem to be standard, but actually are not required. For instance, almost all deeds are dated, but it is not a legal requirement that the deed contain the date of conveyance.

Another item occasionally included is the grantee's signature. Although a deed must contain the grantor's signature, the grantee does not need to sign.

The deed also does not have to contain a recital of the specific consideration for which the property is being transferred. However, it is helpful to include a recital of consideration to show that a transaction was a purchase rather than a gift, since the grantee of a gift deed may be vulnerable to claims by the grantor's creditors. The recital of consideration generally does not contain the actual purchase price, but may simply state: ". . . for $10.00 and other valuable consideration." Consideration can take forms other than money, such as waiver of a right or performance of a service.

Types of Deeds

There are three main types of deeds used in Washington: the general warranty deed, the bargain and sale deed, and the quitclaim deed.

General Warranty Deed. A **general warranty deed** is also called a statutory warranty deed, or just a warranty deed. This is the type of deed most commonly used in Washington real estate transactions. Compared to other deeds, a general warranty deed provides the grantee with the most comprehensive protection. It contains these **covenants** (assurances or guarantees) by the grantor:

1. The grantor has good title to the land conveyed: at the time of executing and delivering the deed, the grantor actually owned the land. This is called the **covenant of seisin**.
2. The grantor has the right to convey the land: the grantor either has title to the land or is an agent of the owner with the authority to transfer the interest. This is called the **covenant of right to convey**.
3. The property is free from undisclosed encumbrances. This is called the **covenant against encumbrances**.
4. The grantor promises quiet and peaceable possession of the premises: the grantee's possession will not be threatened by any lawful claim made by a third party. This is called the **covenant of quiet enjoyment**.
5. The grantor is required to defend the title against anyone who may lawfully have a claim to it. This is called the **covenant of warranty**.

If the grantee suffers financial harm or even loses the property because the title was not as promised (covenanted), the grantee may sue the grantor for damages. For instance, if there was an undisclosed encumbrance such as a tax lien that the grantee had to pay to avoid foreclosure, the grantee could sue the grantor for the amount paid and other costs incurred.

Note that in a 2011 Washington Supreme Court decision, *Edmonson v. Popchoi*, the court held that the covenant of warranty requires a grantor to actively defend the grantee's title against a third party's claim. The grantor in that case chose to settle a third party's adverse possession claim and pay the grantee damages for breach of the covenant, since that was less expensive than defending the grantee's title in court. The supreme court ruled that this was not adequate to fulfill the grantor's duty to the grantee under the covenant of warranty.

Bargain and Sale Deed. The next type of deed is the **bargain and sale deed** (sometimes called a **special warranty deed**). In this type of deed, the grantor only guarantees her own actions. Essentially, the grantor conveys the same interest in property and quality of title as acquired from the last owner. The grantor promises:

1. Nothing the grantor has done has encumbered the property.
2. The grantee's possession of the property won't be disturbed by claims of ownership brought by the grantor's heirs or assigns.

Under a bargain and sale deed, the grantor is liable if the grantee is disturbed by some claim arising through an act of the grantor. However, if an outstanding title is asserted by an outside third party, the grantor is not liable.

> **Example:** Roberts purchased property from Fenniman. Roberts then sold the property to Yamagato. Roberts gave Yamagato a bargain and sale deed.
>
> Unknown to Roberts, Fenniman was a clever crook who had sold the same property to several people. One of these other people appeared and claimed title to the property. Roberts cannot be held liable.

Quitclaim Deed. A **quitclaim deed** simply conveys whatever interest the grantor has. It contains no warranties of any sort. A quitclaim deed will convey nothing at all if the grantor had no interest in the property when the deed was executed.

> **Example:** Able and Baker are neighbors and good friends. They don't know where the boundary line is between their property. A fence runs between the properties 30 yards from Baker's house. Baker thinks his true property line is actually 32 yards from the house. Able and Baker both want to sell their property, but don't want to hire a surveyor. Baker gives Able a quitclaim deed for the two yards of property on the other side of the fence.
>
> Years later, when a survey is done, it is found that the fence is right on the true boundary line. Baker's quitclaim deed didn't actually transfer any interest, since Baker didn't really own the two yards on the other side of the fence.

A common reason for using a quitclaim deed is to cure **clouds on the title**. These could be defects or technical flaws in an earlier conveyance, such as a misspelling of one of the parties' names, or an error in the description of the estate.

A quitclaim deed is also used when the grantor is unsure of the validity of her title and wants to avoid any warranties.

> **Example:** A grantor holds title to the property by virtue of an inheritance that is being challenged in probate court. If the grantor wants to transfer the property, she will probably use a quitclaim deed.

After-Acquired Title. Sometimes a grantor may acquire good title after previously attempting to convey good title to a grantee. When the grantor obtains good title, it will automatically pass to the grantee by operation of law, if the transfer was by a general warranty deed or a bargain and sale deed. This is referred to as **after-acquired title**.

> **Example:** Seller conveyed her property to Buyer on June 1, by a general warranty deed. However, Seller did not have valid title to the property on June 1, because she held title under a forged deed. On August 12, Seller received good title to the property under a properly executed deed. Buyer automatically acquired good title to the property on August 12.

After-acquired title normally does not pass to a grantee under a quitclaim deed. A quitclaim deed transfers only the grantor's current interest. If the grantor did not have valid

title at the time of the quitclaim deed, the grantee could not receive title then, and would not receive any after-acquired title. (However, title would pass if the quitclaim deed included a clause specifically expressing an intent to pass after-acquired title.)

Wills

A **will** (or testament) is a common form of voluntary alienation. Before discussing wills, it is helpful to know the general terminology. The person making out the will is called the **testator**. A testator **bequeaths** personal property (known as a **bequest**) to a **legatee** and **devises** real property to a **devisee**. An amendment to a will is called a **codicil**. The **executor** is named in the will and is the person who carries out the directions in the will, under the supervision of the probate court. **Probate** is the process by which a will is proved valid and its directions are carried out.

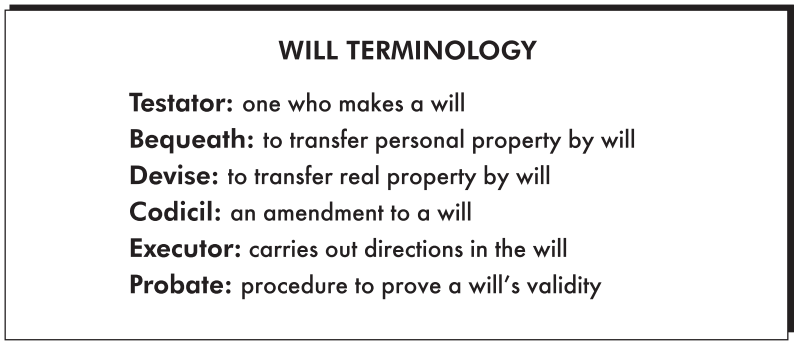
Requirements for a Valid Will. In Washington, any person of sound mind who is at least 18 years old may make a will leaving personal and real property to others. To be valid, a will generally must be:

1. in writing,
2. signed by a competent testator, and
3. attested to by two or more competent witnesses.

In writing. Generally, a will must be in writing to be valid. Under limited circumstances, Washington will recognize a **nuncupative** (oral) will used to dispose of personal property. However, real estate can never be devised by a nuncupative will.

Signature. Except for nuncupative wills, a will must be signed by the testator in order to be valid. However, as with deeds, a will may be signed by a mark or by someone acting for the testator. In Washington, if the will is signed by someone other than the testator, it must be signed under the direction of or at the request of the testator and in the testator's

Fig. 9.2 Will terminology



presence. The person who signs for the testator must also sign his own name and state that the testator's name was subscribed at the testator's request.

Just as the grantor of a deed must be competent, so must a person making out a will. The test for **testamentary capacity** is whether the party has sufficient mind and memory to understand the transaction, comprehend the nature and extent of the estate property, and recollect the "objects of her bounty."

The law presumes the validity of a will. However, if the person making the will was incompetent when the will was executed, the will is invalid. To invalidate a will, the evidence of incompetency must be clear, cogent, and convincing.

Case Example:

Ernest and Elva Eubank had an estate worth approximately $500,000. They had no children. In 1977, they executed wills that left $20,000 to Kermit Lighter (Elva's brother), along with other smaller bequests. The residuary estate was bequeathed half to J.E. Marvin (Ernest's cousin) and the remaining half to Marvin's six children.

On September 8, 1984, Ernest and Elva executed a new will that made Kermit Lighter residuary legatee, and gave only $40,000 to Marvin and $10,000 to each of the Marvin children.

The Marvins petitioned to invalidate the 1984 will, claiming lack of capacity and also undue influence by Kermit Lighter.

Dr. Ebert had treated both Ernest and Elva since 1955. He testified that he had diagnosed Elva in 1981 as suffering from senile dementia or an Alzheimer's-like syndrome. He testified that by June 1984, he felt she was unable to care for herself and was not oriented as to time, place, or self. In his opinion, she was not competent to understand a legal document or to comprehend the nature and extent of her holdings, and he was not confident that Elva could know the objects of her bounty.

Dr. Ebert and Dr. Murphy, a neurologist, also testified that Ernest was not competent.

James Simonton, the Eubanks' trust officer at the bank, visited the Eubanks in September of 1984. Although he had seen them approximately every two months, neither Ernest nor Elva recognized him. Simonton, who is an attorney, testified that in his opinion, neither of the Eubanks had sufficient mind or memory to understand a complicated legal document, to know the extent of their property, or to know the objects of their bounty.

The trial court found testamentary incapacity to execute the 1984 wills. *Matter of Estate of Eubank*, 50 Wn. App. 611, 749 P.2d 691 (1988).

Witnesses. Washington requires two or more competent witnesses to sign their names to the will in the presence of the testator. To validate the will, the witnesses must be able to testify that the testator signed the will or acknowledged the signature in their presence.

Any competent adult may act as a witness. Someone who is a beneficiary under the will should not act as a witness, however. Although a will can still be valid if someone named as a beneficiary is also one of the witnesses, that person might not be allowed to benefit

under the will. If a beneficiary acts as a witness, all devises, legacies, and gifts made to him may be void, unless there are two other competent witnesses.

> **Example:** Ethel Crabtree signs her will and has it witnessed by her chauffeur and her cook. Ethel bequeaths $10,000 to the chauffeur in the will and leaves the remainder of her estate to a charitable organization. The will is valid because it was attested to by two witnesses; the chauffeur can testify as a witness to establish the validity of the will. However, the bequest to the chauffeur is probably void, because he is a beneficiary acting as a witness and there is only one other witness.
>
> Now suppose instead that the same will is witnessed by Ethel's gardener in addition to the chauffeur and the cook. In this case Ethel's bequest to the chauffeur is valid, because there are two other witnesses besides the chauffeur (the beneficiary).

Foreign wills. If a will is made by someone in another state in a manner that meets the laws of that state, Washington will recognize the will as valid, even if it does not meet all of Washington's requirements.

> **Example:** Some states recognize holographic wills, even though they are not witnessed. A **holographic will** is a will written entirely in the testator's handwriting, typically without being witnessed. Washington, however, does not recognize holographic wills. Taylor lives in a state where holographic wills are valid, and he writes a holographic will. He later moves to Washington and does not make a new will. When he dies, Washington will recognize the holographic will, since it was valid in the state where it was executed.

Revocation of a Will. A will may be revoked by a subsequent written will, or by being burnt, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking the will. This destruction may be done directly by the testator, or by another person in the testator's presence and at the testator's direction.

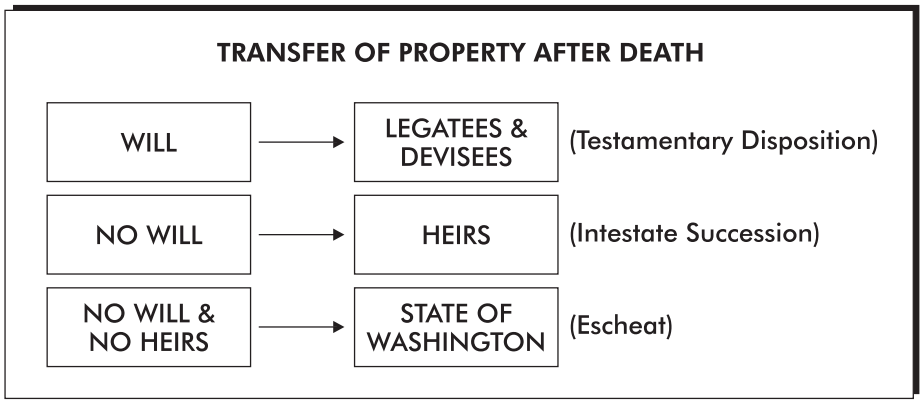
If a will is lost or destroyed inadvertently or as a result of fraud, the court may still take proof of the will and establish it. A will must be proved by at least two witnesses.

Family Rights Under a Will. In Washington, when a married person (or registered domestic partner) dies, one-half of any community property goes to the surviving spouse. The other one-half of the community property and any of the deceased's separate property may be disposed of by will. Children do not have an absolute right to inherit and may be disinherited in a will.

Involuntary Alienation

Involuntary alienation is any transfer of ownership or an interest in property that occurs without any action by the owner or against the owner's wishes. In several instances involuntary alienation occurs automatically, such as when a person dies without leaving a will, or dies without leaving any heirs. Property ownership may also be transferred due to

Fig. 9.3 Transfer of a deceased person's property



adverse possession, a court decision, or government action. And finally, ownership may change due to environmental or geological changes in the land itself.

Intestate Succession

Someone who dies without leaving a valid will is said to have died **intestate**. Intestate succession is the method of distributing the property of a person who dies without leaving a will (or whose will is invalid). The people who take property by intestate succession are called **heirs**. Intestate succession is strictly governed by statute and is supervised by the probate court. The probate court normally appoints an administrator to carry out the statutory distribution of the property.

Escheat

When a person dies intestate and without leaving any heirs, his property **escheats** to the state. The state acquires title to all of the deceased person's property.

Case Example:

John Adomaitis died intestate and without leaving any heirs. John died a resident of Illinois, but he left approximately $7,500 on deposit at the Seattle First National Bank.

A dispute arose concerning whether Illinois or Washington was entitled to this money. The court found that when a person dies without surviving heirs, leaving personal property located in the state of Washington, that property escheats to the state of Washington. *O'Keefe v. State Department of Revenue*, 79 Wn.2d 633, 488 P.2d 754 (1971).

In order for a person to die without leaving any heirs, there must be no living **issue** (issue includes children, grandchildren, great-grandchildren, and so on), and no parents, issue of the parents, grandparents, or issue of the grandparents. Obviously, this doesn't happen often.

If no heirs have appeared within four months after the decedent's death, the court may order payment of claims and expenses out of the estate. After ten months, if no heirs have appeared, personal property may be sold under order of the court. Real property cannot be sold to satisfy any debts until all of the proceeds of the personal property have been used up.

Court Decisions

Another form of involuntary alienation occurs when title to property is conveyed by court order. The most common forms of involuntary alienation by court action are foreclosure, partition, and quiet title actions. Title to property may also change hands due to adverse possession. A claim of adverse possession is often settled by the court in a quiet title action.

Foreclosure Actions. Someone who has a lien on a property may force the sale of the property if the underlying debt is not paid. **Foreclosure** is available for any type of lien against real property, including mortgages, construction liens, tax liens, and judgment liens.

In some foreclosure actions, the court will order the sheriff to seize the debtor's property and sell it at an auction (sheriff's sale, tax sale, or execution sale). The buyer at the auction receives a certificate of sale that ripens into title if the debtor does not redeem the property within eight months (or within one year in some cases, depending on certain statutory requirements). There is no redemption period after a foreclosure action under a deed of trust.

Suit for Partition. A **suit for partition** is a means of dividing property held by more than one person when the owners cannot agree among themselves how to divide it. The decision of the court is conclusive as to the parties involved. Frequently the court will order the property sold and the proceeds divided among the co-owners.

Case Example:

In 1973, Patty and Wally were planning to get married. They bought a purchaser's interest in a contract for the sale of a house. They paid $2,500 for the assignment of the purchaser's interest. The assignment was made to Wally and Patty as tenants in common. Both of them contributed to the downpayment and they intended to contribute equally in the purchase of the property. The contract called for monthly payments of $150.

In 1974, Patty and Wally were married. They lived in the house together for only seven months, until Patty moved out. She was granted a default dissolution in 1975. Wally remained in the house and continued to make the payments. Patty made no further payments after she moved out.

Patty brought a suit for partition claiming a one-half interest in the purchaser's equity on the house. Wally claimed that she had abandoned her interest and was not entitled to any interest in the house.

The court found that originally they had intended to share equally. However, after Patty moved out, Wally made all of the payments. Since they contributed unequally to the purchase price, a presumption arose that they intended to share the property proportionately to their contributions.

The court held that Patty had an equity in the property bearing the same relationship to the total equity as the ratio of her investment to the total investment of the parties. (For instance, if the amount she had paid was one-sixth of the total amount invested, she would have a one-sixth interest in the property.)

Once Wally paid Patty an amount sufficient to compensate her for her interest in the property, he had clear title to the property. *Cummings v. Anderson*, 94 Wn. 2d 135, 614 P.2d 1283 (1980).

Quiet Title Action. A **quiet title action** is used to remove a cloud on the title when the title cannot be cleared by the more peaceable means of a quitclaim deed. The court makes a binding determination of the various parties' interests in a particular piece of real estate.

A **cloud on the title** occurs whenever doubt exists as to the validity of a seller's title. The property is unmarketable as long as the cloud exists. To clear the cloud, the seller may have to bring a quiet title action to get a judicial ruling on the title.

Example: The seller has found a potential buyer for his property. A search of the recorded documents shows a gap in the title. (A gap occurs when the recorded documents don't indicate who owned the property for a certain time period.)

The seller brings a quiet title action. The defendants in the action are all parties who have a potential interest in the land. (This includes the mystery person who held title during the gap, even though this person's name is unknown.)

The seller asks the court to declare his title valid, thereby "quieting title" to the land. If no defendants appear to challenge the seller's title, the court will grant the seller's request. The buyer can then rely on the validity of the seller's title and purchase the property.

Adverse Possession

Adverse possession is a statutory process by which possession and use of property can mature into title to the property. Adverse possession is based on the idea that it is better to give title to someone who makes good use of the property, rather than leaving title with someone who makes no attempt to use the property for a long period of time.

Owners of vacant property (for instance, owners of land held for future sale or development) should periodically inspect their property to check for any signs of adverse possession. The mere posting of "no trespassing" signs may not be sufficient to prevent a claim of adverse possession.

Public Lands. Adverse possession cannot be claimed against public lands, such as any land owned by the United States or Washington State, or land that a city, county, or

other municipal district holds in a governmental capacity, such as public school lands, or public parks.

Requirements. In Washington, there are five basic requirements for adverse possession. Possession of the land must be:

1. actual,
2. open and notorious,
3. hostile,
4. exclusive, and
5. continuous and uninterrupted for a specified period of time.

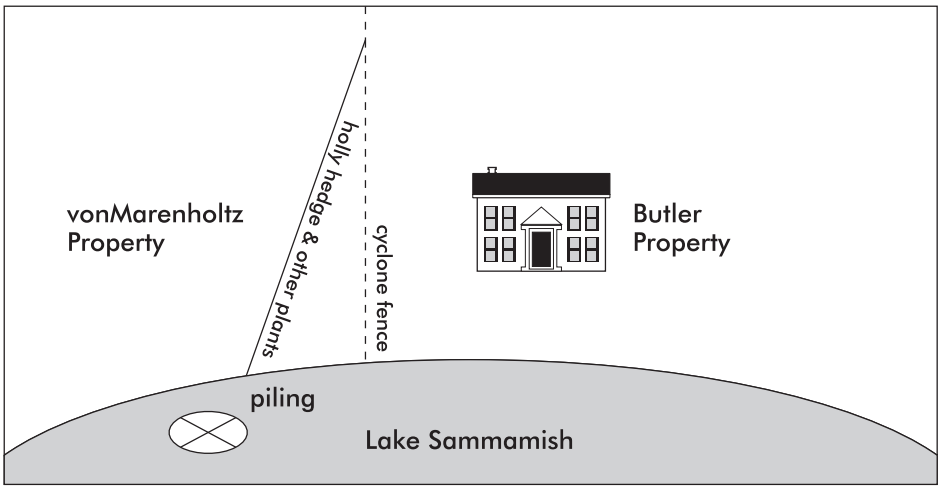
Actual. Actual possession requires occupation and use of the property in a manner appropriate to the type of property. Residing on the property is not required unless residence is an appropriate use.

> **Example:** Actual possession of farmland may be achieved by fencing the land and planting crops.

Open and notorious. Possession must occur in a manner that would put a reasonable owner on notice that her ownership of the property was being threatened. An adverse possessor couldn't live in a hidden underground cave for ten years and then claim adverse possession, since her possession was not open enough to give the real owner notice.

Case Example:

The Butlers purchased property on Lake Sammamish in 1927. They believed their property line ran from a piling in the lake to the southwesterly corner of the lot. Pursuant to this belief, they planted lawn to the water line and planted a holly hedge in line with the piling. For many years they mowed the lawn, trimmed the hedge, and planted other trees, berry vines, and flowers.



In 1958, the vonMarenholtzes bought the property next to the Butlers. By this time, the Butlers' holly hedge had become overgrown and was not very well kept up, due to Mr. Butler's advanced age.

A survey by the vonMarenholtzes showed an encroachment by the holly hedge. Nothing was done about it until 1964, when they hired a contractor to erect an eight-foot cyclone fence between the properties.

In constructing the fence, the contractor bulldozed down the line to the waterfront, removing all growth on both sides of the line to a width of 15 to 20 feet. No consent was obtained from the Butlers for this bulldozing and removal of the hedge.

The Butlers brought an action to quiet title, claiming adverse possession of the narrow strip in dispute between the adjacent properties.

The court found that the Butlers' improvements on the strip of property were actual, open, exclusive, and continuously adverse for the statutory period, long before the vonMarenholtzes even acquired possession of the adjoining property.

The court not only gave title to the strip of property to the Butlers, but also awarded damages for the reasonable expense of restoring the destroyed hedge and plantings. *Butler v. Anderson*, 71 Wn.2d 60, 426 P.2d 467 (1967).

Many adverse possession claims involve narrow strips of land between adjoining properties. As the example shows, planting and maintaining plants and hedges can be enough to meet the requirements for adverse possession. Note, however, that just mowing the lawn on a disputed strip is probably not enough to claim actual possession.

Hostile. Hostile possession requires the occupant to treat the property as his own as against all other parties.

If the owner has given another party permission to use the property, this use can never develop into adverse possession. Use of the property must be open enough for the true owner to be aware of the use, and must be without permission.

Exclusive. Possession of the land must be exclusive, meaning that the adverse possessor may not share possession with the true owner.

Example: Johnson is the true owner of beachfront property. Abbott owns the property next to Johnson and believes that his boundary extends across Johnson's lot clear to the beach.

Abbott uses the beach several weekends each month. Johnson also uses the beach sometimes. He works weekends, so he typically uses the property during the week.

When a dispute arises as to ownership of the beachfront property, Abbott claims the property as an adverse possessor. But his claim of adverse possession would fail because he did not have exclusive use of the property.

Continuous and uninterrupted. Under the Washington statute, the adverse possessor must be in possession of the land for ten successive years (or seven years if under color of title and taxes have been paid). Uninterrupted means that there cannot be a significant break in the period of possession. Minor breaks, such as going away on vacation for two weeks, will not end the possession period.

Fig. 9.4 Requirements for adverse possession

ADVERSE POSSESSION	
10 YEARS	**7 YEARS**
1. actual, open, notorious 2. hostile 3. continuous & uninterrupted 4. exclusive	1. actual, open, notorious 2. hostile 3. continuous & uninterrupted 4. exclusive 5. good faith color of title 6. payment of taxes

The requirement that possession be continuous does not mean that the adverse possessor must use the property throughout the year. Continuous use means normal continuous use that a true owner would make of the property.

> **Example:** Returning to the previous example, now suppose Johnson does not live on the property but is merely holding it as an investment. He never uses the beach; in fact he has not been out to look at the property in 12 years.
>
> During that time, Abbott has used the beach almost every weekend all summer long. Abbott seldom uses the property in winter because it is too cold and rainy.
>
> Abbott's use of the property is continuous enough to meet the requirement because it was normal use for this type of property.

The continuous and uninterrupted requirement can be met by tacking. **Tacking** is the joining together of periods of adverse possession by different parties, to make one long period.

> **Example:** Davis possessed certain property for six years before his death. In his will, he left all of his property to his son, Brent. Brent continued possession of the property for six more years. When a dispute arose, Brent claimed he had met the time period requirements for adverse possession. Brent's six years of possession may be tacked on to his father's six years for a total of twelve years.

If the possessor claims a right to the property in good faith under color of title and pays taxes on the property, the required period of continuous possession is only seven years instead of ten. A party is said to have **color of title** when she appears to have title, or believes she has valid title, but in fact her title is not valid. Failure of the title may be due to a defect such as a forged deed or an erroneous land description.

In order to fall under the seven-year limit, the person claiming adverse possession under color of title must not have been aware that the deed was defective. The claim to the property must be made in good faith. In other words, the possessor must actually believe that he has a right to the property.

Under the seven-year rule, the possessor must also have paid all taxes legally assessed on the property during the time of possession.

Condemnation

Condemnation of private property by the government is another form of involuntary alienation. Under the U.S. Constitution, the government has the power to acquire private property for public use, without the owner's consent. This power is called the power of **eminent domain**. The procedure for exercising the power of eminent domain is called **condemnation**. Based on language in the Constitution, condemnation is often referred to as a "taking" of private property. After a taking, the Constitution requires the government to pay **just compensation** to the property owner (see Chapter 1). Just compensation is ordinarily the fair market value of the property.

The power of eminent domain can be exercised by any government entity (the state, a city, a school district, and so on). Limited use of the power can be delegated to certain private entities. For example, privately owned utility companies may be authorized to condemn property for utility purposes. Whether the entity is public or private, the intended use of the property must benefit the public.

When the government (or other authorized entity) determines it needs a particular piece of property, it first offers to purchase it. If the owner rejects the offer, the government files a condemnation lawsuit. The court considers evidence concerning the fair market value of the property, and directs the government to compensate the owner. Then the court orders the property condemned.

Dedication

Another method of transferring the ownership of real property is by dedication. **Dedication** is the transfer of privately owned land to the public without compensation. Dedication may sometimes be voluntary, as when a wealthy philanthropist dedicates a portion of her estate as a public park.

More frequently, dedication is by developers or subdividers. If a developer wants government approval for a planned subdivision, he may be required to dedicate certain areas for public use, such as streets, sidewalks, play areas, and so forth.

Natural Changes

Sometimes the land itself changes shape, thereby changing ownership of some portions of the soil. **Accretion** is the gradual build-up of soil caused by water-borne soil deposits. These soil deposits are called **alluvion** (or alluvium). A key feature of accretion is that the

build-up must be gradual and almost imperceptible. When the land is changed by accretion, the boundary line may change to include the new soil deposits.

When property is enlarged by the retreat of a body of water, the landowner acquires title to the newly exposed land. This is called **reliction** (or dereliction). As with accretion, the retreat of the waterline must be gradual and imperceptible.

Avulsion is the violent tearing away of land by flowing water or waves. The land severed by avulsion does not change title; it still legally belongs to the original owner. Avulsion must be more sudden and violent than simple erosion, which is the gradual wearing away of soil due to the action of wind or water.

Avulsion may also result from a sudden change in a watercourse, as in the following case example.

Case Example:

The Sheldons and the Stroms owned property on opposite sides of a small stream known as "Whiskey Slough." The original deeds to both properties described the boundary as being the center or thread of the slough. In 1954, the Sheldons dredged the slough in order to widen it. The Sheldons used the enlarged slough to moor barges and trollers.

As a result of the dredging, a significant portion of the stream shifted onto the Sheldons' property, leaving the original boundary line on dry land. For many years, neither property owner was concerned about the change in the center line of the slough. Upon request from the Stroms, the Sheldons would move any craft that obstructed the Stroms' side of the slough.

In 1972, however, the Sheldons asserted a claim to the entire slough and refused to move barges from the Stroms' half. The Stroms brought an action to quiet title to the portion of land running from the original boundary to the present thread (middle of the slough).

The Sheldons argued that the sudden change in the boundary was avulsive, and that therefore the property boundary should not change. They claimed title clear up to the former boundary line, which was now on dry land on the other side of the slough.

The court found that a person may not induce an artificial change in water boundaries, and then claim whatever advantage that change produced. Therefore, the boundary line between the property was held to be the present thread or middle of Whiskey Slough, and the Stroms' action to quiet title was granted. *Strom v. Sheldon*, 12 Wn. App. 66, 527 P.2d 1382 (1975).

Recording

The fact that someone offers to sell real property is no assurance that the seller actually owns the property. The seller simply may be lying about owning the property, or the seller's title may be defective in some way. In order to limit these potential dangers, every state has

recording laws. The purpose of the **recording system** is to protect purchasers by providing a method of determining who owns what interest in a particular piece of property.

A real estate agent is not required to verify a seller's title or perform a title search. However, it's helpful to know as much as possible about the property being sold. By using the recording system, an agent can find out useful information about the property, such as:

1. who is listed as the present owner of the property,
2. the legal description of the property,
3. whether there are any liens against the property, and
4. whether there are any easements or restrictive covenants that affect the property.

Recording Procedure

Many types of legal instruments affecting real property can and should be recorded. Some of the most common are deeds, easements, covenants, certain long-term leases, mortgages and releases of mortgages, agreements relating to community property or separate property, and powers of attorney to convey real estate. Purchase and sale agreements, however, are ordinarily not recorded.

To **record** a document, you simply deposit it with the recorder and pay a nominal fee. The document is then said to be filed for record. As we noted earlier, in Washington a deed cannot be recorded until it is acknowledged.

Once a document has been given to the recorder, it is copied and placed in the public record in chronological order based on the filing date, to establish the priority of the interest described in the document. It may be copied by transcription, or by any photographic or photomechanical process (photocopiers, microfilm, etc.) that produces a clear, legible, and durable record. After being recorded, the original document is returned to the party named on the document as entitled to possession of it.

Usually the county auditor has the duty of recording instruments. In this capacity, the auditor is often referred to as the **county recorder** or **county clerk**.

Access to Recorded Documents

Each county recorder's office must maintain indexes of recorded documents. Documents can be searched for by:

1. grantor name,
2. grantee name,
3. filing date,
4. recording number,
5. document type (for instance, deed or mortgage), and
6. legal description and other information.

Almost every recorder's office maintains a website where the public can search for property records. Typically, however, the online database only includes transactions from more recent decades. Earlier records are on microfilm or in bound volumes at the recorder's office.

Recorder's offices also keep books containing plat maps of all platted (subdivided) land within the county. An index to the plat maps is maintained, listing the name of each subdivision or addition.

Notice

One of the purposes of recording deeds and other documents is to provide notice of the transaction. **Notice** is knowledge of information about the property. Every purchaser or mortgagee of land is charged with notice of all prior recorded documents concerning that property.

Actual Notice. When information is acquired personally by a party, she is said to have actual notice. Actual notice may be gained from the seller, from other parties, or from inspection of the property.

> **Example:** Ashworth tells Simpson that he wants to sell his house. Simpson is interested in buying it.
>
> When Simpson goes to look at the property, she notices that there's a large power transformer located at the back of the property and power cables extending across the property. When she asks Ashworth about this, he tells Simpson that the power company has an easement across the property. Simpson has actual notice of the power company's interest in the property.

Constructive Notice. Notice may be imparted by operation of law as a result of recording. A court will not allow a party to claim ignorance of a recorded document. Even if the purchaser was not actually aware of the document, if it was in the public record the purchaser is deemed to have had constructive notice of it. The document (and the interest set forth in it) would have been discovered if the purchaser had checked the public record.

> **Example:** Smith grants an easement across his property to Jones. Jones records the grant of easement.
>
> Smith then sells his property to King. King claims that the easement is extinguished because he could not tell that it existed simply by looking at the property, and Smith never told him about it.
>
> The easement is still valid. Even though he had no actual notice of it, King is deemed to have constructive notice of the easement. If he'd checked the recorded documents pertaining to the property, he would have found a record of the easement.

Washington Recording Law

Although the rules differ somewhat, every state has **recording statutes**. Generally, these laws provide that a deed, mortgage, or other instrument is ineffective as to subsequent purchasers of the same property unless it is recorded (or unless the purchaser had actual

notice of the instrument or interest). Purchasers should be able to rely on the public record, and the law protects them against any secret, unrecorded instruments.

Document Format. The recording statute contains very specific format requirements for any document submitted for recording. Among other requirements, the document must contain an abbreviated legal description and the county assessor's tax parcel number, and each page must have margins of a certain size. Documents failing to conform to these format requirements will incur an additional fee and may be subject to a delay. If you need to record anything, check the statutory requirements and make sure your documents are in the proper format.

Washington's type of recording statute is called a **race-notice statute**, meaning that there is a race to record. Whoever records first wins, if he has no notice of any previous conveyances.

> **Example:** Connelly sells his property to O'Donnell and gives him a deed on June 10. O'Donnell fails to record his deed. Connelly later sells the same property to McMurphy on August 15. McMurphy has no knowledge of the sale to O'Donnell. McMurphy records her deed on August 15.
>
> McMurphy would win an action to determine ownership of the property even though O'Donnell purchased the property first. McMurphy "won the race" by recording first, and she had no notice of the previous sale. (She had no actual notice, and could not be deemed to have constructive notice because O'Donnell's deed had not yet been recorded.)

In the example, McMurphy is what is known as a **subsequent bona fide purchaser**—someone who pays for an interest in land that has already been sold to another, without any knowledge (actual or constructive notice) of the previous sale.

A mortgagee who loans money in reliance on the public record is considered a **bona fide encumbrancer** and is likewise protected by the recording laws.

However, a subsequent purchaser who has notice of a previous conveyance can never win, even if she records first. Someone with notice of a previous sale is not a bona fide purchaser.

> **Example:** Majeski and Yancey are both house hunting. They have bumped into each other several times at the brokerage office and have chatted about the kind of house they are looking for.
>
> Nomiama sells her property to Majeski and gives her a deed on September 6. Majeski moves onto the property on October 1. Yancey hears about Nomiama's property, and when he goes out to look at it he discovers that Majeski is living on the property. Majeski tells Yancey about the great deal she made. Yancey casually asks if Majeski has recorded her deed yet and Majeski tells him no.
>
> Yancey then purchases the property from Nomiama and records the deed on October 12. Majeski doesn't record her deed until October 20.
>
> Even though Yancey recorded first, his claim will not prevail, since Yancey had actual notice of the prior conveyance to Majeski.

An unrecorded deed or mortgage is valid between the parties, but not as to subsequent bona fide purchasers.

> **Example:** Smith sells his property to Jones and gives Jones a deed. Jones never records the deed. Even though unrecorded, the deed is valid between Smith and Jones. Smith later sells the property to White and gives White a deed. White has no knowledge of the sale to Jones. White records the deed.
>
> In a lawsuit to determine ownership of the property, White will prevail. The deed between Smith and Jones is ineffective as to the subsequent purchaser (White) because it was never recorded.
>
> Of course, Smith's action in selling the property twice was illegal and Jones could try to obtain damages from Smith, but Smith has probably skipped town by now.

The recording statutes are meant to protect purchasers. Someone who inherits property or receives it as a gift may not be protected.

> **Example:** Fritzley mortgages his land to the bank, but the bank fails to record the mortgage document.
>
> Sometime later, Fritzley deeds the land to his son as a gift. The son records his deed. The son is not protected against the bank's claim, however, because he is not a bona fide purchaser. The bank can still enforce the mortgage.
>
> However, if the son sold the property to McGillicuddy and McGillicuddy recorded the deed, McGillicuddy would get good title, free of the unrecorded mortgage, because McGillicuddy is a bona fide purchaser without notice.

Torrens System

Washington adopted the Torrens system of land registration in the early twentieth century. However, even though it is available, Torrens registration is not commonly used here.

Under the Torrens Act, title to a parcel of real property can be registered through the county recorder's office. Once the property is registered, any interests in the property or claims against the title must also be registered in order to have legal effect. So, for example, a mortgage against the property must be added to the Torrens register in order for the lender to have a valid lien. (There's one exception to that rule: construction liens against a Torrens property do not have to be registered to be valid.)

The status of title to registered property may be determined by examining the Torrens register alone; it generally isn't necessary to search the public record in the usual way. A purchaser of property registered under the Torrens system is not held to have constructive notice of interests or claims that were recorded through the ordinary recording system.

Title Insurance

Title insurance is a contract in which the title insurance company agrees to indemnify (reimburse) the policy holder for possible financial losses that could occur due to undiscovered defects in a property's title, such as an undisclosed lien or a forged deed. Title

insurance coverage is typically obtained by a buyer or lender when a piece of real property is purchased or mortgaged. It generally protects the buyer or lender from losses caused by title defects (clouds on title) that are unknown at the time the transaction closes but discovered at some later point, typically when a third party makes a claim against the property.

The title insurance company will handle the legal defense of any claim by a third party that is based on a defect covered by the policy. If the third party prevails in the lawsuit, the company will pay the policy holder's damages, up to the policy's coverage limit.

Obtaining Insurance

When an application for title insurance is received, the title insurance company's first step is to conduct a **title search**. An employee of the company searches the public record for documents concerning the property in question. Next, the company prepares a **title report** (also called a preliminary title report), which lists items that were discovered in the title search and that will be excepted from coverage if a policy is issued.

This list of exceptions from coverage includes the recorded encumbrances—liens, easements, and private restrictions—that currently affect title to the property, in the opinion of the insurer. If it someday turns out that there is an encumbrance or a title defect that was not listed as an exception, the policy will cover problems resulting from that.

> **Example:** There's an easement on the property, but the title searcher accidentally overlooked the recorded grant of easement during the title search. As a result, the easement wasn't listed in the title report or excepted from coverage when the title insurance policy was issued. The buyer doesn't learn about the easement until six months after the sale closes. This problem is covered by the policy.

The parties to the transaction may arrange to have some of the items listed in the title report cleared from the title. For example, a property seller is usually expected to pay off liens before the sale closes.

If the party requesting the insurance (the buyer or lender) is satisfied with the condition of the property's title, the transaction proceeds to closing. When the required premium is paid, the title company issues the title insurance policy. (A single premium payment provides coverage for as long as the policy holder continues to have an interest in the property.)

Hidden Title Defects

Sometimes a property has title defects that are not plainly shown by the recorded documents concerning the property. Examples of hidden defects include a forged signature on a previous deed in the chain of title, a deed or release of mortgage executed by a minor or mentally incompetent person, a deed or mortgage that incorrectly states marital status, or a deed that was not properly delivered. Problems like these can't be discovered through a standard search of the public record and an ordinary examination of the documents. This type of hidden defect usually is covered by a title insurance policy; the company assumes the risk that there may be something like this lurking in the property's history.

Case Example:

W & A Development Company negotiated the sale of some of its property. Transamerica Title Insurance Company issued a preliminary title report showing W & A as the owner and also showing that the property was subject to a mortgage. Allen Bowden, an attorney and controlling owner of W & A, forged a satisfaction of the mortgage and had it recorded.

When Transamerica issued its title insurance policy, it did not list the mortgage as an exception from coverage, since the forged satisfaction made it appear that the mortgage was no longer a lien against the property.

Sometime later, the mortgage holder initiated foreclosure proceedings. The title company had to pay damages to the policy holder because the still-valid mortgage was not excepted from coverage in the policy. *Securities Services, Inc. v. Transamerica Title*, 20 Wn. App. 664, 583 P.2d 1217 (1978).

Types of Coverage

There are three main types of title insurance coverage: standard coverage, extended coverage, and homeowner's coverage.

A **standard coverage policy** is used to insure an owner or lender against title problems related to matters of public record. If there is a recorded document that the title searcher failed to find, or if there is a hidden problem with a recorded document, such as a forged signature, those will be covered. However, standard coverage does not insure against the interests of a person in actual possession of the property, or against other problems that could only be discovered through an inspection or a survey of the property, not from the public record.

An **extended coverage policy** insures against all matters covered by the standard coverage policy, plus matters that could be discovered through an inspection or survey, such as an unrecorded easement, an unrecorded construction lien, an encroachment, or adverse possession.

Example: There are adverse possessors living on the property, but the inspector from the title insurance company fails to notice the indications of their presence. The company issues an extended coverage policy without listing that problem as an exception from coverage.

Several months after the transaction closes, the adverse possessors file a lawsuit claiming that they have met the legal requirements for adverse possession of the property and asking the court to quiet title in their names. Under the extended coverage policy, the title company is required to handle the defense of this lawsuit. The policy will also cover the policy holder's damages if the court rules that the adverse possessors now own the property.

Although an extended coverage policy can be purchased to protect a buyer, it is typically purchased to protect the buyer's lender; this is referred to as a **mortgagee's policy**.

A buyer is ordinarily required to pay the premium for the mortgagee's extended coverage policy as a condition for obtaining the loan.

In Washington, most residential purchase and sale agreements require the seller to pay for a **homeowner's coverage policy** protecting the buyer. This kind of coverage is available in transactions involving residential property with up to four units. It protects the buyer against most of the same title problems as an extended coverage policy, plus some additional ones.

Coverage of certain items not ordinarily included in a particular type of policy may be obtained by purchasing an **endorsement** to cover them.

As a general rule, title insurance will not protect a landowner from losses due to government action. If the property is condemned, or if there is a change in the law that reduces the property's value, that won't be covered by the title policy.

Conclusion

One of the basic rights inherent in property ownership is the right to transfer the property to another party. Property can also change hands without the consent of the owner, through operation of law, as with intestate succession, foreclosure, or partition.

When property is sold and ownership is transferred, the new owners can safeguard their interest in the property by recording the deed and purchasing title insurance.

Owners should be certain of their property's true boundaries and inspect the property regularly to prevent a possible claim of adverse possession. A real estate agent should also be alert to the possibility of adverse possession.

Case Problem

The following is a hypothetical case problem. Most of the facts are taken from a real case. Based on what you have learned from this chapter, make a decision on the issues presented and then check to see if your answer matches the court's decision.

The Facts

John Mayes owned some unimproved land. Upon his death, the land was inherited by several heirs. They each received a percentage interest in the property, which they held as tenants in common. Maude Hamilton, one of the heirs, owned a ¼ interest in the property. In 1936, she executed a quitclaim deed to the property to L. E. Palm. Palm subsequently sold the property to the McGills, giving them a warranty deed that purported to convey the land in its entirety. This deed was recorded in 1936. Since 1936, the McGills have paid all of the taxes on the property.

The McGills erected fences and a goat shed on the property and used it for grazing purposes for several years. Sometime after 1940, the grazing was discontinued, and the land lay vacant and unused except as a source of firewood.

From 1936 to 1955, none of the other heirs of John Mayes made any claim to the land or attempted to occupy or use the land.

In 1955, the heirs executed quitclaim deeds to the Shugartses. When the Shugartses entered the land and cut and removed timber, the McGills brought an action to quiet title.

The Questions

When Maude Hamilton executed the quitclaim deed, what was transferred? When Palm sold to the McGills, what was transferred? Have the McGills met the requirements for adverse possession, even though they did not live on the property or even use it for many years except to cut firewood? Did the Shugartses acquire any interest in the property by the quitclaim deeds given by the heirs?

The Answer

When Maude Hamilton executed the quitclaim deed, she could only transfer the interest she possessed, which was a ¼ interest. This means that Palm only received a ¼ interest and could only transfer a ¼ interest. Since he gave the McGills a warranty deed to all of the property, he could be liable to them because he only had clear title to a ¼ interest.

However, the McGills adversely possessed the property under color of title. They had a deed that purported to transfer all of the property to them. In addition, and probably most convincing, they paid all taxes on the property since 1936. None of the heirs had paid any taxes, made any claim to the property, or attempted to occupy or use it.

By the time the heirs attempted to convey the property to the Shugartses, they had no interest to convey. The McGills had already acquired the property by adverse possession. Since a quitclaim deed only transfers the interest the grantor possesses, the Shugartses gained no interest in the property.

Title to the property was quieted in the McGills, and the McGills were awarded damages for the Shugartses' trespass and the cutting of timber. *McGill v. Shugarts*, 58 Wn.2d 203, 361 P.2d 645 (1961).

Chapter Summary

- Transferring (or alienating) real property by deed is called conveyancing. Three main types of deeds are used in Washington: the general warranty deed, the bargain and sale deed, and the quitclaim deed.
- To be valid, a deed must have an identifiable grantee, be in writing, contain words of conveyance and an adequate description of the property, and be signed by a competent grantor. It must also be delivered to and accepted by the grantee. A deed can be recorded in Washington only if it has been acknowledged by the grantor.
- A valid will in Washington generally must be executed by a competent testator, be in writing, and be signed by the testator, and the signature must be attested to by two or more competent witnesses.
- Intestate succession is the method of distributing the property of someone who dies without a valid will. If a person dies intestate without any heirs, the property will escheat to the state.
- Property ownership may be transferred by court decisions such as foreclosure actions, suits for partition, and quiet title actions.
- Property ownership may also be acquired through adverse possession. The requirements for adverse possession are that possession be actual, open, notorious, hostile, continuous, uninterrupted, and exclusive for ten years. If the claim of adverse possession is made in good faith under color of title and the adverse possessor has paid taxes on the property, the time requirement is only seven years.
- Other methods of transferring the ownership of real property include dedication, condemnation, and natural changes such as accretion, reliction, or avulsion.
- When a document is recorded, a copy is placed in the public record, in chronological order based on the date it was filed for recording. Recorded documents can generally be searched for online using the database maintained by the county recorder.
- Every purchaser or mortgagee of land is charged with notice of all prior recorded documents concerning the property in question. Even without actual notice, a party will be deemed to have constructive notice if the information has been recorded.
- Washington has a race-notice type of recording statute. When a dispute occurs as to ownership, the party who filed first, with no notice of previous conveyances, wins.
- Title insurance is purchased to protect the policy holder against losses caused by defects in title. Common policies include the standard coverage policy, the extended coverage policy, and the homeowner's coverage policy.

Checklist of Problem Areas

Real Estate Licensee's Checklist

- ❑ Does the title report confirm that the seller is the current owner of the property?
- ❑ Are there any encumbrances or problems with the seller's title that might block the sale?

Seller's Checklist

- ❑ Are you aware of the warranties you are making in the deed when you transfer the property to the buyer?
- ❑ Has title insurance been purchased for the buyer?

Buyer's Checklist

- ❑ Are there any clouds on the title?
- ❑ Does anyone have a possible claim to the property based on adverse possession?
- ❑ Has title insurance been purchased for the lender?
- ❑ What type of deed are you receiving, and what warranties or guarantees does this type of deed give you?
- ❑ Has the deed been signed by the grantor and does it indicate the grantor's marital status?
- ❑ Was the deed acknowledged and properly delivered?
- ❑ Has the deed been recorded?

Chapter Quiz

1. Johnson sells her property to Eibert. Johnson is 23 and Eibert is 17. Eibert signs the deed but Johnson does not. The deed does not specify the amount of the purchase price. Eibert never records the deed. The deed between Johnson and Eibert is invalid because:
   a. Eibert is only 17
   b. Johnson did not sign the deed
   c. the amount of the purchase price was not specified
   d. the deed was never recorded

2. A deed grants property to "Jonathan Searl Meachan and his brother Ed."
   a. The deed is invalid because it does not specify Ed's full name
   b. The deed is valid as to Jonathan but not as to Ed
   c. The deed is valid because it adequately identifies Ed even though it doesn't give his full name
   d. None of the above

3. A deed does not indicate whether the grantor is married or single. Which of the following is true?
   a. The deed is invalid because it must specify marital status
   b. Marital status is irrelevant in a deed
   c. Stating marital status is not required but is helpful and strongly recommended
   d. None of the above

4. Celia Johnson executes (but does not record) a deed granting her property "to my niece upon my death" and places it in her safe deposit box. She has several nieces, although only one ever comes to visit her. The deed is discovered after Celia dies. The deed does not transfer title, because:
   a. it was not properly delivered before Celia died
   b. a transfer on death deed must be recorded
   c. the grantee is not adequately identified
   d. All of the above

5. Barbara has been appointed as the attorney in fact for her grandmother. When she executes a deed conveying an interest in real property held by her grandmother, she should:
   a. sign her grandmother's name only
   b. sign her own name only
   c. write her grandmother's name, followed by her own signature as attorney in fact
   d. None of the above

6. A quitclaim deed conveys:
   a. whatever interest the grantor has
   b. only a portion of the interest held by the grantor
   c. only property acquired by adverse possession
   d. None of the above

7. A will:
   a. is a form of involuntary alienation
   b. is a form of voluntary alienation
   c. may be made out by anyone, regardless of age, if adequately witnessed
   d. must be witnessed by a notary public

8. A nuncupative will:
   a. must be entirely handwritten
   b. is invalid in Washington
   c. is an oral will
   d. can be used to convey real property

9. Which of the following is true regarding witnesses to a will?
   a. A beneficiary may never be a witness
   b. There must be at least three witnesses
   c. The witnesses must be notary publics
   d. The witnesses must be mentally competent

10. Which of these is not a requirement for adverse possession?
    a. Continuous and uninterrupted possession
    b. Exclusive possession
    c. Constructive possession
    d. Open and notorious possession

11. Under a race-notice statute, the person who wins is the:
    a. last to purchase the property, with notice of all previous conveyances
    b. first to record, without notice of any previous conveyances
    c. first to purchase the property, without notice of all subsequent conveyances
    d. first to record, with notice of all previous conveyances

12. In Washington, when someone with color of title has paid all taxes on property, the time limit required for adverse possession is:
    a. five years
    b. seven years
    c. ten years
    d. None of the above

13. A flash flood changes the course of a small river and leaves it in a new position. This type of change is known as:
    a. reliction
    b. accretion
    c. avulsion
    d. alluvion

14. Which type or types of title insurance protect against adverse possession?
    a. Only the standard coverage policy
    b. Both the extended coverage policy and the homeowner's coverage policy
    c. Both the standard coverage policy and the extended coverage policy
    d. Neither the standard coverage policy nor the extended coverage policy

15. A deed has been recorded but the prospective purchaser has not checked the public record. The purchaser is said to have what type of notice of this document?
    a. Actual notice
    b. Constructive notice
    c. Implied notice
    d. The purchaser has no notice until the document is discovered