

Chapter 3



Property Transfers

Chapter 3 Goals:

- Understand what a deed is
- Recognize the various types of deeds
- Explain what a trust is
- Who are the parties to a trust
- Learn how the size of land can be increased or reduced due to natural causes
- Learn what happens to land when the property owner dies without a surviving party
- Learn about the different types of wills

Chapter 3: Property Transfers

Key Terms

accession	devisee	open and notorious use
accretion	devisor	partition action
acknowledgment	disseisor	probate
action to quiet title	eminent domain	public grant
actual notice	encumbrance	quiet enjoyment
administrator	escheat	quitclaim deed
adverse possession	exclusive use	recording
alienation	execution sale	reliction
avulsion	executor	right to convey
beneficiary	franchise sale	sheriff's deed
business opportunity sale	full ownership	successor trustee
certificate of acknowledgment	gift deed	tacking on
codicil	government seizure	tax deed
color of title	grant deed	testator
constructive notice	grantee	trust
continuous use	grantor	trustee
covenant of further assurances	holographic will	trustor
covenant of warranty	implied warranty	valid deed
dedication	interspousal grant deed	warranty deed
deed of reconveyance	intestate	will
defective recording	intestate succession	witnessed will
defective title	living trust	writ of execution
devise	marketable title	

Property Deeds

As mentioned in Chapter 2, a deed is a written legal document that provides evidence of property ownership. It is transferred upon the sale or transfer of a property.

Valid Deed

A valid deed must:

- *Be in writing.*
- *Indicate that it is actually a deed.* It must use language such as “this deed...” or “executed as a deed”.

- *Indicate the name of the parties involved and a description of their relationship.* A **grantor** is the party bequeathing ownership of a property; a **grantee** is the party accepting ownership of a property.
- *Be between competent parties.* This requires all parties to have the legal capacity to enter in a deed agreement.
- *Contain a legal description of the subject property.* This includes the address and basic physical description of the property.
- *Be signed by the grantor.*

If the above deed requirements are not met, the validity of a property's ownership may be questioned.

Title Covenants

Most property deeds contain title covenants that ensure a marketable title and an implied warranty between a grantor and a grantee.

A **marketable title** is a clean title that allows a buyer to have full interest in a purchased property. This means that a property is free and clear of any interests (i.e. encumbrances, involuntary liens) that would “cloud” the title and affect the ownership rights of a grantee.

Encumbrances and liens will be discussed further in Chapter 4.

Implied warranty signifies that a grantor owns a marketable title that can be freely transferred. This means that a property has not been sold or transferred to anyone else and will remain in a grantor's possession until the transfer of the deed.

Conversely, a **defective title** – or **defective recording** – refers to a property with conflicting ownership rights. This involves one party claiming to be a property owner when ownership interests are actually divided amongst parties or are someone else's entirely.

Title insurance renders a title company liable for any damages that may arise from a defective title. Title insurance will be discussed further in Chapter 11.

The Recording Process

A real estate **recording** – also known as a deed registration – is the process of publicly documenting the existence of a title/deed.

A recording protects a property owner's interest in a property and gives notice to the public regarding the status of the property.

A recording does not determine who owns a title/deed, but rather, provides documentation of who owns a title/deed. This subsequently provides legal protection in the event of a dispute over ownership.

There is no time limit as to when a deed may be recorded; however, to protect the interests of a deed holder, it is recommended that a deed be recorded immediately upon the transfer of a property.

A deed must be recorded in the local county office associated with a subject property. A valid recording requires:

- *A valid deed that has been executed, transferred, and accepted.* It must be the original deed or a certified copy issued by the appropriate custodian of the public record.
- *A Preliminary Change of Ownership form.*
- *An address.* This is where property tax bills will be sent.
- *Recording fees.* Fees are transferred to the Real Estate Fraud Prosecution Trust Fund, which is used to investigate and prosecute violations of real property law.

The final two steps in the recording process include acknowledgement and constructive notice.

Acknowledgement

A deed becomes valid once it is signed. However, an individual can further validate a deed through the process of acknowledgement. It is almost always a requirement for all party's to acknowledge the transaction is required in order for the transaction to close.

Acknowledgement involves confirming the identities of both parties in a transaction and verifying that the transfer of real property is genuine and valid.

In order to execute an acknowledgement, both parties must sign documents in the presence of an authorized individual. In California, authorized individuals include notary publics, judges, and court clerks. These parties cannot be related or have a working relationship with either of the signing parties.

Acknowledgement is indicated in a **certificate of acknowledgment**. This certificate includes the names of the signing parties and the notary public, and the place in which the document was executed. A notary public must stamp the certificate and keep a record of it in his or her notary journal.

A recording will not take place until an acknowledgement is official.

Constructive Notice

Constructive notice refers to the knowledge a reasonable party is expected to have acquired regarding interest in a property. Former deeds, mortgages, and liens are all considered constructive notice as any member of the public can readily access them.

For example, say a property up for sale has a tax lien on it. A buyer is presumed to have knowledge of this lien, either through his or her own research or through a preliminary title report from a title insurance company.

Whether a party has *actually* acquired such knowledge is not stipulated. Constructive notice merely refers to knowledge that *could* be acquired by making reasonable inquiries. **Actual notice** is when a party is directly notified of the condition of interest in a property.

Constructive notice allows buyers, sellers, and lenders to protect their interests.

Types of Deeds

There are various types of deeds:

- Grant deed
- Warranty deed
- Quitclaim deed
- Tax deed
- Sheriff's deed
- Gift deed
- Deed of reconveyance

Grant Deed

A **grant deed** transfers interest in real property from one party to another.

A grant deed implies certain conditions regarding the title to a property, including:

- There are no liens or interest in the property that have not been disclosed to the buyer
- The grantor is current with his or her property taxes
- The property has not been conveyed to anyone else

This implied title guarantee offers a grantee a stronger level of protection in a transaction. For this reason, grant deeds are the most commonly used type of deed in California and the standard choice of most legal experts.

A grant deed does exclude certain title guarantees, however. For example: protection from easements. To protect the interests of all parties involved – particularly the grantee – title insurance should be purchased. Only title insurance can guarantee the prevention of loss due to undisclosed liens.

There are various types of grant deeds. One that is often used is the **interspousal grant deed**, which transfers real property from one spouse to the other. An interspousal grant deed does not trigger the reassessment of property taxes because the property is still owned by a party who lives there.

Grant Deed

Name: _____

Address: _____

APN: _____

For a valuable consideration, receipt of which is hereby acknowledged,

hereby grant(s) to

the following real property in the City of _____, Country of
_____, California:

Date: _____

(Signature of declarant)

Date: _____

(Signature of declarant)

State of California

Country of _____

On _____, 20_____, before me,

_____, who proved to me on
the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct

WITNESS my hand and official seal

Signature of Notary

Warranty Deed

A **warranty deed** transfers real property interests from a grantor to a grantee with a guarantee, or “warranty”.

A warranty deed includes guaranteed provisions:

- ***Right to Convey***. The subject property’s title is under the grantor’s name, giving him or her the legal right to transfer the title.
- ***Encumbrances***. The grantor’s property does not have any encumbrances other than standard liens, such as mortgages and/or tax liens. All liens must be disclosed to the grantee.
- ***Covenant of Warranty***. The grantor has free and clear possession of a title. No lien or interest holders can claim ownership to the property in the future.
- ***Quiet Enjoyment***. Ensures the grantee the right to quiet enjoyment, including protections against future title claims against the property.
- ***Full Ownership***. The grantee will become the full interest holder upon the close of the transaction.
- ***Covenant of Further Assurances***. A grantor will defend the title against any third party claims to the property and take the necessary steps to cure any title defects.

A warranty deed offers a high level of protection for buyers. Consequently, they are one of the most commonly used types of deeds. However, as is the case with grant deeds, a warranty deed should not be used as a substitute for purchasing title insurance.

Quitclaim Deed

A **quitclaim deed** is similar to a grant and warranty deed in that it transfers interest in a real property from one party to another; however, it does not ensure a marketable title or implied warranty.

With a quitclaim deed, the grantor “quits” his or her actual interest in a property. However, that interest may not be full. For example, a property’s title may have a lienholder with partial interest in the property.

It is therefore possible for a buyer to purchase a home executed with a quitclaim deed and not be entitled to the entire property. If a grantee does not have full interest in a property, he or she does not have the right to live on it.

Quitclaim deeds significantly increase the risk that a buyer is relying on inaccurate and dated information during the decision-making process. Consequently, title insurance rarely covers quitclaim deeds.

For all of the aforementioned reasons, most grantees prefer not to use a quitclaim deed unless they know and trust the grantor.

A common situation in which a quitclaim deed is used is when property is not sold, including the transfer of property between family members or the addition of a spouse's interest in a property.

Tax Deed

A **tax deed** gives the government the authority to sell a property in order to collect delinquent taxes.

If a property's taxes remain unpaid for an extended period of time, the state has the right to foreclose on the property. A county tax collector will then issue a tax deed granting the state the legal right to sell the property in order to recoup the unpaid taxes.

The state generally sells tax-delinquent properties in a public auction known as a tax deed sale. The winning bidder pays the property's unpaid property taxes and is issued the tax deed. After a statutory period, the winning bidder can apply to the tax collector and assume ownership interest in the property.

The state does not guarantee that paying off a property's tax debt ensures full ownership interest. Buyers of tax deeds are advised to conduct their own research in regards to a property's title.

Sheriff's Deed

A **sheriff's deed** gives a lender the authority to sell a property in order to collect delinquent mortgage payments.

When a borrower falls significantly behind on mortgage payments, a lender has the legal right to foreclose on the borrower's property.

A **writ of execution** is a court-ordered judgment whereby a court takes possession of a defaulting borrower's property as a means of collateral for a lender. The lender may then sell the property at a public auction known as an **execution sale** (or sheriff's sale) in order to recoup its losses. The highest bidder purchases the lender's debt and assumes ownership rights of the property through a sheriff's deed.

Execution sales are typically a last resort solution. They occur when an individual personally guarantees that he or she will pay back a debt and reneges on that promise or in criminal cases where a defendant does not have the means to pay fines and legal

fees.

Gift Deed

A **gift deed** allows a grantor to transfer – or “gift” – interest in a property to a grantee without any money or assets being exchanged.

Gift deeds are commonly used to exchange property between family members. A gift deed cannot be revoked after a property has been transferred.

A grantee must disclose the new property on his or her tax return.

Gift deeds do not terminate a grantor’s previous debts. Such a deed cannot be used to evade paying property taxes, debts, or other financial obligations.

A gift deed must be executed in the presence of a third party witness. This witness – typically a notary public – must also sign the gift deed.

Deed of Reconveyance

If a borrower takes out a mortgage for a property, the lender holds a security interest in that property. When the borrower pays off the loan, the lender releases its security interest in the property.

A **deed of reconveyance** – or a reconveyance deed – establishes that a borrower’s mortgage debt has been satisfied. It releases the property title back to the borrower and verifies that he or she is the sole legal owner of the property.

A notary must execute a deed of reconveyance.

A lender must provide a deed of reconveyance to a borrower within 30 days of a request.

Voluntary Property Transfers

Trust

Property ownership can also be held in a trust.

A **trust** is a legal relationship in which one party transfers a property to another party for the benefit of a third party.

The person who initiates and creates the trust is called a **trustor**. A trustor transfers real property interests – or a property’s “bundle of rights” – to a **trustee**. The trustee manages the property and holds the property’s title on behalf of the party who is entitled to it in the future (**beneficiary**).

Property held in the trust is known as trust property.

In the event that a trustor does not indicate the role of a trustee or does not provide the trustee with directions prior to the trustee’s death, California law will determine the direction of the trust.

A trust may be created for various reasons:

- A trustor wishes to avoid taxes
- A trustor wishes to designate who will receive his or her property and/or assets upon his or her death
- A trustor wishes for his or her heirs to avoid the time-consuming and costly probate process
- A trustor does not want his or her name to be associated with owning a property

Trustees can be individuals, public servants, or an employee of a company. A trustee is compensated for his or her time, including reasonable expenses and fees.

A trustee must act in good faith and uphold the fiduciary duties prescribed by the trustor. If a trustee acts in a self-serving manner, the court may reverse a trustee’s actions.

Living Trust

A **living trust** is a trust that is created by a trustor while he or she is still alive. Such trusts are commonly used in conjunction with a will.

Unlike in a standard trust where a third-party trustee is designated to control a trustor’s assets, a living trust allows a trustor to manage his or her own assets while he or she is alive. In effect, a trustor can act as his or her own trustee and beneficiary.

When a trustor passes away, his or her property will be transferred to a **successor trustee** designated by the trustor. Successor trustees are typically family members of the original trustor.

In some living trusts, a trustor may designate the role of trustee to multiple people in order to maximize the chances of proper implementation of the trustor’s goals.

An individual who co-owns property with another party may put his or her share in a

living trust so that it will not automatically go to the surviving co-owner(s) in the event of the individual's death.

Will



A **will** is a legal document and financial planning tool that designates how a party's property and assets will be transferred upon that party's death.

A **testator** drafts a will. While alive, the testator has the right to make amendments or changes to his or her will (known as **codicils**).

The following are requirements to create a will:

- Must include the words “will”, or clearly describe the purpose of the document. The document cannot be contrived as random; it must be seen as the official document consented to by the testator
- Must clearly identify the testator
- Must clearly identify the name(s) of the heir(s) to which property is being transferred.
- Must clearly state how a testator's estate will be split up among heirs
- Must appoint an executor who is responsible for overseeing the will upon the testator's death
- Must be signed and dated by the testator on the will's last page
- Must be signed and dated in the presence of a third party who is not a beneficiary in the will

Verbal wills are no longer valid in the state of California.

A **devise** refers to the transfer of a property title through a will. The deceased party who uses a will to transfer the property is known as a **devisor**. The party who receives property in a will is known as a **devisee**, or beneficiary. A property remains the possession of a devisor until his or her death. A devisee has no control of a property until a devisor dies.

If a property owner does not leave a will or does not stipulate a beneficiary's name, the state will determine who will retain the property.

Witnessed Will

A **witnessed will** is a written legal document that is typically prepared by an attorney.

A testator must sign the will in the presence of two witnesses. These witnesses must subsequently sign the will as evidence.

Holographic Will

A **holographic will** is a handwritten will created without witnesses. The only requirement of a holographic will is that a testator hand-writes all of its components, including the names of the beneficiaries and how real property should be distributed.

The main reasons why testators choose to use a holographic will is because they cannot afford the costs of hiring a lawyer and/or death is imminent and they do not have enough time to properly draft a will.

Such wills are less common than in the past.

Intestate Succession

A property owner who dies without creating a will or dictating the distribution of his or her estate is said to have died **intestate**.

In this case, the individual's property is distributed using intestate succession. **Intestate succession** is the state-controlled process of distributing a property owner's assets to beneficiaries.

Intestate succession diverts assets using the following line of succession:

- Surviving spouse
- Surviving children (over 18)
- Parents
- Brothers and sisters of decedent
- Grandparents of decedent
- Next in family line

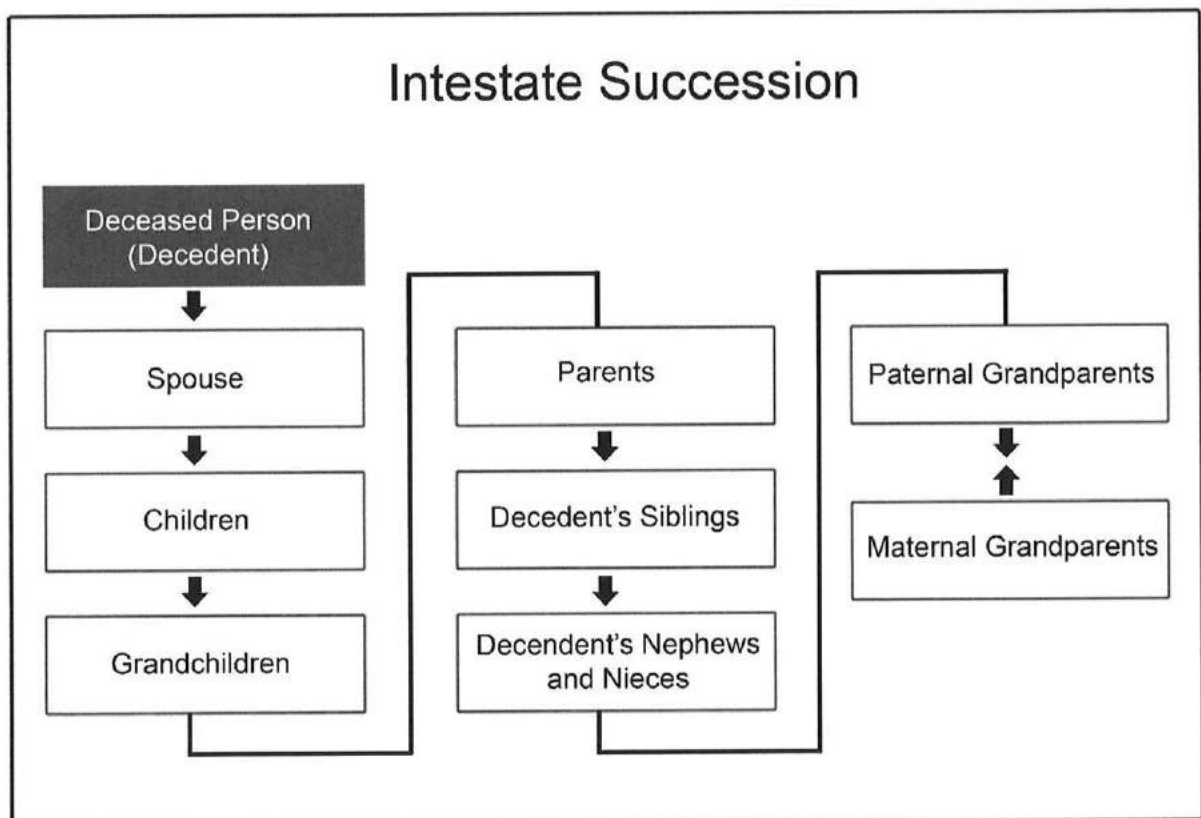
Surviving spouses must be legally married prior to the deceased party's death. If a couple was engaged in divorce proceedings when one of the spouses dies, a court may prevent the surviving spouse from accessing the property.

Property will not go to friends, unmarried partners, or a charity organization.

An individual who is known to have acted unfavorably towards a deceased party does not have the right to claim a property, even if he or she is a blood relative.

For example, suppose Eric passes away without a will. He has no spouse or children, but he has a surviving father. However, legal records show that Eric's father had been physically abusive to Eric in the past. In this case, a court may rule that Eric's father cannot have access to Eric's property.

If there is no further family line or an heir of the deceased party does not claim the property within five years, the property is transferred to the state. This is state-administered process is known as **escheat**.



Probate

Probate refers to the court-administered process of proving a testator's will to be valid and enforceable. This process determines how a testator's assets will be distributed and any debts will be paid.

Probate is a common process. It is typically required when a deceased party's assets are legally in the deceased party's name. In this case, an estate must go through the probate process in order to legally transfer the deceased party's assets to any heirs/beneficiaries.

A testator may designate a legal representative to distribute the testator's assets upon his or her death. This representative is known as an **executor**. An executor "steps into the shoes" of a testator and represents his or her estate in court.

In the event that no will exists, an executor is not designated, or a designated individual declines to act as an executor, the court will appoint an **administrator**.

If there is a will, an executor/administrator will carry out the will's provisions in a probate court.

An executor/administrator is responsible for the following:

- *Verifying the validity of a testator's will.* This includes proving that a testator was legally and mentally capable of creating a will.
- *Identifying and appraising a testator's real and personal property*
- *Identifying a testator's heirs/beneficiaries*
- *Identifying and paying a testator's outstanding debts.* This includes creditors and unpaid property taxes. An executor/administrator may need to sell or liquidate a testator's assets in order to pay off debts.
- *Distributing a testator's assets to the proper heirs/beneficiaries*

Probate is not required for all of a testator's personal and real property. Assets below \$100,000 are not subject to probate; however, any amount greater than \$150,000 is subject to the probate court's discretion.

A probate court must approve all of an executor's/administrator's actions.

The probate process can be a long and arduous process. It can take anywhere from a few months to a couple of years. The associated legal fees can also make it an expensive process for a testator's heirs/beneficiaries. Therefore, a testator is advised to take steps to avoid the probate process prior to his or her death, such as by putting his or her assets in a trust or assuming joint ownership.

Dedication

A **dedication** in real estate is the voluntary transfer of real property from a private property owner to the government for the purpose of public use.

For example, a property owner may dedicate a portion of his or her land to the government in order to allow the state to build a train line.

A property owner will transfer a dedication deed to the government or issue a written declaration of his or her intent to dedicate the property.

A property owner may stipulate that the dedicated property be used for a certain purpose, such as a community park or hiking trail. If a property owner does not designate the dedication for a particular purpose, the government has the right to use the property for any public purpose it chooses.

Public Grant

State and federal governments have the right to sell public lands to private parties. This typically occurs when the government no longer considers a property as useful for a public purpose.

For example, assume a government agency outgrows the building they were once using. The government can publicly grant the property to another party.

Commercial and Industrial Transfers

Commercial and industrial real estate are huge sectors within the industry. Retail space, restaurants, manufacturing, and factories all fall under this umbrella. Many agents/brokers specialize in commercial real estate as such transactions offer them a sizeable percentage of gross real estate deals.

Business Opportunity Sale

A **business opportunity sale** involves the transfer of business assets, products, and/or branding rights. This includes real property, personal property, and inventory.

Common business opportunity sales are gas stations and retail stores.

Buyers of business opportunity listings are often naïve about the realities of purchasing such real estate. While impressive profits may make a business more attractive, they do not necessarily imply the absence of new or real responsibilities or risks for the buyer.

Hiring an experienced agent/broker can help a buyer make informed decisions. An agent/broker should understand the business dynamics of the business he or she is buying or selling and be fully aware of the business's assets and liabilities.

An agent/broker must disclose a seller's financial records to a prospective buyer. Seller records may include:

- Profit and loss statements

- 2-3 years of tax documents
- Liabilities
- Necessary permits and licenses
- Government requirements to operating the business
- State payroll taxes
- Workers compensation records

Although not a licensed securities professional (stock broker), an agent/broker can also help with the transfer of stock and/or dividends that are part of a company's portfolio. (They cannot assist with the sale of stock, however.)

Franchise Sale

A **franchise sale** involves a buyer purchasing the right to use a business franchise's name and engage in that franchise's business. This includes using the franchise's marketing plan and its process, as well as offering its products and services.

An agent/broker can represent a buyer or a seller in a franchise agreement between a company and an individual.

Franchise sales have become an increasingly larger percentage of the overall real estate transactions. Agents/brokers can specialize in these sales. Some agents/brokers may specialize in the sale of specific companies, industries, or types of businesses.

An agent/broker who engages in the sale of a franchise must be well-versed in the nature of franchise sales. This includes a thorough understanding of business documents such as profit and losses reports, company reports, and expense reports.

Involuntary Real Estate Transfers

Adverse Possession

Adverse possession is a situation in which a party who does not have legal ownership to a property occupies the property without the permission of the legal owner, but fulfills the required common law actions necessary to have the property's title involuntarily transferred to them.

The party who uses the property without permission is called a **disseisor**. Adverse possession can be claimed when a disseisor uses a property against the will of the legal owner for a continuous period of time without interruption from that owner.

If a disseisor wins an adverse possession claim, he or she has the right to take legal possession of a property and its title without paying any money or exchanging any interest.

The requirements to claim a property title through adverse possession include:

- *Possession of the Property:* A disseisor must occupy a property as if he or she was the owner. This includes engaging in activities that alter a property's landscape, such as planting crops, mowing the fields, clearing brush, or constructing a shed. This also includes paying property taxes.
- *Open and Notorious Use:* A disseisor's use of the property cannot be hidden. He or she must openly use a property against the wishes of the legal owner, and prevent others from using the property as well.
- *Continuous Use:* A disseisor must possess a property for five consecutive years without interruption. Any interruption in possession ends the original five-year period and begins a new one. In the event that a disseisor dies, or discontinues use of the property for the five-year period, a successor of the disseisor may take over and complete the five year period. This is called **tacking on**. In order for tacking on to be considered valid in an adverse possession claim, the disseisor and the successor must have an existing relationship with one another.
- *Exclusive Use:* Title can only be claimed over the parts of the property that are physically used by the disseisor and not consistently used by the legal property owner. The disseisor must be the exclusive user of the property unless he or she is renting the land. A disseisor's legal ability to claim ownership through adverse possession is invalidated if the legal property owner uses the property.
- *Hostile, Non-Permissive:* To claim title, a disseisor must use the property without the consent of the legal owner. If the legal owner consents to the disseisor's use of the property, an adverse possession claim is not valid.
- *Illegal Activity:* As a disseisor must use a property owner's land without his/her permission in order to make an adverse possession claim, a disseisor engages in illegal behavior. A disseisor actively violates a property owner's right to quiet enjoyment. Such actions may result in lawsuit against the disseisor. However, if the property's legal owner does not remove the disseisor from the property for a period of five years, the title will be transferred and the disseisor will take over the property through adverse possession. The disseisor must illegally claim title to the property through **color of title**. This involves the disseisor acting as the true owner in order to receive title to the land.

A disseisor cannot claim title through adverse possession of a government or publicly owned building, or a property belonging to a minor, mentally incapacitated party, or legally incompetent party.

Adverse possession is a hotly contested method of involuntary transfer. Critics claim that involuntarily transferring an owner's property is unjust and illegal and incentives lawlessness. Proponents claim adverse possession is justified as it allows more efficient use of land for those who need it.

Example

An elderly woman, Samantha, owns a 1,000-acre property, most of which she rarely uses or even sees. Samantha hires Gregory to tend to her property and allows him to live in a small guesthouse on the edge of the property. After a year, Samantha fires Gregory and orders him to leave the property by the end of the week. Gregory pleads with Samantha for an additional few weeks in order to find a new place to live. Samantha agrees.

However, a few weeks pass and Gregory doesn't leave the property. He continues living in the guesthouse and even starts growing his own crops on the edge of the property. After a few months, Samantha finally sees Gregory and discovers that he is still living in the guesthouse. Samantha does not approve, but does nothing to stop him. Gregory goes on to pay property taxes on the guesthouse and does not allow anyone else to use it for five, continuous years. At the end of the five years, Gregory claims title to the guesthouse through adverse possession.

Alienation

Alienation refers to the transfer of a property title without the true or original property owner's consent.

A prospective titleholder can bring a legal action suit against a party who claims to be the true titleholder. The prospective titleholder will subsequently attempt to prove his or her right to the property. The true titleholder will be established through an **action to quiet title**.

A court may opt to split a property amongst the "owners".

Eminent Domain

The Fifth Amendment grants the government the power to confiscate private property and divert it to public use through **eminent domain**.

The purpose of eminent domain is to assume private property for a public or governmental use, such as the construction of roads, highways, schools, or public utilities.

The government must purchase a property that is subject to eminent domain at a fair market price. It is advised that a property owner use recently sold comparables to negotiate the final sales price.

The practice of eminent domain, while necessary, has many opponents. These critics argue that the forced, concurrent sale of one or many properties in a single area depresses the fair market value of other properties.

Government Seizure

A **government seizure** – also referred to as asset seizure and asset forfeiture – refers to when the government confiscates a property being used for criminal or terrorist activities. The purpose of such a seizure is to prevent violators of the law from engaging in further illegal activity.

The burden of proof is on the government to prove that a property is being used to conduct illegal activity.

Unlike with eminent domain, property owners who are subjected to government seizure are not entitled to compensation.

A court will typically exhaust all alternative methods prior to resorting to an asset seizure. This is due to the wide reaching, damaging effects that a seizure can have on a violator and his or her family.

Partial Property Transfers

Partition Action

In cases where multiple parties own a property and one party wishes to sell his or her share, a partition action may be used.

A **partition action** is a court-ordered action that forces the division of a property into equal parcels. If a property cannot be divided equally, a court may force the owners to sell the property and divide the proceeds equally.

Example

Question: Bobby and Mary's parents die in a tragic car accident. The parents left their home to the two siblings in their will. Bobby wants to sell the property, while Mary wants to keep it. What are the legal rights of Bobby and Mary?

Answer: *Bobby can file a partition action in a court of law. If the property can be split into two equal parcels, Bobby can sell his share and Mary can keep her share. If the property cannot be divided equally, the court will require the siblings to sell the entire property and split the proceeds.*

Accession



Accession is the process of acquiring property through either labor or the addition of new materials.

Accession may occur as a result of man-made actions, such as when a property owner adds a new structure or develops a property.

It may also refer to circumstances outside of a property owner's control, including through accretion or reliction.

Avulsion

Avulsion refers to the *sudden* loss or addition to land due to strong water forces. If a body of water changes suddenly through avulsion – such as in the event of a heavy rain or drought – property boundaries do not change.

A property owner has one year to reclaim a property where avulsion has occurred.

Accretion

Accretion refers to the *gradual* loss or addition to land due to strong water forces. If a body of water changes gradually through accretion, property boundaries will change with it.

For example, a beach's sand may be eroded over time and result in a permanent loss of land.

Reliction

Reliction refers to when a body of water (i.e. pond, river, lake, ocean) recedes and increases the size of available land.

When reliction occurs, a property owner who is adjacent to the body of water can claim the newly created land as his or her own property. An exception is if the newly created land is public or government property.