Real Property Outline

Ownership of Real Property

I. Present Possessory Estates

A present possessory estate gives the holder a present right of possession and right to use and enjoy the property.

A. Freehold Estates

A freehold estate gives the owner title to or a right to hold the property.

1. Fee Simple Absolute

This is the largest possible estate, giving the holder all possible rights, including the right to sell or convey all or part of the property and the right to devise the property. A fee simple absolute may last in perpetuity. If the owner dies intestate, the property passes to the owner’s heirs.

a. Creation

The traditional words used to create a fee simple absolute are “to A and his heirs.” Modern law assumes a fee simple absolute if the language is ambiguous, so a conveyance of "to B" would be sufficient.

b. Rights of Possession and Use

The grantee of a fee simple absolute has the exclusive rights of possession and use.

2. Defeasible Fees

Defeasible fees are estates that may be cut short upon the occurrence of a specified event. They are alienable, devisable, and descendible.

a. Fee Simple Determinable

A fee simple determinable is an estate that ends automatically when a certain event or condition occurs, specified in the conveyance. The interest will automatically revert back to the grantor or the grantor's heirs.

i. Creation

A fee simple determinable is created using durational language such as "so long as," "during," "while," and "until." The grantor holds the possibility of reverter.

b. Fee Simple Subject to a Condition Subsequent

A fee simple subject to a condition subsequent is a defeasible fee estate that does not end automatically upon the occurrence of the condition specified in the conveyance. The grantor must expressly provide language containing a right of reentry upon the happening of the specified event. The language must expressly state that if the grantee does not use the parcel as designated, the grantor may reenter and occupy the parcel.

i. Creation

The language used to create this interest would include: "to Grantee, but if Grantee sells alcohol, Grantor has the right of reentry."

3. Life Estates

A life estate is an interest in real property that lasts for the duration of a person’s lifetime. The holder has the right to possess the property during their lifetime, but the ownership interest terminates upon their death.

a. Creation

A life estate is created by language such as “To A for life” or “To A for the life of B.”

b. Rights and Duties

The life tenant is entitled to all the ordinary uses and profits of the land. A life tenant must not commit waste. The future interest following a life estate can be a reversion in the grantor or a remainder in a third party.

B. Non-Freehold Estates

A non-freehold estate gives mere possession, such as in the case of a leasehold.

1. Leasehold Estates

In a leasehold estate, the tenant enjoys all rights attendant with possession for the term of the lease.

a. Types of Leasehold Estates

i. Estate for Years

An estate for years (also known as a tenancy for years) is an estate that lasts for a fixed period of time. It has a definite beginning and end date and automatically expires at the end of the term.

ii. Periodic Tenancy

A periodic tenancy (also known as a tenancy from period to period) is a leasehold estate that is automatically renewed for successive periods until one of the parties gives proper notice to terminate it. Examples include month-to-month or year-to-year tenancies.

iii. Tenancy at Will

A tenancy at will is a leasehold estate that has no fixed duration and can be terminated by either the landlord or the tenant at any time. However, reasonable notice is typically required to terminate a tenancy at will.

iv. Tenancy at Sufferance

A tenancy at sufferance occurs when a tenant wrongfully remains in possession of the property after the lease has expired. It arises by operation of law and is not a true leasehold estate.

II. Future Interests

A future interest is a present non-possessory estate or interest in real property that may become a possessory interest at some time in the future. A future interest follows a qualified estate and may be created in a grantee or in a grantor.

A. Reversions

A reversion is a future interest that arises when a grantor conveys a lesser estate than the grantor possesses and does not specify a third party to receive the remaining interest upon the termination of the lesser estate. In this situation, the interest automatically reverts back to the grantor.

B. Remainders

A remainder is a future interest that is created in a third party and becomes possessory upon the natural termination of the prior estate. Remainders typically follow life estates or estates for a term of years.

1. Vested Remainders

A vested remainder is a remainder that is: (1) given to an ascertained grantee; and (2) not subject to a condition precedent.

a. Indefeasibly Vested Remainder

An indefeasibly vested remainder is a remainder that is certain to become possessory in the future and cannot be divested or defeated by any condition subsequent.

b. Vested Remainder Subject to Complete Defeasance/Divestment

A vested remainder subject to complete defeasance (or divestment) is a remainder that may be completely divested or defeated upon the occurrence of a condition subsequent.

c. Vested Remainder Subject to Open

A vested remainder subject to open is a remainder that is given to a class of persons, but the class is still open to the possibility of additional members being added in the future. For example, a grant "to A for life, then to A's children" would create a vested remainder subject to open if A already has children, as the class of A's children is not closed.

2. Contingent Remainders

A contingent remainder is a remainder that is either given to an unascertained person or subject to a condition precedent.

C. Executory Interests

An executory interest is a future interest created in a third party (transferee) that divests or cuts short a prior estate.

1. Shifting Executory Interest

A shifting executory interest divests a prior estate created in a third party.

2. Springing Executory Interest

A springing executory interest divests the grantor’s interest.

D. Rules that Limit Future Interests

1. Rule Against Perpetuities

The Rule Against Perpetuities prevents remote vesting of property interests. The traditional rule states that "no interest is good unless it must vest, if at all, no later than 21 years after some life in being at the creation of the interest." In simpler terms, it means that a future interest must become certain to vest or fail to vest within a specific time frame (21 years after the death of someone alive when the interest was created).

a. Interests Subject to the Rule

The Rule Against Perpetuities applies to a broad array of contingent interests in real property, such as contingent remainders, executory interests, vested remainders that are subject to open, and, in many states, options to purchase or repurchase property. The rule also applies to powers of appointment under a will.

b. Interests NOT Subject to the Rule

The rule does not apply to reversions, possibilities of reverter, and rights of entry.

III. Co-tenancy

Co-tenancy exists when two or more people hold an interest in the same property.

A. Tenancy in Common

Each co-tenant owns an undivided interest in the whole of the property. Each tenant has a right to possess the whole.

1. Creation

Unity of possession is required; each tenant has the right to possess the whole.

2. No Right of Survivorship

There is no right of survivorship in a tenancy in common. If one co-tenant dies, their interest passes to their heirs or devisees.

B. Joint Tenancy

Each joint tenant owns an undivided interest in the whole of the property, but there is a right of survivorship. If one joint tenant dies, the surviving joint tenant(s) automatically inherit the deceased tenant’s interest.

1. Creation

Requires four unities: (1) possession, (2) interest, (3) title, and (4) time. All joint tenants must acquire their interests at the same time, from the same instrument, with identical interests, and with equal rights of possession.

2. Right of Survivorship

The surviving joint tenant(s) automatically inherit the deceased tenant’s interest.

C. Tenancy by the Entirety

Tenancy by the entirety is a form of joint tenancy available only to married couples. It provides special protections for the couple’s ownership interests.

1. Creation

Requires the four unities of a joint tenancy, plus marriage.

2. Rights of Possession and Use

Both spouses have an equal right to possess and use the entire property.

3. Right of Survivorship

If one spouse dies, the surviving spouse automatically inherits the entire interest.

Rights in Real Property

This section covers non-possessory interests in land, which are rights to use the land of another in a manner that would otherwise be a trespass.

I. Covenants at Law and Equity

Covenants are agreements or promises that concern the use of land and benefit and burden both the original parties to the promise and their successors. They can be affirmative (requiring the burdened party to do something) or negative (restricting how land may be used).

A. Real Covenants

Real covenants are enforced by an action at law for money damages.

1. Requirements for the Burden to Run with the Land

a. Written Document

There must be a writing that complies with the Statute of Frauds.

b. Intent

The original parties must have intended for the covenant to run with the land.

c. Horizontal Privity

Horizontal privity exists when there is a shared interest in the property at the time the covenant is created (e.g., grantor-grantee, landlord-tenant, mortgagor-mortgagee).

d. Vertical Privity

Vertical privity exists if the original party transferred their entire interest to the subsequent owner.

e. Touches and Concerns the Land

The covenant must relate to the use and enjoyment of the land.

2. Requirements for the Benefit to Run with the Land

a. Written Document

There must be a writing that complies with the Statute of Frauds.

b. Intent

The original parties must have intended for the covenant to run with the land.

c. Vertical Privity

Vertical privity exists if the original party transferred the entire estate or any lesser estate to the subsequent owner.

d. Touches and Concerns the Land

The covenant must relate to the use and enjoyment of the land.

B. Equitable Servitudes

Equitable servitudes are identical to real covenants, except that they are enforced in equity by an injunction. No privity is required.

1. Requirements for an Equitable Servitude

a. Written Document

A writing is generally required, but there is an exception for implied reciprocal servitudes.

b. Intent

The original parties must have intended for the restriction to run to future landowners.

c. Notice

The current owner of the servient estate took with notice of the servitude.

d. Touches and Concerns the Land

The covenant must relate to the use and enjoyment of the land.

2. Implied Reciprocal Servitudes

Implied reciprocal servitudes (also called reciprocal negative easements) may be enforced even if they do not appear in the chain of title. They arise when a common grantor develops land and intends to create a common scheme or plan of development. For example, if a developer sells lots with a restriction requiring single-family dwellings, even if the restriction is not explicitly included in subsequent deeds, the restriction may be implied.

a. Elements

i. Common Scheme or Plan

The restriction is part of a common scheme or plan for development.

ii. Notice

The current owner of the servient estate took with notice of the restriction.

b. Factors to Show Common Scheme

- A large percentage of lots expressly burdened.
- Oral representations to buyers.
- Statements in advertisements to buyers.
- Recorded plot maps or other declarations.

3. Terminating a Covenant or Equitable Servitude

a. Written Release

The parties may agree to terminate the covenant in writing.

b. Merger of the Dominant and Servient Estates

If the owner of the benefited property acquires the burdened property, the covenant or servitude terminates.

c. Abandonment

If the benefited party abandons the covenant or servitude, it terminates.

d. Estoppel

If the benefited party acts in a way that leads the burdened party to believe that the covenant is no longer in effect, the benefited party may be estopped from enforcing it.

e. Changed Circumstances

If the circumstances surrounding the covenant have changed so much that the reason for the restriction is no longer valid, the covenant may be terminated.

II. Easements

An easement is a non-possessory property interest that confers a right to use another’s land.

A. Easement Appurtenant

An easement appurtenant benefits a specific parcel of land (the dominant estate) and burdens another parcel of land (the servient estate).

1. Creation

a. Express Grant

Created by a written agreement between the landowners that satisfies the Statute of Frauds.

b. Implied by Prior Use

Arises when a landowner subdivides land, and there was a common apparent use that existed prior to the subdivision.

c. Implied by Necessity

Arises when a parcel of land becomes landlocked and the easement is necessary to access a public road. An easement by necessity ends when the necessity ends.

d. Prescription

Created when someone uses the land of another openly, notoriously, continuously, and without permission for the statutory period of time (typically 20 years).

2. Transfer

The burden of the easement passes automatically with the servient land, unless the new owner is a bona fide purchaser with no notice of the easement. The benefit of the easement passes automatically with the dominant estate.

3. Scope

Reasonable development of the easement is permitted, but the easement must be used for its original purpose.

4. Termination

a. Release

The holder of the easement releases the easement in writing.

b. Merger

The dominant and servient estates come under common ownership.

c. Abandonment

The holder of the easement demonstrates by physical action an intent to abandon the easement.

d. Estoppel

The servient estate owner detrimentally relies on the holder's conduct indicating an intent to abandon the easement.

e. Prescription

The servient estate owner interferes with the easement for the statutory period.

f. End of Necessity

An easement by necessity terminates when the necessity ends.

B. Easement in Gross

An easement in gross benefits a person or entity rather than a specific parcel of land. There is no dominant estate. For example, utility easements are typically easements in gross.

1. Creation

Easements in gross may be created by operation of law or by an express written or verbal agreement.

2. Transfer

Easements in gross are not transferable unless the parties intend for them to be.

III. Profits

A profit is a non-possessory interest in land that allows the holder to enter the land of another and remove something from it (e.g., minerals, timber, oil, gas). Profits are similar to easements, but they involve the right to take something from the land. Profits are created and terminated in the same way as easements.

IV. Licenses

A license is a revocable privilege to enter the land of another for a specific purpose. It is not an interest in land, and it does not run with the land.

A. Creation

Licenses can be created orally or in writing.

B. Revocation

Generally, a license is revocable at will by the licensor. However, a license coupled with an interest is not revocable. Additionally, if a licensee spends money or labor in reliance on the license, the license is irrevocable until the person gets value out of the expenditure.

C. Transferability

Licenses are not transferable unless the licensor so intends.

D. Termination

A license terminates on the death of the licensor or the conveyance of the servient estate.

V. Fixtures

Fixtures are items of personal property that have been attached to real property in such a way that they are considered part of the real property. Whether an item is a fixture depends on the intent of the person who attached it.

A. Elements of a Fixture

- Annexation: The item must be physically attached to the real property.
- Adaptation: The item must be adapted to the use of the real property.
- Intent: The intent of the person who attached the item must have been to make it a permanent part of the real property.

B. Trade Fixtures

Trade fixtures are items of personal property that are attached to real property for the purpose of carrying on a trade or business. They are generally considered to be personal property of the tenant and can be removed at the end of the lease, as long as the tenant restores the premises to their original condition.

VI. Zoning

Zoning is the government’s power to regulate the use of land for the health, safety, and welfare of the public.

A. Types of Zoning

- Residential: Restricts land use to residential purposes.
- Commercial: Allows for businesses and commercial activities.
- Industrial: Permits manufacturing and industrial uses.
- Agricultural: Limits land use to farming and agricultural activities.

B. Nonconforming Uses

A nonconforming use is a use of land that was lawful when it began but is now prohibited by zoning regulations. A grandfather provision may allow the pre-existing, nonconforming use to continue.

C. Variances

A variance is an exception to zoning regulations that allows a property owner to use their land in a way that is otherwise prohibited.

D. Special Use Permits

A special use permit allows a property owner to use their land for a specific purpose that is not otherwise permitted in the zoning district, but that is considered beneficial to the community.

VII. Support Rights

A. Lateral Support

Lateral support refers to the support that a parcel of land receives from the adjacent land. Landowners have a right to lateral support for their land in its natural state.

1. Strict Liability

If a landowner’s excavation causes adjacent land to subside in its natural state, the excavating landowner is strictly liable for damages.

2. Negligence

If the adjacent land has been improved, the excavating landowner is liable only if they acted negligently.

B. Subjacent Support

Subjacent support refers to the support that the surface of land receives from the underlying strata. If a landowner removes minerals or other substances from beneath the surface, they may be liable for damages if the surface subsides.

VIII. Water Rights

A. Riparian Rights

Riparian rights are the rights of landowners who border a watercourse (e.g., river, stream, lake). They have the right to reasonable use of the water for domestic purposes and other beneficial uses.

B. Prior Appropriation

The prior appropriation doctrine gives the right to use water to the first person to divert it for a beneficial use. This doctrine is often used in arid western states.

IX. Other Important Real Property Concepts

A. Marketable Title

Marketable title is a title that is free from reasonable doubt as to its validity and that a reasonable purchaser would accept. It is a title that is free from encumbrances (e.g., mortgages, liens, easements) unless they are explicitly identified in the contract. In a contract for the sale of real property, the seller has an implied obligation to convey marketable title to the buyer.

B. Equitable Conversion

The doctrine of equitable conversion states that once a valid and enforceable contract for the sale of real property has been executed, the buyer is treated as the equitable owner of the property and the seller is treated as the equitable owner of the purchase price. This doctrine has significant implications for risk of loss during the executory period of the contract.

C. Recording Acts

Recording acts are state statutes that establish a system for recording documents affecting real property, such as deeds, mortgages, and easements. These acts are designed to protect purchasers of real property from unrecorded interests.

1. Types of Recording Acts

a. Race Statute

Under a race statute, the first person to record their interest prevails, regardless of whether they had notice of prior unrecorded interests.

b. Notice Statute

Under a notice statute, a subsequent bona fide purchaser (BFP) without notice of prior unrecorded interests prevails over a prior unrecorded interest, even if the prior interest is recorded later.

c. Race-Notice Statute

Under a race-notice statute, a subsequent BFP who records first and has no notice of prior unrecorded interests prevails.

2. Types of Notice

a. Actual Notice

Actual notice exists when a party has direct knowledge of a prior interest.

b. Constructive Notice

Constructive notice exists when a document is properly recorded and appears in the chain of title, meaning that a reasonable title search would reveal it.

c. Inquiry Notice

Inquiry notice exists when a party has knowledge of facts that would lead a reasonable person to investigate further and would reveal a prior interest.

D. Deeds

A deed is a written instrument that conveys title to real property.

1. Requirements for a Valid Deed

a. Writing

The deed must be in writing and signed by the grantor.

b. Description of the Property

The deed must contain an adequate legal description of the property being conveyed. The deed must be definite enough to allow a court to fashion a remedy in the case of a dispute.

c. Identification of the Parties

The deed must clearly identify the grantor and the grantee.

d. Words of Conveyance

The deed must contain words indicating the grantor's intent to transfer the property.

e. Delivery

The deed must be delivered to the grantee with the present intent to transfer ownership.

2. Types of Deeds

a. General Warranty Deed

A general warranty deed provides the greatest protection to the grantee because the grantor makes several covenants or promises regarding the title. These covenants include present covenants (covenant of seisin, right to convey, covenant against encumbrances) and future covenants (covenant of warranty, quiet enjoyment, further assurances).

b. Special Warranty Deed

A special warranty deed limits the grantor's warranties to defects that arose during the grantor's ownership of the property.

c. Quitclaim Deed

A quitclaim deed contains no warranties of title whatsoever. The grantee receives whatever interest the grantor has, which may be nothing.

E. Mortgages

A mortgage is a security interest in real property that is given by a borrower (mortgagor) to a lender (mortgagee) to secure the repayment of a loan.

1. Creation

A mortgage is created by a written instrument that meets the requirements of the Statute of Frauds.

2. Types of Mortgages

a. Purchase-Money Mortgage

A purchase-money mortgage is a mortgage that is given to a lender to secure a loan used to purchase the property.

b. Future Advance Mortgage

A future advance mortgage secures future loans that the lender may make to the borrower.

3. Rights and Obligations of the Parties

a. Mortgagor's Rights

The mortgagor (borrower) has the right to possess and use the property, subject to the terms of the mortgage.

b. Mortgagee's Rights

The mortgagee (lender) has the right to foreclose on the property if the mortgagor defaults on the loan.

4. Foreclosure

Foreclosure is a legal process by which a mortgagee can sell the mortgaged property to satisfy the debt owed by the mortgagor.

5. Redemption

Redemption is the mortgagor’s right to reclaim the property after default but before foreclosure by paying the outstanding debt and any associated costs.

6. Priority of Mortgages

Multiple mortgages on the same property are prioritized based on the time of recording. The first mortgage to be recorded (senior mortgage) has priority over subsequent mortgages (junior mortgages). However, there are exceptions to this general rule, such as purchase-money mortgages.

Real Estate Contracts

I. Contracts to Sell and Buy

- A **marketing contract** reflects the terms and conditions of an agreement between a buyer and a seller of real property.
- This contract may exist separate and distinct from any documents regarding financing of the real property interest or a conveyance.
- The parties may also refer to the contract as a **sell and buy contract**.

A. Statute of Frauds

- To be enforceable, a real estate contract must satisfy the **Statute of Frauds**.
- The contract must:
  - be in **writing**
  - be **signed** by the party against whom enforcement is sought
  - contain the **essential terms** of the agreement

1. Part Performance Exception

- An **oral contract** for the sale of land may be enforced if the buyer has partially performed the contract.
- Partial performance may include:
  - payment of all or part of the **purchase price**
  - taking **possession** of the property
  - making **improvements** to the property
- The buyer's actions must **unequivocally** indicate that a contract for the sale of land exists.

B. Essential Terms

- A valid real estate contract must include the following **essential terms**:
  - **names and addresses** of the parties
  - **accurate legal description** of the land
  - **signature** of the party to be bound
  - **language** indicating an intention to buy and sell the land
  - **selling price** of the land
  - **recital of earnest money** and consideration for the purchase

C. Marketable Title

- A seller of real property has an implied duty to convey **marketable title** to the buyer.
- Marketable title is title that is **free from reasonable doubt** as to its validity.
- A title that is subject to an **unreasonable risk of litigation** is not marketable.

1. When Title is Not Marketable

- The following are examples of title defects that may render title **unmarketable**:
  - **outstanding mortgage or lien** on the property
  - **defect in the chain of title**
  - **encroachment** on the property

    - **zoning violation**
- A property in violation of **building codes** is not considered to have an encumbrance and the title is marketable.

2. Curing Title Defects

- A seller has a reasonable time **before closing** to cure any defects in the title.

3. Insurable Title

- A real estate contract may include a clause requiring the seller to convey **insurable title**.
- Insurable title is title that a **title insurance company** is willing to insure.
- The standard for insurable title may be **lower** than the standard for marketable title.

D. Remedies for Breach

1. Seller's Remedies

- **Specific performance**: A seller may seek specific performance of a real estate contract, compelling the buyer to purchase the property.
    - Specific performance is available because real property is considered **unique** and money damages may not be an adequate remedy for the seller.
- **Damages**: A seller may seek damages for the buyer's breach of contract, typically measured by the difference between the contract price and the fair market value of the property.

2. Buyer's Remedies

- **Specific performance**: A buyer may seek specific performance of a real estate contract, compelling the seller to convey the property.
- **Damages**: A buyer may seek damages for the seller's breach of contract.
    - If the seller **intentionally** breached the contract, the buyer may recover the difference between the market value of the property and the contract price.
    - If the breach was not intentional, the buyer may only recover **out-of-pocket expenses**, such as the cost of a title search and inspection.

E. Equitable Conversion

- The **doctrine of equitable conversion** provides that once a contract for the sale of land is signed, the buyer is treated as the equitable owner of the property and bears the risk of loss.
- The seller retains legal title to the property until closing.
- This doctrine is a **majority rule**, but some states have adopted statutes that place the risk of loss on the seller.

F. Time is of the Essence

- If a contract specifies that "**time is of the essence**", then the parties must perform their obligations by the date specified in the contract.
- If a party fails to perform by the deadline, the other party may be entitled to **rescind the contract**.

G. Fitness and Suitability

- Generally, a seller does not warrant the **fitness or suitability** of the property.
- The common law doctrine of **caveat emptor** (buyer beware) applies to real estate contracts.
- However, a seller has a **duty to disclose** any known **material latent defects** that are not readily observable by the buyer.
- Some states have adopted **statutes** that require sellers to disclose certain defects.

Mortgages/Security Devices

I. Types of Security Devices

A. Mortgages

- A **mortgage** is a security interest in real property that secures the repayment of a debt.
- A mortgage is typically evidenced by two documents:
  - **Mortgage deed:** a document that conveys an interest in real property to secure the performance of a debt.
  - **Promissory note:** a written promise to repay a debt.

1. Parties

- **Mortgagor:** The borrower who grants the mortgage to the lender.
- **Mortgagee:** The lender who receives the mortgage as security for the loan.

2. Creation

- A mortgage must satisfy the **Statute of Frauds**, meaning it must be in writing, signed by the mortgagor, and contain essential terms, including:
  - identity of the parties
  - description of the property
  - amount of the debt
  - interest rate
  - maturity date

3. Types of Mortgages

- **Purchase-money mortgage**: A mortgage given to the seller of real property as part of the purchase price.
  - A purchase-money mortgage typically has **priority** over other liens on the property.

- **Future-advance mortgage**: A mortgage that secures future advances of funds from the lender to the borrower.
  - The priority of a future-advance mortgage depends on whether the future advances are **obligatory** or **optional**.
- **Equitable mortgage**: A mortgage that arises by operation of law rather than by express agreement.
  - An equitable mortgage may occur when a deed absolute on its face is given as security for a debt.

4. Mortgage Theories

- **Lien theory** (majority rule): The mortgagee only has a lien on the property, and the mortgagor retains legal title.
- **Title theory** (minority rule): Legal title to the property is transferred to the mortgagee until the debt is repaid.
- **Intermediate theory**: A hybrid approach that combines elements of both the lien and title theories.

5. Transfers

a. By Mortgagor

- A mortgagor may transfer their interest in the property subject to the mortgage.
- **Transfer "subject to" the mortgage**: The transferee takes the property subject to the mortgage but does not assume personal liability for the debt.
  - The original mortgagor remains personally liable on the mortgage.
- **Transfer "assuming" the mortgage**: The transferee assumes personal liability for the mortgage debt.
  - Both the original mortgagor and the transferee are liable on the mortgage.
- **Novation**: A new contract between the mortgagee and the transferee that releases the original mortgagor from liability.
  - Only the transferee is liable on the mortgage.
- **Due-on-sale clause**: A clause in a mortgage that allows the lender to accelerate the debt and demand full payment if the property is transferred without the lender's consent.

b. By Mortgagee

- A mortgagee may transfer their interest in the mortgage to a third party.
- The mortgage and the promissory note are typically transferred together.

6. Discharge of Mortgage

- **Payment**: Full payment of the debt discharges the mortgage.
- **Deed in lieu of foreclosure**: The mortgagor conveys the property to the mortgagee in satisfaction of the debt.
- **Foreclosure**: The legal process by which a mortgagee sells the property to satisfy the debt.

a. Foreclosure Process

- **Default**: The mortgagor fails to make payments as required by the mortgage.
- **Notice of default**: The mortgagee notifies the mortgagor of the default and the lender's intent to foreclose.
- **Foreclosure sale**: The property is sold at a public auction.
  - Proceeds from the sale are used to satisfy the mortgage debt, and any surplus funds are paid to the mortgagor.
- **Deficiency judgment**: If the proceeds from the foreclosure sale are insufficient to satisfy the debt, the mortgagee may obtain a deficiency judgment against the mortgagor for the remaining balance.

b. Equity of Redemption

- **Equity of redemption**: The mortgagor’s right to redeem the property by paying the outstanding debt before the foreclosure sale.
  - This right cannot be waived in the mortgage.

c. Statutory Right of Redemption

- **Statutory right of redemption**: A right granted by some states that allows the mortgagor to redeem the property after the foreclosure sale by paying the full purchase price within a specified period.

B. Installment Land Contracts

- An **installment land contract** is a contract for the sale of real property in which the buyer makes payments to the seller over time and receives title to the property upon full payment.
- The seller retains legal title to the property until the buyer makes all payments.
- Installment land contracts are subject to the **Statute of Frauds**.

C. Absolute Deeds as Security

- An **absolute deed** is a deed that appears to convey absolute title to the grantee but is actually intended to be security for a debt.
- Parol evidence is admissible to prove the parties’ intent that the deed was intended as security.

Titles

I. Deeds

- A **deed** is a written instrument that conveys an interest in real property from the grantor to the grantee.

A. Requirements

- **Writing**: A deed must be in writing to satisfy the **Statute of Frauds**.
- **Execution**: The deed must be signed by the grantor.
- **Delivery**: The deed must be delivered to the grantee with the intent to transfer title.
  - Delivery is typically presumed if the deed is **recorded** or if the grantee is in **possession** of the deed.
- **Acceptance**: The grantee must accept the deed.
- **Description of the property**: The deed must contain an adequate description of the property being conveyed.
- **Identification of the parties**: The deed must clearly identify the grantor and the grantee.

B. Types of Deeds

- **Quitclaim deed**: Conveys only the grantor's interest in the property, without any warranties of title.
- **Special warranty deed**: Conveys the property with warranties that the grantor has not encumbered the property during their ownership but does not warrant against defects in title prior to their ownership.
- **General warranty deed**: Conveys the property with warranties that the title is free from all defects, regardless of when they arose.

1. Covenants of Title

- A general warranty deed typically includes the following covenants of title:

a. Present Covenants

- **Covenant of seisin**: The grantor warrants that they own the property being conveyed.
- **Covenant of right to convey**: The grantor warrants that they have the right to convey the property.
- **Covenant against encumbrances**: The grantor warrants that there are no undisclosed encumbrances on the property.

b. Future Covenants

- **Covenant of warranty**: The grantor warrants that they will defend the grantee's title against any lawful claims.
- **Covenant of quiet enjoyment**: The grantor warrants that the grantee will not be disturbed in their possession of the property by a lawful claim of title.
- **Covenant of further assurances**: The grantor promises to perform any acts necessary to perfect the grantee's title.

C. Merger

- The **doctrine of merger** provides that once a deed is delivered and accepted, the contract for the sale of the property merges into the deed.
- After merger, the buyer can only sue on the deed, not the contract.

II. Title Assurance System

- The **title assurance system** is a system of public records and private insurance that helps buyers and lenders determine the state of title to real property.

A. Recording Acts

- **Recording acts** are statutes that establish a system for recording documents affecting title to real property.
- The purpose of recording acts is to provide notice to the public of interests in real property and to protect bona fide purchasers from unrecorded interests.

1. Types of Recording Acts

- **Race statute**: The first party to record their deed prevails, regardless of whether they had notice of any prior unrecorded interests.
- **Notice statute**: A subsequent bona fide purchaser (BFP) prevails over a prior unrecorded interest if the BFP took without notice of the prior interest.
- **Race-notice statute**: A subsequent BFP prevails over a prior unrecorded interest only if the BFP took without notice of the prior interest and recorded their deed first.

2. Types of Notice

- **Actual notice**: A party has actual notice of a fact if they have actual knowledge of it.
- **Constructive notice**: A party has constructive notice of a fact if it is recorded in the public records.
- **Inquiry notice**: A party has inquiry notice of a fact if they are aware of facts that would lead a reasonable person to inquire further and that inquiry would reveal the fact.

3. Bona Fide Purchaser

- A **bona fide purchaser (BFP)** is a party who:
  - purchases real property for **value**
  - takes **without notice** of any prior unrecorded interests

B. Title Insurance

- **Title insurance** is a form of insurance that protects the insured against losses arising from defects in title to real property.

1. Title Search

- Before issuing a title insurance policy, the title company conducts a **title search** to examine the public records for any defects in title.

2. Title Insurance Policy

- The **title insurance policy** describes the property insured, the insured party, and the scope of coverage.
- The policy typically covers:
  - **defects in title** that are discovered after the closing
  - **liens and encumbrances** that were not disclosed in the title search
  - **forgery and fraud** in the chain of title
- The policy does not cover:
  - **zoning violations**
  - **environmental contamination**
  - **boundary disputes**

3. Title Insurance Premium

- The insured pays a **one-time premium** for the title insurance policy.

III. Special Problems

- **After-acquired title**: If a grantor conveys property that they do not own and later acquires title to the property, the title automatically vests in the grantee under the doctrine of estoppel by deed.
- **Deeds recorded too early**: A deed that is recorded before the grantor acquires title to the property may not be discovered in a standard title search and may not provide constructive notice to subsequent purchasers.
- **Wild deeds**: A deed that is recorded outside the chain of title and cannot be found through a standard title search.
- **Improperly indexed deeds**: A deed that is incorrectly indexed in the public records may not be discovered in a title search.

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