

# Chapter 8



## Property Deeds, Recording & Conveyances

### Chapter 8 Goals:

- Learn what a deed is
- Be aware of the various types of deeds
- Understand components of title that are vital to a real estate transaction
- Learn what happens to property when there is no surviving party
- Understand how property can be transferred through a will
- Learn why title insurance is necessary for real estate transactions

# Chapter 8: Property Deeds, Recordings, & Conveyances

*This chapter explores the concept of property title and deeds, the process of recording a transfer of ownership, and other types of property conveyances.*

## Key Terms

acknowledgement	executed deed	quiet title
actual notice	executor	quitclaim deed
ademption	delivery	recording
administrator	fictitious trust deed	reservation in a deed
after-acquired title	gift deed	simple will
bundle of rights	grant deed	simultaneous death
codicil	holographic will	standard policy of title insurance
color of title	intestate succession	tax deed
constructive notice	joint will	testator
dedication	living trust	trust deed
deed	marketable title	trustee's deed
defective recording	ownership in severalty	warranty deed
defective title	per stirpes	wild documents
devise	pour-over will	will
easement	priority of title	
escheat	probate	

## Land Ownership

All real property is owned by someone or some entity. Ownership may be held by private individuals, businesses, or by the local, state, or federal government. Real property owned by an individual or corporation is called **ownership in severalty**.

This ownership is not permanent, however: it can be transferred, sold, or lost through foreclosure or seizure.

## History of California Land Ownership

The land that is now modern-day California has witnessed large waves of migrants for tens of thousands of years. However, the most critical period of change -- both in terms of economics and land distribution -- occurred in the last 500 years.

Following the news of Christopher Columbus' successful journey to the new world, a Spanish explorer and conquistador named Vasco Núñez de Balboa set out on his own expedition. Balboa crossed the Isthmus of Panama in 1513 and claimed all of the coastal land on behalf of the Spanish monarchy. This included California.

California was originally inhabited by the nomadic Native Americans tribes. However, the Spanish brought infectious diseases with them and ultimately wiped out 60-90% of the Native American population. This massive death toll, coupled with Spain's aggressive expansion plans, significantly changed the land distribution within California.

The Spanish conquerors divided the land into two major areas: Baja California and Alta California. In 1769, Spanish missionaries also created a mission system in an effort to provide refuge for Spanish settlers and spread Christianity throughout the region. The twenty-one missions were separated by a one-day horse ride, and stretched from Northern California to modern-day San Diego.

In the early 1800s, the Spanish lost influence over California. Mexico subsequently took control of the region in 1822 and ended the mission system.

During the same period, the United States was expanding its reach westward. The United States and Mexico fought over control of California in the Mexican-American War of 1846. In 1848, the United States prevailed and Mexico ceded control.

At this point in history, there was very little private land in California; most of the land was public. In an attempt to solidify the United States' claim to the region, Congress enacted various Homestead Acts which gave citizens over the age of 21 the right to claim public land. This began the assimilation and development of the California we know today.

## **Titles & Deeds**

A **title** refers to one party's ownership of a property. Ownership is either an outright legal interest or equitable interest. The written legal document that provides evidence of this ownership is called a **deed**.

A title/deed affords its holder a set of legal rights and/or equitable interest, known as the **bundle of rights**. This includes the right to possess, sell, or transfer a property, as well as the right to exclusion and enjoyment. These rights may be separated and held by different parties.

## **Valid Deed Requirements**

A valid deed document must be in writing. It must also indicate that it is actually a deed by using language such as "this deed..." or "executed as a deed".

### Parties Involved

The deed must 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.

As in a contract, all parties involved must be competent and have the legal capacity to enter into a deed agreement.

### Property Description

A deed must contain a legal description of the subject property, including the address and a basic physical description that clearly defines a property’s borders. For example, a property description could state: “the property’s borders begin at the flagpole and end at the fences by the lake”.

There must be no doubt regarding which property is being transferred.

### Recitals

A recital is a formal statement that lists the past history -- or path -- of ownership for a subject property. It will begin with the earliest record of an owner and end with the property’s current ownership (the grantor). A recital is used to ensure that there is a clear path to ownership for the grantee.

### Reservation in a Deed

A **reservation in a deed** -- or reddendum -- allows a grantor to retain certain rights or interest in a subject property. For example, a grantor may exempt a property’s mineral rights from the deed transfer.

Typically, a reservation grants an **easement**, which allows the deed’s grantor to hold a nonpossessory interest in the land (i.e. access to the property). Although an easement and a lien both have nonpossessory interests in land, an easement is the right to use another’s land for a specified purpose (such as using another’s driveway to access their own property), while a lien is simply an interest in land until a debt the landowner owes is discharged.

#### Case Review: *People v. Sanders (1998)*

In the case, *People v. Sanders (1998) 67 Cal.4th 1403.*, a real estate investor was

sued for forgery.

A real estate investor (Sanders) ran a forgery scheme. He forged the signatures of deceased property owners, paid the back taxes on the properties, and even used a notary public stamp to verify the transactions. In all, he forged ten deeds of eleven parcels of land to himself, making himself the owner of the properties.

After successfully defrauding the state of numerous properties it was entitled to, a tax collector noticed many of the unpaid properties were being transferred to Sanders. The suspicious tax collector ordered an audit of Sanders' actions. After an investigation, the government uncovered Sanders' elaborate forgery scheme and brought Sanders to court.

The court held Sanders liable and sentenced him to five years in jail. Sanders appealed. The appellate court ruled that the prosecution failed to prove the grand theft claim. Citing California Penal Code Section 484 (a), it reversed the lower court's ruling, however still held Sanders liable for fraud.

## Transfer of a Deed

### Legal Description

The transfer of a deed must be accompanied by legal language that indicates the parties involved in a transfer and the terms and conditions of the exchange.

*The habendum provision* is a clause in a deed that describes the rights and interests being transferred to the grantee. This provision usually begins with the phrase “to have and to hold...”

*Testatum* requires the payment and receipt of deed consideration to be witnessed and acknowledged. Once this is completed, the operative aspects of the actual transfer can commence.

### Execution

The execution of a deed requires the grantor to sign and date the written deed in the presence of a neutral third party. This third party is typically a notary public, a judge, or a clerk at the county recorder's office.

If the subject property is owned by multiple parties, the deed must be signed by all of them. As the new title holder, the grantee is not required to sign the deed.

There can be no dispute as to the correct name of the grantor in a deed exchange. A

grantor must use the same name that he or she used upon originally receiving the deed, or validate his or her current name, in order for the transfer to occur.

For example, say Margaret Smith buys a property and signs a deed to transfer the property title to her. Shortly after, Margaret gets married and changes her name to Margaret Johnson. Thirty years later, Margaret wishes to transfer the property deed to her son. As the original deed features the name “Margaret Smith”, Margaret must legally validate her current name (“Margaret Johnson”) before the transfer can occur.

A deed does not automatically transfer upon its execution, however. In order to be valid, the executed deed must be delivered and accepted.

### **Delivery**

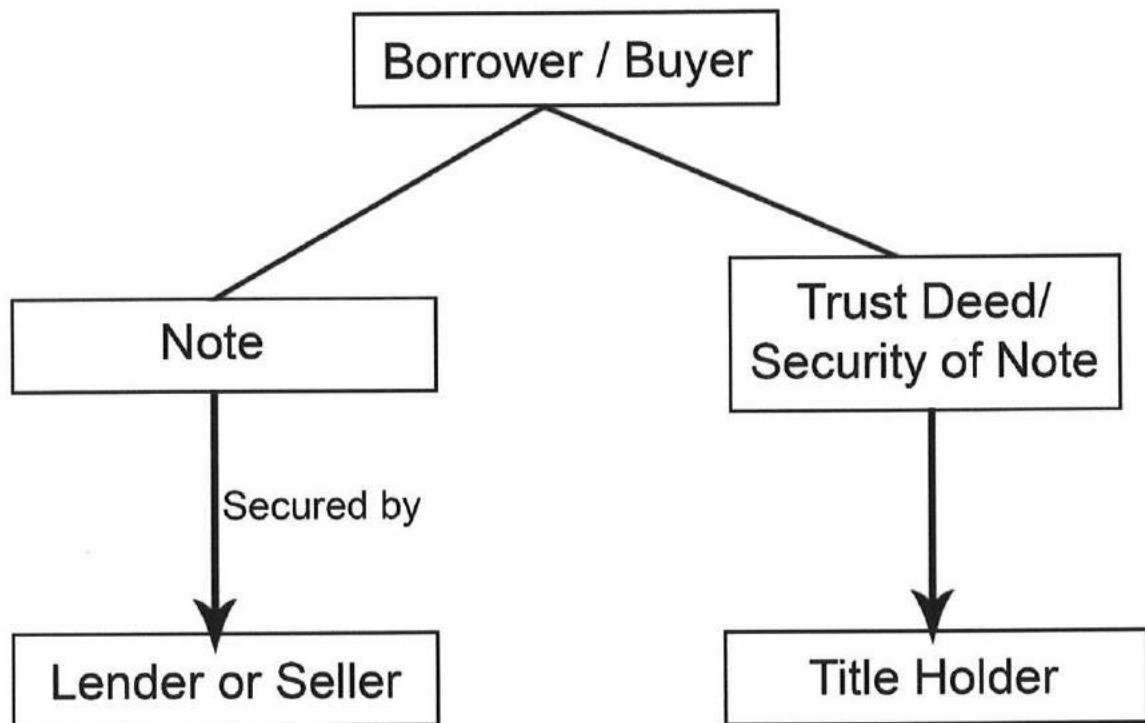
An executed deed must be delivered from the grantor to the grantees. The purpose of this step is to ensure that the intent of the grantor is to transfer the property. If the deed is in the possession of the grantees, it is considered delivered.

### **Acceptance**

Acceptance of the deed by the grantees is the last prerequisite in making a deed valid. If the grantees do not challenge the validity of a deed transfer, the deed is presumed to be accepted. Acceptance can also be established through the actions of the grantees. For example, inhabiting or borrowing against the deed’s subject property are clear signs of acceptance.

Once all of these components have been met, there is a valid, **executed deed**. The last step to formalizing a deed’s legal power is to publicly record it.

## Deed Process



### **Priority of Title**

Priority of interests is partially determined based on the date of the recording. Civil Code Section 1213-1220 states that the interests of the parties are set based on the date the information is recorded. Therefore the general rule for lien priority is as follows: “first to the site gets first right”.

Property tax liens always have priority, even if they were not first in line. The priority of the liens determines which parties get paid first in the event of a foreclosure. The senior lien holder has first priority and is therefore paid first. Further priority stems down the lien line. If any proceeds remain after the first lien is paid, the proceeds go to the second lien, and then the third and so forth.

## **Real Estate Recordings**

### **History of Recording System**

In the past, the exchange of property between parties occurred as a ceremonial custom in the presence of a credible witness. This ceremony -- known as livery of seisin -- also involved the exchange of earthly material as a sign of good will and “evidence” of the exchange.

However, the absence of a formal record-keeping system led to property ownership disputes, such as unverifiable title claims and uncertain property boundaries. This made the process of purchasing, selling, and/or maintaining a property arduous. For example, property owners in the past often had to physically possess their property in order to protect their claim to it. Owners could not own multiple properties without the fear that they may be repossessed by another party.

The establishment of the statute of frauds assisted this problem. Requiring the transfer of property to be documented in writing dramatically reduced uncertainty over property ownership.

In 1850, California adopted a real property recording system. This system originated from principles found in England’s common law system, including stare decisis (using precedents to determine future case law). Over the next 150 years, it evolved into a comprehensive system tasked with managing and collecting title interests.

The modern recording system allows titles to be easily discovered and ensures that the process of transferring property is protected and simple.

### **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.

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

A deed must be recorded in the county office in which a subject property is located. A recording requires the presence of a valid deed that has been executed, transferred, and accepted.

Additional requirements for a proper recording include:

1. The document must be authorized or required by law to be recorded. (G.C. § 27201)
2. Signatures must be original unless the document is a certified copy issued by the appropriate custodian of the public record. (G.C. § 27201b, G.C. § 27279, Evidence Code § 1530)
3. The document must include the name of the party requesting the recording, and a name and address where it can be returned. (G.C. § 27361.6)
4. The document must be properly acknowledged, unless exempt. California requires an all-purpose acknowledgement. (G.C. § 27201, 27289, 27285, 27287, 27288; C.C. § 1189)
5. The Assessor's Parcel Number is required on a notice of default, a notice of a trustee's sale, deeds, trust deeds, and mortgages. (G.C. § 27297.6)
6. The notary seal must be legible for a microfilm reproduction. (G.C. § 8207)
7. When recording documents affecting a change in the ownership of real property, include a completed Preliminary Change of Ownership Report. These forms can be obtained from the County Assessor's Office as well as the County Clerk-Recorder's Office.
8. Documents must be clearly legible in order to produce a readable photographic record. This pertains to the document text, notary seals, certificates and other attachments, such as legal descriptions. (Gov. 27361.7)
9. Include the recording fees. Payment can be made by cash, personal check, cashier's check, money order, or debit/credit cards.
10. Standard page size is 8.5 by 11 inches. Other page sizes incur additional recording fees.

A deed is entered into the specific recording system that matches the type of deed being recorded. Each recording will be assigned a filing number. The filing number acts as a receipt of when the deed was recorded and whose interests are held within it.

When the above requirements are met, there are two final steps in the process of a real estate recording: acknowledgement and constructive notice.

### **Acknowledgement**

**Acknowledgement** is when an official -- usually a notary public -- verifies that the parties claiming to transfer or accept an interest in a property accept the transfer or acceptance of such an interest; and that the parties are who they claim to be.

To do this, a notary will check each party's state or federally-issued identification. This

is usually a driver's license, social security card, or passport. Conversely, a third party may swear under oath that the party being verified is who he or she claims to be. (This method is rarely used.)

A notary public will document acknowledgement in his or her notary journal. This journal includes all vital data relating to the parties involved, including names, signatures, thumbprints, and address. If there are multiple parties who claim an interest -- such as on a mortgage -- all parties must sign in order for an interest to be accepted or transferred.

A notary public does not need to verify a party's interest or identity in the following circumstances:

- When a judgment is acknowledged by a county clerk
- Tax certificates
- Federal government leases
- Documents that are required to be signed by an attorney (Most of this will take place in court in the presence of the clerk)

The purpose of the acknowledgement is to provide proof that the interests of the parties have been validated and allow them to be recorded.

### **Constructive Notice**

**Constructive notice** is knowledge regarding the condition of the interests in a property that a party is presumed to have acquired.

(Whether a party has *actually* acquired such knowledge is not stipulated, merely that knowledge *could* be acquired by making reasonable inquiries. Conversely, **actual notice** is when a party is directly notified of the condition of interest.)

Constructive notice requires that all aspects of the chain of title be readily discoverable. This allows buyers, sellers, and lenders to recognize who has ownership rights to a property in order to protect their own interests.

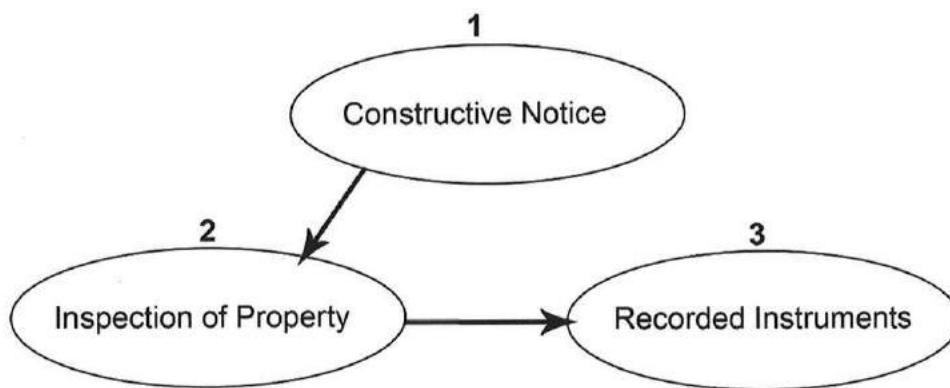
For example, a buyer is presumed to have discovered the legal status of a property, including whether there are other interest holders. If there are other parties with an interest in the property, the buyer would have to settle with, or remove, them in order to retain sole ownership.

If a deed is improperly recorded -- or evidence of its existence is not available -- the recording is deemed to not provide sufficient constructive notice. For example, if a title holder's name is not found in the county recorder's system because of a misspelled name. A deed holder should verify the details and existence of a recording with the county office, even if a receipt has been given.

Any document that is forged or otherwise inaccurate does not provide constructive notice and is considered void. If a court determines who the forger was, he or she may be held criminally liable. Document forgers are held particularly liable for offenses involving the forgery of trust deeds, due to the potential financial loss that can result from a lender lending money to an unintended party or for a property with undisclosed interest holders.

**Wild documents** are recorded deeds that are not found in the chain of the deed due to a mistake by a party. A wild document is not valid constructive notice.

## The Notice Process



### Case Review: *Gates Rubber Co. v. Ulman (1989)*

The case, *Gates Rubber Co. v. Ulman (1989) 214 Cal.3d 356.*, involved a dispute over the recording of a tenant's purchase option.

A tenant (Gates Rubber Co.) had a purchase option on a property. The agreement stated that the tenant could pay \$550,000 for the property upon the completion of a 25-year lease. Six years after the start of the purchase option, the owner sold the property. The new property owner (Ulman) was not informed of Gates Rubber Co.'s purchase option at the time of the sale. When Ulman refused to recognize Gates Rubber Co.'s right to purchase the property, Gates Rubber Co. sued.

The Superior Court discovered that Gates Rubber Co.'s option to purchase was in a separate agreement that was never actually recorded. It ruled in favor of

Ulman. Gates Rubber Co. appealed. The appellate court upheld the lower court's ruling. It ruled that while Ulman had a duty to verify tenant leases, he did not have the duty to verify the rights of the tenants, particularly when they were never recorded. Ulman was therefore entitled to all interest of the property and not required to transfer or sell any interest to Gates Rubber Co..

## Types of Deeds

### Grant Deed

A **grant deed** transfers interest in real property from one party to another. The grant deed is the most commonly used deed in California.

A grant deed is typically used for the sale or transfer of property from one family member to another. In such a scenario, the property will not be re-evaluated for property tax purposes.

A grant deed includes:

- the name of the party transferring the property (grantor)
- a legal description of the property being transferred
- the name of the party that the property is being transferred to (grantee)

For a grant deed to transfer, the grantor must sign and date the deed in the presence of a notary public or other court official. The notary will then collect the grantor's fingerprint and seal the deed. This indicates that the deed has been signed and executed.

Most property deeds -- including a grant deed -- contain title covenants that ensure a marketable title and implied warranty between the grantor and 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.

All property taxes must be paid off prior to the sale, or must be disclosed to the buyer as a part of the transaction.

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

A grant deed may exclude certain title guarantees, however, such as the protection of an easement. To protect the interests of all parties involved -- particularly the grantee -- title insurance should be purchased.

A **standard policy of title insurance** is a title policy that protects consumers from defects in title in matters relating to public records, forgery, tax liens, corporation deeds, and non delivery. In the event that a grantor violates any of the deed's implied covenants, a grantee may have the right to recover damages. (Title insurance will be explored in greater detail in Chapter 9.)

**Color of title** is the claim that a title is valid, when it is actually defective. This may stem from a deed not being registered properly, or at all.

**Defective title (or defective recording)** refers to a property with conflicting ownership rights. This involves one party claiming to be a property owner, when in reality the interests of the property are either divided amongst parties or are someone else's entirely.

**After-acquired title** refers to title that is acquired by a first party after a second party has transferred the property to a third party. In other words, a seller who may be the owner of a property/title in the future may sell that property/title to a buyer while not being the current property/title owner. In this case, the title will be transferred to the buyer once the seller acquires the title from the current owner.

For example, assume John has stake in a ranch owned by his father. If John wants to sell his stake in the property and finds a buyer, a title transfer will only occur upon the transfer of title from John's father to John. Otherwise, the property cannot be sold.

### **Quiet Title**

An action to **quiet title** is a legal action used to establish a party's title to property and remove ("quiet") any challenges or claims to that title. Once a property title is clear, a party has the ability to sell or refinance the property.

A quiet title is used in matters relating to:

- Tax problems
- Adverse possession
- Fraudulent conveyance
- Boundary disputes
- Surveying errors

Recording Requested By:

**When recorded mail document to:**

NAME

ADDRESS

CITY  
STATE & ZIP

APN:

Above Space for Recorder's Use Only

### GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_ CITY TAX \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value of items or encumbrances remaining at time of sale,
- Unincorporated area     City of \_\_\_\_\_, and

FOR A FULL VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

hereby

GRANT(s) to \_\_\_\_\_ the following

described real property in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of California:

Dated: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA} \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_ 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 signatures(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 \_\_\_\_\_ (SEAL)

MAIL TAX STATEMENT TO ADDRESS AS SHOWN ABOVE

## Grant Deed Explained

<p>Recording Requested By:</p> <p>When recorded mail document to:</p> <p>NAME</p> <p>ADDRESS</p> <p>CITY STATE &amp; ZIP</p> <p>APN:</p>	<p>The name of the person who will be turning the deed in to the Recorder's Office.</p> <p>The name and address of the person who will receive the new deed and all tax statements.</p> <p>The APN (Assessor's Parcel Number) of the property. This is on the current deed.</p>
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Above Space for Recorder's Use Only

### GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$ \_\_\_\_\_ CITY TAX \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value of items or encumbrances remaining at time of sale,
- Unincorporated area       City of \_\_\_\_\_, and

Enter the amount of Doc. Transfer Tax due.

FOR A FULL VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

hereby

GRANT(s) to \_\_\_\_\_

the following

described real property in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of California:

Enter the name or names of the current owners, and form of title.

Enter the name or names of all new owners (including current if they are staying on title).

Dated: \_\_\_\_\_

Enter the city and county the property is located

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA}

COUNTY OF \_\_\_\_\_ } SS

On \_\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_ 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 signatures(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 \_\_\_\_\_ (SEAL)

MAIL TAX STATEMENT TO ADDRESS AS SHOWN ABOVE

## Trust Deed

A **trust deed** – also known as a deed of trust – transfers the title of a borrower's property to an independent third party in order to secure a loan that has been provided by a lien holder/lender.

This type of deed involves:

- a borrower (or trustor)
- a lien holder/lender (or beneficiary)
- an independent third party (or trustee)

A trustee (usually an escrow company) is given legal documentation indicating a lender's interests in a borrower's property. Since the borrower's property title is held by an escrow company, a lender has the right to foreclose on the property in order to protect his or her legal interests, if necessary.

A **fictitious trust deed** is a legal term used to describe a general deed that is recorded for the purpose of being referenced for a particular transaction and referenced in other trust deeds.

## Warranty Deed

A **warranty deed** transfers the real property interests of one party to another and includes a marketable title and implied warranty.

Warranty deeds offer a high level of protection for grantees. It should not be used as a substitute for purchasing title insurance, however. (Only title insurance can guarantee the prevention of loss due to undisclosed liens.) The overwhelming majority of real estate purchases in California do not utilize warranty deeds as buyers typically purchase title insurance.

A warranty deed includes guaranteed provisions:

- **Right to Convey:** A seller's property's title is under his or her name, proving that the title can be transferred to the buyer.
- **Encumbrances:** A seller'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:** A seller has free and clear possession of a title.
- **Quiet enjoyment:** Ensures a grantee the right to quiet enjoyment, including protections against future title claims against the property.
- **Covenant of further assurances:** A seller will defend the title against any third party claims to the property.

## Quitclaim Deed

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

A quitclaim deed offers little protection for a grantee. Without a marketable title or implied warranty, a grantee receives all of the interests held by a grantor at the time a quitclaim deed is executed. It also does not afford a grantee any legal recourse to sue for damages. This leaves room for potential title disputes to occur.

For example, a grantee may believe that all interests in a property will be transferred to them, but multiple liens on the property mean that only a portion of the interests will be transferred.

Therefore, it is very rare for unacquainted sellers and buyers to use quitclaim deeds. Most grantees prefer not to use a quitclaim deed unless they know or trust the grantor, such as in the transfer of property between family members or friends. More often, quitclaim deeds are used to end -- or “quit” -- a party’s claim to an interest in a property.

They are most often used for their simplicity and speed.

## Tax Deed

A **tax deed** transfers real property with unpaid property taxes to the state.

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 will generally do so at a tax auction, whereby buyers may purchase the foreclosed property by paying its unpaid property taxes.

### Case Review: *L&B Real Estate v. Housing Authority of the County of Los Angeles (2007)*

The case, *L&B Real Estate v. Housing Authority of the County of Los Angeles (2007) 149 Cal.4th 950.*, involved the sale of a wrongly recorded property.

A developer sold a piece of private land to the state. The state then transferred that land to the Housing Authority of the County of Los Angeles.

However, the recorder’s office had failed to record two of the parcels that were included in the sale. Consequently, the county’s tax office believed that the

developer was still the current owner and continued to send him tax bills for the un-recorded parcels. After receiving no response or payment, the county foreclosed on the property for nonpayment of property taxes. The property was subsequently sold in a tax sale to L&B Real Estate.

At this point, the Housing Authority discovered the recorder's office mistake. It voided the property's sale to L&B Real Estate, indicating that the property was never intended to be sold. L&B Real Estate sued to quiet title to the property.

The Superior Court argued that because the deed to the two parcels was not recorded, L&B Real Estate's purchase of the land was not a valid transaction. It reasoned that the initial transfer of ownership from the private developer to a public owner (the state) meant that the state was not required to pay property taxes. Therefore, the state had technically not failed to pay property taxes and the property should never have gone into foreclosure and sold in a tax sale. Thus, the sale to L&B Real Estate was deemed void.

## Trustee's Deed

When a property is foreclosed and subsequently sold in an auction, the highest bidder retains the right to purchase the property through a **trustee's deed**.

## Gift Deed

A **gift deed** transfers interest in real property from one party to another. "Gifting" real estate typically involves family members exchanging or transferring assets.

A gift deed must be tangible and clearly defined. The transferred real property must be a physical property that currently exists. The title of the property must be transferrable. A gift deed cannot be used to evade taxes.

## Voided Deed

The following instances constitute a voided deed:

- Forgery
- Fraud
- Alteration of the deed
- The grantor was not legally authorized to transfer the interest in real property (i.e. due to mental incapacitation or minor status)
- Deed was not delivered and/or accepted
- Grantor acted under duress, confusion, or pressure

Should a voided deed be transferred, the grantee holds no right to the deed because of the inaccurate nature of the transfer. The grantor or grantee have the right to challenge the validity of a real property transfer, and have up to five years to recover damages.

### **Case Review: *Anderson v. Reynolds* (1984)**

The case, *Anderson v. Reynolds* (1984) 588 F.Supp. 814, involved intentional fraud in a grant deed transfer.

A property owner (Anderson) put her property up for sale. An opera singer (Reynolds) claimed to know a famous movie star who wished to purchase the property, but only if the star dealt directly with Anderson, not an agent. Against the advice of her professional advisors, Anderson tendered a grant deed to Reynolds with the intent of transferring it to the famous movie star. Reynolds' attorney recorded the deed, then executed several additional deeds that transferred the property not to the famous movie star, but to Reynolds himself. Anderson brought legal action against Reynolds. She sought the cancellation of the grant deed and the subsequent deeds that granted the property to Reynolds.

The Superior Court contended that Reynolds had engaged in intentional fraud by falsely misrepresenting his claims. It held Reynolds guilty and ruled the previous grant deeds to be null and void. The property was returned to the full possession of Anderson.

## **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. Once a dedication is implemented, the original property owner forfeits all rights to the property.

For dedication to occur, a property owner must first obtain approval from the county. The transfer must meet county coding laws (i.e. provides enough space for the existence of streets, alleys) and protect the easement rights of others. The property owner then transfers the dedication deed to the government, or issues a written declaration of the property owner's intent to dedicate the property and, if applicable, the purpose of the dedication.

A statutory dedication bequeaths a property with no particular purpose. If a property owner does not clearly state an intent for the dedication, the government has the right to use the donated property for any public purpose it chooses.

Conversely, an express dedication bequeaths a property for a specific purpose. Property owners typically dedicate a property with the intent of building something for the community they work and live in (i.e. community park, hiking trail, horse trail, community center). The government must develop the property according to the property owner's intent, or it will be forced to return the property.

Dedication is typically utilized by business owners or individuals with a high net worth and/or vast holdings of land.

### **Case Review: *Dolan v. City of Tigard* (1994)**

The case, *Dolan v. City of Tigard* (1994) 114 S. Ct. 2309., challenged the constitutionality of the government's expanding role into private property matters.

A property owner (Dolan) operated a retail store. She applied to the City of Tigard for a building permit with the intent of increasing the size of her store and paving an extended parking lot. The City approved the permit -- on the condition that Dolan included a pedestrian walkway and bike lane. However, this proposed condition would use ten percent of Dolan's property and Dolan refused. The City subsequently denied her building permit request. Dolan sued.

The Superior Court sided with the City, concluding that the development of a walkway and bike lane was reasonably related to the impact of the expansion of Dolan's business. Dolan appealed. The appellate court upheld the lower court's ruling. Dolan appealed again.

The United States Supreme Court reversed the lower courts' rulings. It argued that the bike lane had nothing to do with Dolan's business and that the implementation of the walkway/bike lane placed an undue burden on Dolan. Furthermore, it concluded that requiring Dolan to build such an expansive walkway and bike lane violated her Fifth Amendment rights.

## **Property Ownership After Death**

When a property owner dies, a property title may be transferred in various ways.

### **Wills**

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 will is drafted by a **testator**. The parties to whom a testator transfers property or assets are known as beneficiaries or heirs.

A will applies to both real property and personal property; however, in the context of this section, we will explore the laws regarding real property wills.

In order to create a will, a testator must possess the legal and mental capacity to do so. A testator must be an adult of reasonable mental faculties, and cannot be in a state of incoherence when the will is executed.

Unlike other legal documents, a will can be drafted by anyone. However, due to the specificity of most will requests, it is advised that a testator hire a professional attorney to draft a will.

Additional requirements to create a will include:

- 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

A **devise** refers to the transfer of property through a will.

If there are multiple wills, the most recent document will be used. If there are previous wills or distribution documents, the testator must indicate that the current will is the only valid will, and that it supersedes any previous documents and/or arrangements. Older wills are not valid and do not constitute legal proof of one's interest in a property.

A **codicil** is an amendment or change to a will.

If a testator destroys a will, the terms of the will are void.

**Per stirpes** describes how property is distributed when a beneficiary dies prior to a testator's death.

### **Simple Will**

A simple will is a will whose provisions are simple and straightforward. Due to the simple process of creating such a will, many testators create it themselves, rather than hiring a lawyer. The will should include the name of the testator, all beneficiaries, and the disbursement of assets following the testator's death.

### **Joint Wills**

A joint will is created by two individuals for the purpose of transferring property rights and/or assets exclusively to each other. Upon the death of one testator, all property rights and/or assets will transfer to the other testator.

### **Pour-Over Will**

A pour-over will deems a living trust as its beneficiary. Upon a testator's death, his or her property and assets are "poured" (or transferred) into a trust. Typically, a pour-over will requires a property to go into probate before being transferred into the trust.

### **Holographic Will**

A **holographic will** is a handwritten will created without witnesses. The only requirement of this will is that a testator hand-write all 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.

Because of the complicated laws that govern wills, and the difficulty in drafting a will without legal expertise, holographic wills are commonly deemed invalid.

## **Probate**

**Probate** refers to the legal process of proving to a court that a testator's will is valid and enforceable.

### **When Probate is Necessary**

The probate court administers the process of dividing assets to the proper beneficiaries. While assets are typically divided between parties that are to receive the assets, probate courts determine who is entitled to the deceased party's property when there are

disputes.

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

One situation in which probate could be necessary is **simultaneous death**. This occurs when multiple parties who are entitled to the other's estate die at the same time (or very close to the same time). This situation typically arises in the case of unnatural deaths, such as those caused by accidents or homicides. If there is evidence that one deceased party outlasted the other deceased party (even if by moments), the estates of both parties would be distributed in that order and to subsequent heirs/beneficiaries.

Probate can be a long and arduous process, and a testator is advised to take the necessary steps to avoid the property going into probate. Trusts and joint ownership are the simplest ways to transfer title to a testator's person of choice.

### Probate Process

A will may designate a representative to distribute a testator's assets to its proper heirs/beneficiaries upon the testator's death. This representative is known as an **executor**. In the event that no will exists, or an executor is not designated, the court will appoint an **administrator**.

An executor or administrator must prove to a probate court that the testator was legally and mentally capable of creating a will. He or she is also responsible for finding the testator's heirs/beneficiaries.

The probate court is located in the state that the real property exists.

If the will is found to be valid and enforceable, the probate court will execute the terms of the will, including:

- Distributing a testator's personal and real property amongst the intended beneficiaries
- Determining the value of personal and real property
- Managing debts and paying off creditors
- Balancing financial sheets
- If the property does not have heirs or beneficiaries entitled to the property, the state gains control of the assets

### Probate Length

The probate process generally takes anywhere from a few months to one or two years. The length of time is determined by the specifics of the probate, the amount and

complexity of a testator's designated assets and debts, the number of beneficiaries, and whether disputes arise amongst beneficiaries.

### **Selling Assets**

A testator's executor/administrator may determine the need to sell or liquidate the testator's assets in order to pay off debts or liens. Such a sale must be approved by the court. In the event that the sale of a testator's real or personal property is not to the financial benefit of the beneficiaries, the court may not grant approval.

If the court does approve the sale, however, a sale can occur.

Assets in a probate court sale can typically be bought at huge discounts. Buyers can place bids. All bids are subject to court approval. Back up bids and late bids can also occur. Late bids must exceed the first bid amount.

Similar to a standard real property sale, property from wills and probate courts can be represented by real estate agents. The fees and commission to which an agent is entitled to receive is dependent on court approval.

The further allocation of a testator's assets to heirs/beneficiaries will be determined after the net proceeds of a sale are calculated. A property title is not insurable until after the probate is determined. This is because the executor/administrator distributes the assets and no one knows exactly how assets will be transferred until the probate process is finished.

### **Heir/Beneficiary Discrepancies**

If necessary to prove heirship, a potential heir may file a petition in the Superior Court of the county where the testator's property is located (Probate Code Section 248). The court is tasked with determining the validity of the party's claim. It may ask the potential heir's child or children to provide genetic material to determine connection to the testator. Any interested party with a claim to the property may dispute the petition and contest the potential heir's rights (Section 249).

### **Minors as Beneficiaries**

A beneficiary who is under the age of eighteen is known as a ward. If a testator wishes to transfer real property to a ward, he or she may nominate a temporary guardian, or conservator, for the property until the ward reaches legal age (Probate Code Section 1501).

The nominated guardian is responsible for managing the property, including paying

property taxes, maintaining the property, and performing other duties associated with property ownership. As the manager of the ward's estate, he or she has the legal authority to purchase property on the ward's behalf if it is in the benefit of the ward (Section 2571). However, the purchase of any property must be approved by the court.

A guardianship naturally terminates once the ward reaches legal age (Section 1600). However, a guardianship can be terminated prior to this time if the guardian fails to meet his or her duties (Section 2650). Grounds for a guardian's termination include: failure to use due care and diligence in the management of a ward's estate; failure to provide financial documents requested by the court; and mental incapacity or an inability to make reasonable decisions.

### Case Review: *Estate of Lopez (1992)*

The case *Estate of Lopez (1992) 8 Cal. 3d 317.*, involved a real estate broker bidding on a real property in a probate sale without a proper license.

A real estate broker (Tong) made a successful bid in a probate sale in order to purchase real property on behalf of his client. At the time of the bidding, Tong's license was expired; however, he had renewed his license by the time the sale was completed.

The probate court ruled that Tong was not entitled to a commission because he had made a bid without a license. The Court of Appeals reversed the lower court's ruling on the grounds that Tong had a valid license on the day of the sale's close. The court cited Business & Professions Code Section 10136, which requires the party claiming commission be licensed at the time of the sale's execution. The court also noted that according to Probate Code Section 10160, an estate is liable for commission at the time the actual sale is made. Therefore, Tong was entitled to a commission.

## Intestate Succession

When a property owner does not create a will or map out the distribution of his or her estate prior to death, property is distributed using **intestate succession**. Intestate succession is the state-controlled process of distributing a property owner's assets to heirs.

Intestate succession diverts assets using the following line of succession:

- Surviving spouse
- Surviving children

- Parents
- Brothers and sisters of descendent
- Grandparents of descendent
- Next in family line
- If there is no further family line, the property becomes the property of the state.

**Escheat** refers to the transfer of real property from a property owner to the state upon the owner's death when there are no legal heirs. This occurs when a property owner does not designate beneficiaries in his or her will.

The property becomes the property of the state within two years after the owner's death. However, potential heirs have up to five years after the owner's death to come forward and claim the property.

## Living Trusts

A **living trust** is a legal tool that establishes a relationship dynamic between parties in which one party holds property on behalf of the other.

The person who initiates and creates the trust is the **trustor**. The trustor transfers real property interests to a **trustee**. The trustee manages the property and holds the title during the duration of the living trust.

A trustee can be an individual or a company. 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.

Trustees are compensated for their services; however, they are not entitled to any portion of the trust, unless otherwise indicated by the trustor. It is the trustee's responsibility to act in good faith and make decisions that benefit the trustor's beneficiaries.

Living trusts are commonly used in conjunction with a will. Much like a will, one of the purposes of a living trust is to divide a trustor's property upon his or her death.

Individuals use living trusts for many reasons:

- **To avoid probate.** Probate can take upwards of a couple years, while a trust may take only a few weeks. A living trust allows a trustor's assets to be distributed more quickly to intended heirs/beneficiaries.
- **To save money.** A living trust may be a cheaper alternative to the creation of a will, as wills are generally subject to go through the lengthy, and potentially costly, probate process.
- **To avoid or reduce property taxes.**

- **To establish the line of succession of title holders upon a trustor's death.**
- **Privacy:** Unlike wills -- which are public record -- living trusts are private.

## **Ademption**

**Ademption** is a law that determines how a testator's personal property will be distributed when his or her property is sold, transferred, or no longer exists. If, for example, a father transfers real property to his daughter upon his death, but the father has sold the property, the property would be adeemed. Therefore, the daughter would not be entitled to the property.