

CHAPTER 2

TRANSFER OF PROPERTY (Approximately 8% of Broker Exam)

- I. **DEED** - the written instrument which, when properly **executed, delivered, and accepted**, conveys title to real property from one person (the grantor) to another person (the grantee). If a deed is recorded, it is recorded in the county where the property is located and **indexed by the names of the parties (grantor and grantee)**.

A. Essentials of a Valid Deed

1. **Grantor Competent to Convey** (18, married, or veteran). A deed signed by a minor who is not emancipated is void.
2. **Adequate Description of the Property.**
3. **Grantee Capable of Receiving** (not a fictitious person).
4. **Action Clause (Granting Clause)** - must say "grant," "transfer," or "convey."
5. **Proper Description of the Parties.**
6. **In Writing.**
7. **Grantor's Signature (Executed)** - a deed is deemed by law to be executed when it is signed by the grantor. A deed may be signed by a witnessed "X."

- B-Notes:**
1. A "corporate seal" on a deed implies that the person signing the deed is authorized to sign for the corporation.
 2. A deed is typically signed by the **president and recording secretary** when a non-profit unincorporated association sells real property.

B. Delivery and Acceptance - necessary for the deed to be effective.

1. **Intention - of the grantor** to pass title immediately must be present. A deed **cannot be delivered upon death**.
2. **Acceptance - grantee must accept the deed.**
3. **Possession - of the deed** by the grantee, **or recording, presumes a valid delivery and acceptance**, but such presumption is rebuttable in court.

Question #1 Deeds are indexed at the County Recorder's office by: (A) legal descriptions; (B) sales price; (C) names of grantor and grantee; (D) tax assessor parcel number.

Question #2 A valid deed may be: (A) assigned to another grantee; (B) foreclosed by the lender; (C) revoked at a later date by the grantor; (D) signed by an "X."

BQ. Who typically signs the grant deed when a non-profit, unincorporated association sells real property? (A) the president and recording secretary; (B) only the president; (C) any two officers of the association; (D) all officers of the association.

Question #3 A valid grant deed passes title when the deed is: (A) notarized; (B) signed; (C) delivered; (D) recorded.

C. Acknowledging and Recording

1. **Acknowledgment** - declaration before a notary by a person (grantor) who has executed a document stating that he did in fact sign the document. A deed must be acknowledged to be recorded. Once acknowledged, a deed is accepted as “prima facie” evidence in court. It is not legally required to acknowledge or record a deed for a deed to be valid or transfer title.

Note: *An employee of a corporation who is a notary may notarize a deed involving the corporation as long as she does not have a personal interest in the subject matter of the transaction.*

2. **Recording** - very few documents must be recorded to be effective (**some documents which must be recorded include mechanic’s liens, homestead exemptions, lis pendens, and abandonment of homestead**).
 - a. **Notice** - can be actual or constructive.
 - (1) **Actual Notice** - a person actually knows something (for example, you know someone has taken possession of a property).
 - (2) **Constructive (Legal) Notice** - events which by law put people on notice regardless of whether they actually know of the events or not. Recording a document gives constructive notice. The act of taking possession of land, while holding an unrecorded deed, gives constructive notice.
 - b. **Priority of Valid Deeds** - the first valid deed that is recorded determines the owner unless that person, prior to recording, had either actual or constructive notice of the rights of others. A deed signed, delivered and accepted, but not recorded, is valid between the parties but invalid as to subsequent recorded interests without notice.

D. Types of Deeds:

1. **Grant Deed - most commonly used deed.** It contains **two implied warranties**:
 - a. The grantor has not conveyed title to any other person.
 - b. The estate is free from undisclosed encumbrances. This is warranted by the grant deed and is not covered by title insurance.

Question #4 Which of the following is **not** essential to a valid deed? (A) the parties are competent to convey and capable of receiving title; (B) a granting clause; (C) the deed must be acknowledged; (D) the deed must be in writing.

Question #5 The recording of a deed gives what type of notice? (A) actual notice; (B) positive notice; (C) negative notice; (D) constructive notice.

Question #6 Adam sold his home to Tim but negotiated a two year leaseback and remained in possession. Tim immediately placed the deed he received in a safe deposit box for safe keeping. Adam then sold this same home to Sally. Sally recorded the deed. Who owns the home? (A) Tim because he received the first deed; (B) Sally, because she recorded her deed; (C) Adam, because he still has three more deeds ready to be sold; (D) Adam, because both sales were improper.

Answers: #4-C; #5-D; #6-B

B-Note: A grant deed is the only deed which conveys **after-acquired title**. Any after-acquired title received by a grantee also benefits the beneficiary under the trust deed. After-acquired title is automatically encumbered by an existing trust deed and includes any personal property that is later permanently affixed to the land and additional land acquired by the grantee through accretion.

2. **Quitclaim Deed** - contains no warranties. It is usually used to quiet title or to clear a cloud on title (for example, a vendee who has defaulted on a recorded land contract could record a quitclaim deed to clear title for the vendor). It merely conveys the rights of grantor, if any.

- Notes:**
1. In California the warranty deed has been replaced by the use of title insurance.
 2. Trust deeds and reconveyance deeds are loan documents, not deeds.

II. TITLE VESTING - how property is owned, also called "tenancy."

Note: Tenancy is a mode or method of holding title to real property by a lessee or owner.

A. Ownership in Severalty (individual ownership) - ownership by one person, individual, or corporation; sole ownership.

B. Concurrent Estates - ownership by two or more persons. They hold title jointly and severally.

1. **Joint Tenancy** - created when two or more persons elect to take one title as joint tenants. **Four unities** are required for joint tenancy (**T - T I P**): **T**ime, **T**itle, **I**nterest, **P**ossession. A joint tenancy in real property can be legally created with the execution of a deed by a husband and wife who deed the property to themselves as joint tenants; existing joint tenants who deed the property to themselves, along with a new joint tenant; and/or existing tenants in common who deed the property to themselves as joint tenants.
 - a. **Right of Survivorship** - the most important characteristic of joint tenancy. Joint tenants can do almost anything with their interest except will it. The surviving joint tenants receive the decedent's interest automatically. They are not liable to creditors of a deceased joint tenant who hold unencumbered liens.
 - b. A joint tenant may sell his/her share without consent of other joint tenants. The new owner usually becomes a tenant in common.
 - c. Recording a lien against a joint tenant's interest does not sever that interest from the joint tenancy until the lien is foreclosed.

BQ. Which of the following statements is **least correct** in relation to deeds on real property? (A) a deed does not take legal effect until it has been delivered and accepted; (B) a grant deed conveys after-acquired title, even when such language is not actually written in the deed; (C) a reconveyance deed is used to convey title to a new owner in a trustee's sale; (D) a quitclaim deed may convey a fee simple estate.

Question #7 Each of the following deeds will contain at least some implied covenants from the grantor, **except:** (A) grant deed; (B) warranty deed; (C) quitclaim deed; (D) gift deed.

Question #8 A brother and sister held title to an apartment building as joint tenants. Other than this building, their business and personal affairs were conducted separately. At the time of the brother's death, he was insolvent and owed creditors substantial unsecured amounts of money. Title to the apartment building would now be held by the sister: (A) subject to the processes of a probate sale; (B) subject to the claims of the unsecured creditors; (C) free and clear of the debts of her brother; (D) as tenant in common with the creditors of the deceased brother.

Question #9 Which of the following would **not** terminate a joint tenancy between two owners? (A) foreclosure on one of the joint tenant's interest; (B) the sale of one joint tenant's interest; (C) one of the joint tenants deeding his interest to a third party; (D) one joint tenant having a trust deed or mortgage recorded against his or her interest in the property.