Introduction

You need an organized system for keeping track of property ownership to determine who owns what, and how ownership can be transferred. Of course, the system, which serves you as a real estate agent and a consumer, must be completely reliable.

In this unit, you will learn the methods and types of deeds that are used to transfer ownership of real property from one person to another.

Learning Objectives

After reading this unit, you should be able to:

• define encumbrances and liens.
• explain the California homestead law.
• list the different ways to convey real estate.
• name the requirements for valid deeds.
• explain how title to real estate is acquired or conveyed.
Encumbrances: Limitations on Real Property

An encumbrance is an interest in real property that is held by someone who is not the owner. Anything that burdens or affects the title or the use of the property is an encumbrance. A property is encumbered when it is burdened with legal obligations against the title. Most buyers purchase encumbered property.

Encumbrances fall into two categories: those that affect the title, known as money encumbrances, and those that affect the use of the property, known as non-money encumbrances. The encumbrances that create a legal obligation to pay are known as liens. A lien uses real property as security for the payment of a debt (liens - Memory aid: the dollar sign is to show liens involve money).

Common types of liens are trust deeds and mortgages, mechanic’s liens, tax liens, and special assessments, attachments, and recorded abstracts of judgment. The types of encumbrances that affect the physical use of property are easements, building restrictions, and zoning requirements and encroachments.
Money Encumbrances

A lien is an obligation to pay a money encumbrance that may be voluntary or involuntary. An owner may choose to borrow money, using the property as security for the loan, creating a voluntary lien. A voluntary lien does not have to be recorded.

Typical voluntary liens include trust deeds and mortgages. On the other hand, if the owner does not pay taxes or the debt owed, a lien may be placed against his or her property without permission, creating an involuntary lien. Typical involuntary liens include mechanic’s liens, recorded abstracts of judgment, tax liens, and attachments.

A lien may be specific or general. A specific lien is one that is placed against a certain property, such as a mechanic’s lien, trust deed, attachment, property tax lien, and lis pendens. A general lien affects all property of the owner, such as a judgment lien or federal or state income tax liens.

Trust Deeds and Mortgages

Trust deeds and mortgages are both instruments used in real estate financing to create voluntary, specific liens against real property.

Mechanic’s Lien

A mechanic’s lien may be placed against a property by anyone who supplies labor, services, or materials used for improvements on real property and who did not receive payment for the improvements. Therefore, a contractor, a subcontractor, a laborer on a job, any person who furnishes materials, such as lumber, plumbing or roofing, or anyone who furnishes services, such as an architect, engineer, teamster, or equipment lessor is eligible to file a mechanic’s lien.

A mechanic’s lien must be verified and recorded. The law is very time specific about the recording. The statutory procedure must be followed exactly if the mechanic’s lien is to be valid. The four steps to be taken include: (1) the preliminary notice, (2) the notice of completion, (3) no notice of completion, and (4) foreclosure action.
1. Preliminary Notice: A preliminary notice is a written notice that must be given to the owner within 20 days of first furnishing labor or materials for a job by anyone eligible to file a mechanic’s lien. This document gives owners notice that their property may have a lien placed on it if they do not pay for work completed.

2. Notice of Completion: If the owner records a notice of completion within 10 days after the project is finished, the original contractors have 60 days after the notice is filed, and all others have 30 days after the notice is filed, to record a mechanic’s lien.

3. No Notice of Completion: If the owner does not record a notice of completion when work is finished, all claimants have a maximum of 90 days from the day work was finished to record a mechanic’s lien.

4. Foreclosure Action: After a mechanic’s lien is recorded, the claimant has 90 days to bring foreclosure action to enforce the lien. If he or she does not bring action, the lien will be terminated and the claimant loses the right to foreclose.

If an owner discovers unauthorized work on the property, he or she must file a notice of non-responsibility. This is a notice that must be recorded and posted on the property to be valid, stating the owner is not responsible for work being done. This notice releases the owner from the liability for work done without permission. The owner must record this notice within 10 days after discovering the unauthorized work. The notice normally is posted with a commercial lease at the beginning of a job, if a tenant is ordering the job.

Mechanic’s Lien Time Line
Here are the major events to be followed, in a timely manner, whenever improvement of real property is done.

1. Work Commences
2. Preliminary 20-Day Notice
3. Work Completed
4. Notice of Completion Recorded
5. Lien Recorded
6. Foreclosure Action and Lis Pendens Recorded
7. Service of Process
8. Court Decision
   a) Judgment
   b) Release of Lien
   c) Dismissed
   d) Foreclosure
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME


ADDRESS


CITY


STATE/ZIP


Title Order No.


 espaço above this line for recorder's use

MECHANICS LIEN

The undersigned, ________________, claimant (name of person or firm claiming mechanics lien. Contractors use name exactly as it appears on the contractor's license.)

Claims a mechanics lien upon the following described real property:

City of ________________, County of ________________, California. (General description of property where the work or materials were furnished. A street address is sufficient, but if possible, use both street address and legal description.)

The sum of $ _______________________, together with interest thereon at the rate of 0.00% per annum from ________________, is due claimant (after deducting all just credits and offsets) for the following work and material furnished by claimant:

(insert general description of the work or materials furnished)

Claimant furnished the work and materials at the request of, or under contract with

______________________________ (name of the person or firm who ordered or contract for the work or materials.)

The owners or reputed owners of the property are

______________________________ (Insert name of owner of real property. This can be obtained from the county recorder or by checking the building permit application at the building department.)

Firm Name ______________________

By: ____________________________

(Signature of claimant or authorized agent)

VERIFICATION

I, the undersigned, say: I am the ________________, the claimant of the foregoing mechanics lien; I have read said claim of mechanic's lien and know the contents thereof; the above is true of my own knowledge.

I declare under penalty that the foregoing is true and correct.

Executed on ________________, at ________________, California. (Date of signature) ____________________________ (City where signed)

(Personal signature of the individual who is swearing that the contents of the claim of mechanic's lien are true.)
Determining the starting date for a mechanic's lien is very important. Mechanic's liens have priority as of the date work began or materials were first furnished for the job. A mechanic's lien has priority over any other liens filed after the commencement of labor or delivery of materials with the exception of government liens (taxes and special assessments). That means if there is a foreclosure action, the mechanic's lien would be paid before any other liens that were recorded after work started on the job.

That includes trust deeds or mortgages recorded prior to the filing of the mechanic's lien, but after the start of the work. Lenders will make a physical inspection of the property to determine that no materials have been delivered and no work has been done before recording a construction loan to assure the priority of their trust deed or mortgage.

In the following example, the mechanic's lien has the priority:

**Mechanic's Lien has Priority over Trust Deed**
1. Start of work June 15
2. Trust Deed recorded June 18
3. Notice of completion Sept 1
4. Mechanic's Lien recorded September 28

**Tax Liens and Special Assessments**

If any government taxes, such as income or property taxes are not paid, they become a tax lien against the property. Special assessments are levied against property owners to pay for local improvements, such as underground utilities, street repair, or water projects. Payment for the projects is secured by a special assessment, which becomes a lien against real property. Property taxes and special assessments are specific liens, whereas other government taxes are general liens.

**Lis Pendens**

A lis pendens (also called a pendency of action) is a recorded notice that indicates pending litigation affecting the title on a property. It clouds the title, preventing the sale or transfer of the property until the lis pendens is removed, the action is dismissed, or final judgment is rendered. A pendency of action gives the least protection against a mechanic's lien.

**Attachments and Judgments**

An attachment lien or writ of attachment is the process by which the court holds the real or personal property of a defendant as security for a possible
judgment pending the outcome of a lawsuit. An attachment lien is an involuntary, specific lien that is valid for three years. It does not terminate upon death and it may be extended in certain cases.

A **judgment** is the final determination of the rights of parties in a lawsuit by the court. A judgment does not automatically create a lien. A summary of the court decision, known as an **abstract of judgment**, must be recorded with the county recorder. When the abstract of judgment is recorded, it is a general lien on all non-exempt property owned or acquired by the judgment debtor for 10 years, in the county in which the abstract is filed. The court may force the sale of the property to satisfy the judgment by issuing a **writ of execution**. The sale is called an **execution sale**.

**Non-Money Encumbrances**

A non-money encumbrance is one that affects the use of property, such as an easement, a building restriction, an encroachment, or a lease.

**Easements**

An **easement** is the right to enter or use someone else’s land for a specified purpose. An interest in an easement is non-possessory. That means the holder of an easement can use it only for the purpose intended and may not exclude anyone else from using it. The right to enter onto a property using an easement is called **ingress** (enter). The right to exit from a property using an easement is called **egress** (exit).

**Appurtenant Easement**

As you recall, an appurtenance is anything used for the benefit of the land. An easement appurtenant has a servient and a dominant tenement. The owner whose land is being used is the one giving the easement and the land is the **servient tenement**. The servient tenement is the one encumbered by the easement. The person’s land receiving the benefit of the easement is known as the **dominant tenement**.
An easement appurtenant automatically goes with the sale of the dominant tenement. To be valid, the dominant and servient tenements of an appurtenant easement do not have to be mentioned in the deed, nor do they have to touch each other (abut).

**Easement in Gross**

Since an unlocated easement is valid, it is possible to have an easement that is not appurtenant to any particular land. Thus, Joe, who owns no land, may have an easement over Sam’s land for the purpose of getting to the stream where he regularly fishes. The easement for the path to cross the land does not need to specify where the path is actually located. A commercial camping enterprise may use an easement over private property to take clients to remote sites, which may otherwise be inaccessible.

Public utilities also have easements that are not appurtenant to any one parcel. These easements are known as easements in gross, and only have a servient tenement (no dominant tenement). Easements in gross are the most common type of easement.

Make sure you understand the difference between an easement in gross and a license. An easement may not be terminated arbitrarily, as you will see in the following section. A license is permission to use property. However, a license to use may be revoked at any time.

**Creating an Easement**

Easements are created in various ways—commonly by express grant or reservation in a grant deed or by a written agreement between owners of adjoining land. An easement always should be recorded to assure its continued existence. It is recorded by the party benefiting from the easement as the dominant tenement.

**Express Grant**

The servient tenement, or the giver of the easement, grants the easement by deed or express agreement.

**Express Reservation**

The seller of a parcel who owns adjoining land reserves an easement or right-of-way over the former property. It is created at the time of the sale with a deed or express agreement.

**Implied Grant or Reservation**

The existence of an easement is obvious and necessary at the time a property is conveyed, even though no mention is made of it in the deed.
**Necessity**

An easement by necessity is created when a parcel is completely land locked and has no access. It is automatically terminated when another way to enter and leave the property becomes available.

**Prescription**

Prescription is the process of acquiring an interest, not ownership, in a certain property.

An easement by prescription may be created by continuous and uninterrupted use, by a single party, for a period of five years. The use must be against the owner’s wishes and be open and notorious. No confrontation with the owner is required and property taxes do not have to be paid. The party wishing to obtain the prescriptive easement must have some reasonable claim to the use of the property.

The method used for acquiring property rights through prescription is similar to adverse possession, which is discussed later in the unit. The main difference is the payment of taxes. Adverse possession requires the payment of taxes for five continuous years, while prescription does not. Also, remember one acquires title to property through adverse possession, but only a specified interest in property through prescription.

**Terminating an Easement**

The owner of the property with the servient tenement cannot revoke or terminate the easement. Easements may be terminated or extinguished in eight ways:

1. **Abandonment**: Abandonment is the obvious and intentional surrender of the easement. **Non-use**: If a prescriptive easement is not used for a period of five years, the easement is terminated.

2. **Destruction of the servient tenement**: If the government takes the servient tenement for its use, as in eminent domain, the easement is terminated.

3. **Adverse possession**: The owner of the servient tenement may, by his or her own use, prevent the dominant tenement from using the easement for a period of five years, thus terminating the easement.

4. **Merger**: If the same person owns both the dominant and servient tenements, the easement is terminated.

5. **Express release**: The owner of the dominant tenement is the only one who can release an easement. A usual way would be to sign a quitclaim deed.
6. **Legal proceedings**: In order to terminate an easement, the owner of the servient tenement would bring an action to quiet title against the owner of the dominant tenement. A lawsuit to establish or settle title to real property is called a **quiet title action** or an action to quiet title.

7. **Estoppel**: Unless created by express grant, an easement may be terminated by non-use and the property owner has reason to believe that no further use is intended.

Example: John is a farmer who owns some land. Bob, the son of a neighboring farmer, cuts through John's field on the way to high school. Upon graduation, Bob leaves for college and stops taking the short cut through John's field. Farmer John, seeing that the easement was no longer in use, fenced his field. John's action showed that he relied on Bob's conduct (no longer taking the shortcut). Therefore, the easement terminates through the estoppel.

8. **Excessive use**: Depending on the terms of the easement, excessive use can terminate the easement.

Example: Dan Smith owns a Victorian style 6-bedroom, 2-story house on 1/2 acre. Even though he has street access, he asked his neighbor Betty if he could use her private dirt road at the back of her 1/2 acre to get to his home because it was faster. Betty agreed and gave him an easement to use her private dirt road. In order to pay for an upcoming trip, Dan decided to rent out all the bedrooms in his home to college students. He rented each room to four students. Therefore, the traffic across the easement increased dramatically. Betty, understandably upset, terminated Dan's easement due to excessive use.

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**The Requirements for Terminating an Easement**

Mnemonic = ADAM E. LEE

<table>
<thead>
<tr>
<th>Abandonment</th>
<th>Legal proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Destruction of the servient tenement</td>
<td>Estoppel</td>
</tr>
<tr>
<td>Adverse possession</td>
<td>Excessive</td>
</tr>
<tr>
<td>Merger</td>
<td></td>
</tr>
<tr>
<td>Express release</td>
<td></td>
</tr>
</tbody>
</table>

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**Restrictions**

Another type of encumbrance is a restriction. A **restriction** is a limitation placed on the use of property. It is usually placed on property to assure that land use is consistent and uniform within a certain area. Restrictions may be placed by a private owner, a developer, or the government. **Private restrictions**
are placed by a present or past owner and affect only a specific property or development. **Zoning (public restriction)** is an example of government restrictions that benefit the public.

### Private Restrictions

**Private restrictions** are created in the deed at the time of sale or in the general plan of a subdivision by the developer. For example, a developer may use a height restriction to ensure views from each parcel in a subdivision.

### CC&Rs

Restrictions are commonly known as **CC&Rs** or covenants, conditions, and restrictions. The CC&Rs for a new subdivision are listed in a recorded **Declaration of Restrictions** which gives each owner the right to enforce the CC&Rs.

A **covenant** is a promise to do or not do certain things. The penalty for a breach of a covenant is usually money damages or an **injunction**. An **injunction** is a court order forcing a person to do or not do an act, such as violating a private restriction. An example of a covenant might be that the tenant agrees to make certain repairs, or that a property may be used only for a specific purpose.

A **condition** is much the same as a covenant, a promise to do or not do something (usually a limitation on the use of the property), except the penalty for breaking a condition is return of the property to the grantor. A **condition subsequent** is a restriction, placed in a deed at the time of conveyance, upon future use of the property. It is a condition placed on the property that comes into play subsequent to the transaction. Upon breach of the condition subsequent, the grantor may take back the property. A **condition precedent** requires that a certain event, or condition, occur before title can pass to the new owner. It is a condition that must be taken care of preceding the transaction.

Covenants, conditions, and restrictions are void if they are unlawful, impossible to perform, or in restraint of alienation. Therefore, a deed restriction prohibiting For Sale signs is illegal, but the signs may be limited to a reasonable size.

### Public Restrictions

**Public restrictions** are primarily zoning laws (zoning) which promote public health or general public welfare. Zoning regulates land use with regard to lot
sizes, types of structures permitted, building heights, setbacks, and density. Zoning departments use zoning symbols to show types of property use. For example, R-3 is multiple family, R-1 is single family, M-1 is light industrial, and C-1 stands for commercial property.

Changes in zoning may be initiated by a single property owner, developer, or government entity. Commonly, zoning is changed from a high-density use to a lower density use, such as commercial (C-1) or light manufacturing (M-1) to residential (R-1), or from residential to conservation. This is called downzoning. Sometimes developers ask for higher density, such as changing from low density residential (R-1) to high density (R-3) in order to build condominiums.

Zoning changes can create non-conforming use, for example, farmland rezoned for residential use. All new structures must conform to the new zoning and be for residential use. Existing farms are now non-conforming properties, but may continue to operate because a grandfather clause allows an owner to continue to use structures which are now non-conforming with the new zoning laws.

If a person wants to use property in a way that is currently prohibited by zoning laws, he or she may petition to rezone the entire area or petition for a variance for the single piece of land. A variance is an allowable difference to the zoning laws for a structure or land use.

Whenever there is a conflict between zoning and deed restrictions, the more restrictive of the two must be followed.
Encroachments

Placing a permanent improvement, such as a fence, wall, driveway or roof, so that it extends over the lot line into adjacent property owned by another, is known as an encroachment. This unauthorized intrusion on the adjoining land can limit its use and reduce it in size and value. An owner has three years in which to sue the neighbor to have the unauthorized encroachment removed.

Homestead Protection

California and many other states have homestead laws to protect families. Some or all of the land that is occupied by a family as their home is exempt from the claims of, or eviction by, unsecured creditors. A homestead is not truly an encumbrance, but it does limit the amount of liability for certain debts against which a home can be used to satisfy a judgment. A Declaration of Homestead is the recorded document that protects a homeowner from foreclosure by certain judgment creditors.

The first $75,000 of a home’s value may not be used to satisfy a judgment against the head of a household. A mentally or physically disabled person, or someone over the age of 65, is entitled to protection up to $150,000. All others have a homestead exemption of $50,000. A homestead does not protect an owner against foreclosure on a trust deed, mechanic’s lien, or lien recorded prior to the filing of the homestead.

Requirements for a Valid Homestead

Certain requirements must be met before a homestead is valid. The claimant must be living on the property at the time of filing, must state his or her status as head of household or other, must describe the property, and give an estimate of value. Only one homestead can be valid at any one time.
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME
ADDRESS
CITY
STATE ZIP
Title Order No.
Escrow No.

HOMESTEAD DECLARATION

I, ____________________________________________________________ (Full Name of Declarant)
do hereby certify and declare as follows:

1) I hereby claim as a declared homestead the premises located in the City of _______________________, County of _______________________, State of California, commonly known as _______________________, (Street Address)

and more particularly described as follows: [Give complete legal description]

2) I am the declared homestead owner of the above declared homestead.

3) I own the following interest in the above declared homestead:

4) The above declared homestead is: [ ] my principal dwelling, or [ ] the principal dwelling of my spouse, and

I am, or my spouse is currently residing on that declared homestead.

5) The facts stated in this Declaration are true as of my personal knowledge.

Dated: ____________________________, 20__ (Signature of Declarant)

STATE OF CALIFORNIA
COUNTY OF ______________________

On ______________________, before me, the
undersigned, ______________________, a Notary Public in and for
said State, personally appeared

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

WITNESS my hand and official seal

Notary Public in and for said State.
Termination of a Homestead

An owner must file an Abandonment of Homestead form in order to obtain a homestead on a new property. Sale of the property automatically causes the homestead to terminate. However, if the owner moves from the homesteaded property and does not wish to file a new one, the original homestead remains valid. Destruction of the property does not terminate the homestead.

How Title to Real Estate Is Acquired or Conveyed

Acquisition and conveyance is also defined as buying and selling. If one person is buying, someone must be selling. This section studies the two functions together. Real property may be acquired or conveyed by will, succession, accession, occupancy, and transfer.

Will

A will disposes of property after death. A testator is a person who makes a will. If a person died testate it means the person left a valid will. If a person died intestate it means the person did not leave a will. A gift of real property by will is a devise, while a gift of money or personal property by will is a bequest or legacy. The maker, before death, may change a will by a codicil.

One type of will is a witnessed will, usually prepared by an attorney and signed by the maker (testator) and two witnesses. A holographic will is written in the maker’s writing, dated, and signed by the maker.

Probate

Probate is the legal process to prove a will is valid. Probate proceedings are held in the superior court to determine creditors’ claims and beneficiaries’ interests in an estate upon the owner’s death. A hearing is held to appoint a representative to handle the estate of the deceased. If that person is named in a will, he or she is referred to as an executor or executrix. If there is no will or someone named in a will to administer the estate, the court will appoint an administrator or administratrix.

Estate property may be sold during the probate period at a public or private auction. An administrator or executor may list the property for up to 90 days with court permission. The court confirms the final sale and sets the broker’s commission. The first offer must be for at least 90% of the appraised value, and a subsequent offer at least 10% of the first $10,000 original bid, plus 5% of the remainder.
Succession

Succession is the legal transfer of a person's interests in real and personal property under the laws of descent and distribution. When a person inherits property as a result of someone dying without a will, it is called intestate succession. An intestate decedent's property passes to his or her heirs according to the laws of descent in the state where such real property is located. The law provides for disposition of the deceased's property by statute.

If the deceased was married, and died intestate, the surviving spouse receives all community property. Separate property is divided between a surviving spouse and any children. If there is only one child, the separate property is split equally. If there is more than one child, the surviving spouse receives one-third and the children, two-thirds.

Accession

Accession is a process by which there is an addition to property by the efforts of man or natural forces. An example of accession is alluvial deposits. When property is adjacent to a flow of water, accession may occur. Ownership is extended to include the property that has been gained.

Accession can occur by the addition of personal property to land so that it becomes a fixture or by improvements to land made in error. If an improvement was made innocently, the person responsible may remove it, provided he or she pays for any damage to the property.

The gradual build-up of soil, or alluvium, by natural causes on property bordering a river, lake, or ocean is called accretion. Erosion is the gradual wearing away of land by natural processes. The gradual wearing away of land is by the act of water, wind, or glacial ice. The sudden washing or tearing away of land by water action is known as avulsion. Accession can occur by reliction when land covered by water becomes uncovered because of alluvial deposits along the banks of streams.

Sample Probate Bid

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraised Value</td>
<td>100,000</td>
</tr>
<tr>
<td>1. First bid: at least 90% of appraised value</td>
<td>90,000</td>
</tr>
<tr>
<td>2. Second bid: at least 10% of first $10,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Plus 5% of the remainder ($80,000)</td>
<td>4,000</td>
</tr>
<tr>
<td>Total minimum second bid required</td>
<td>95,000</td>
</tr>
</tbody>
</table>
**Occupancy**

Ownership of real property can be acquired by using (occupying) it. The property must be occupied without the owner's knowledge. It cannot be publicly owned (national and state parks, government buildings, public beaches, and the like). There are three ways to acquire property by occupancy: (1) abandonment, (2) adverse possession, and (3) prescription.

**Adverse Possession**

Adverse possession also can affect a transfer. It is accomplished by acquiring title to property through continued possession and payment of taxes. There are six requirements: (1) possession must be actual occupation, (2) adverse, (3) notorious, (4) continuous and uninterrupted for five years, (5) hostile to the present owner's title and wishes, and (6) open.

<table>
<thead>
<tr>
<th>Review - Six Ways for Adverse Possession</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Mnemonic</strong> = PANCHO</td>
</tr>
<tr>
<td>Possession</td>
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<tr>
<td>Adverse</td>
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<td>Notorious</td>
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<td>Continuous</td>
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<tr>
<td>Hostile</td>
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<td>Open</td>
</tr>
</tbody>
</table>

**Transfer**

Property is acquired by transfer when, by an act of the parties or law, title is conveyed, or transferred, from one person to another by means of a written document. The transfer may be voluntary, such as the sale of a home, or involuntary by act of law, such as a foreclosure sale. Real property may be transferred (alienated) by private grant, public grant, public dedication, or operation of law (court action).

**Private Grant**

When property is transferred by private grant a written instrument is used. An instrument is a formal legal document, such as a contract, deed or will. The kinds of deeds commonly used for private grants include grant deed, quitclaim deed, gift deed, and warranty deed.
Grant Deed

In California, the **grant deed** is the most frequently used instrument to transfer title. The parties involved in the grant deed are the grantor and grantee. The **grantor** is the person conveying the property, and the **grantee** is the person receiving the property or to whom it is being conveyed.

A grant deed must have a **granting clause** and has two **implied warranties** by the grantor. One is that the grantor has not already conveyed title to any other person, and the other is that the estate is free from encumbrances other than those disclosed by the grantor. If you see the words *et ux.* on a grant deed, it means “and wife.”

The grantor also promises to deed any rights he or she might acquire to the property after conveying it to the grantee. This is called **after-acquired title**, which means any benefits that come to the property after a sale must follow the sale and accrue to the new owner. For example, oil or mineral rights might revert to the property at some time in the future, after the present owner has sold the property.

A grant deed must contain certain basics in order to be legally binding.

**Requirements for a Valid Grant Deed**

- According to the statute of frauds, a deed must be in writing.
- The parties to the transfer (grantor and grantee) must be sufficiently identified and described.
- The grantor must be competent to convey the property (not a minor or incompetent).
- The grantee must be capable of holding title (must be a real living person, not fictitious).
- The property must be adequately described but it does not require a legal description.
- Words of granting, such as grant or convey must be included.
- The deed must be executed (signed) by the grantor. The deed may be signed by a witnessed mark “X”.
- The deed must be delivered to and accepted by the grantee.
A deed is void (invalid) if the grantor is a minor or incompetent or if the grantee does not exist. A deed to a deceased person or fictitious person, as ABC Company is void; however, a deed to an actual person using a fictitious name or DBA is valid. A fictitious business name or assumed name is a business name other than the name of the person who has registered the business. For example, “ABC Real Estate Brokerage” owned by Jill Jones or “South Coast Property Management” owned by Bill Hernandez. The acronym **DBA** means, doing business as. An example is, Bill Hernandez, DBA “South Coast Property Management”.

A grant deed is not effective until it is delivered. It must be the intention of the grantor that the deed is delivered and title be transferred during his or her lifetime. For example, a deed would not be valid if signed and put in a safe place until the death of the grantor, and then recorded. Recording a deed is considered the same as delivery. After a deed has been acknowledged by the grantor, it may be filed with the county recorder, giving constructive notice of the sale. An acknowledgment is a signed statement, made before a notary public, by a named person confirming that the signature on a document is genuine and that it was made of free will. A deed does not have to be acknowledged to be valid, but must be acknowledged to be recorded.

The purpose of recording a deed is to protect the chain of title. This is a sequential record of changes in ownership showing the connection from one owner to the next. A complete chain of title is desirable whenever property is transferred and required by title insurance companies if they are writing a policy on a property.

Example: Jane Borden, a single woman, owned the house in which she lived, as her sole and separate property. After marrying Sam Jones, she decided to sell the house. However, because the chain of the title showed that Jane Borden owned it, reference had to be made, in the grant deed to the buyer, that Jane Jones, a married woman, previously known as Jane Borden, was conveying her interest in the property. In that way, the chain of title remained unbroken.

The priority of a deed is determined by the date it is recorded. In other words, recording establishes a claim of ownership which has priority over any deeds recorded after it. The first to record a deed is the first in right.
RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

NAME
ADDRESS
CITY
STATE & ZIP

Title Order No. Escrow No.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned declares that the documentary transfer tax is $____ and is

☐ Computed on the full value of the interest or property conveyed, or is

☐ Computed on the full value less the value of liens or encumbrances remaining at time of sale. The land, tenements, realty is located in

☐ Unincorporated area of: ☐ City of: and

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

hereby GRANT(S) to

the following described real property in the

County of: , State of:

Dated:

STATE OF:

COUNTY OF:

On ___________ before me, the undersigned, a Notary Public in and for State, personally appeared

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

WITNESS my hand and official seal

Signature ____________________________

MAIL TAX STATEMENTS AS DIRECTED ABOVE

(This area for official notary seal)
Example: Cal sells his house to Margaret, and, without telling Margaret. He also sells it to Anita. Anita records her deed before Margaret has a chance to record hers. Anita is the owner of record and gets the house. Margaret has a definite cause for a lawsuit against Cal.

However, there are some exceptions to the “first to record is first in right” rule. If the same property is sold to two parties, and the second party knows of the first sale and is aware of the fraud intended by the seller, the original sale is valid, even if it was not recorded first.

Also, as you recall, possession is considered constructive notice, just like recording. So, if a deed is not recorded, but the buyer moves in, that sale has priority over later recorded deeds.

Example: Greta sells her house to Victor, who moves in without recording the deed. Greta also sells the house to Alex, telling him to record the deed quickly, making him aware that she had previously sold it to Victor. Due to Alex’s knowledge of the prior sale, and Victor’s possession and occupancy of the property, which established his right of ownership, Victor gets the house.

A grantee must accept a deed before it is considered effective. Acceptance is automatic if the grantee is an infant or incompetent person. Acceptance may be shown by the acts of the grantee, such as moving onto the property.

The grant deed need not be signed by the grantee. An undated, unrecorded, and unacknowledged grant deed may be valid as long as it contains the essential items required for a valid deed. Here is a list of non-essentials for a grant deed to be valid:

**Review - Not Necessary for Valid Grant Deed**

- Acknowledgment
- Recording
- Competent grantee; may be a minor, felon or incompetent
- Date
- Mention of the consideration
- Signature of grantee
- Habendum clause (to have and to hold)
- Seal or witnesses
- Legal description, an adequate description is sufficient
QUITCLAIM DEED

The undersigned grantor(s) declares(s) that the documentary transfer tax is and is

☐ Computed on the full value of the interest or property conveyed, or is

☐ Computed on the full value less the value of liens or encumbrances remaining at time of sale.

☐ Unincorporated area of: ☐ City of: and

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

hereby REMISE(S), RELEASE(S) AND FOREVER QUITCLAIM(S) to

the following described real property in the

County of: , State of:

Dated:

STATE OF: $

COUNTY OF: $

On _________________ before me, the undersigned, a Notary Public in and for State, personally appeared

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

WITNESS my hand and official seal

Signature _______________________________ (This area for official notary seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE
**Quitclaim Deed**

A *quitclaim deed* contains no warranties and transfers any interest the grantor may have at the time the deed is signed. It is often used to clear a cloud on the title. A *cloud on title* is any condition that affects the clear title of real property or minor defect in the chain of title, which needs to be removed. A quitclaim is used to transfer interests between husband and wife or to terminate an easement. If a buyer defaults on a loan carried back by the seller, the fastest way to clear title would be for the defaulting buyer to sign a quitclaim deed to the seller.

**Gift Deed**

A *gift deed* is used to make a gift of property to a grantee, usually a close friend or relative. The consideration in a gift deed is called *love and affection*.

**Warranty Deed**

A *warranty deed* is a document containing *express covenants* of title and is rarely used in California because title companies have taken over the role of insuring title to property.

**Financing Instruments**

Deeds of trust and deeds of reconveyance are primarily financing instruments.

**Public Grant**

Real property can be transferred by *public grant*, which is the transfer of title by the government to a private individual. In the last century many people moved west and improved land by building and planting crops. As they qualified for ownership under the homestead laws, they received a patent from the government as proof of ownership. A *patent* is the document used by the government to transfer title to land instead of using a deed.

**Public Dedication**

When real property is intended for public use, it may be acquired as a *public dedication*. There are three means of public dedication: (1) common law dedication, (2) statutory dedication, and (3) deed.

In a *common law dedication*, a property owner implies through his or her conduct the intent that the public use the land. In order to be effective, the dedication must be accepted by public use or local ordinance.
A **statutory dedication** is a dedication made by a private individual to the public. An owner follows procedures outlined in the Subdivision Map Act—commonly used by developers to dedicate streets and common areas to the public.

A **deed** is a formal transfer by a party as in a gift deed where there is no consideration.

**Operation of Law**

Sometimes property is transferred by the **operation of law**. It is usually an involuntary transfer involving foreclosure or is the result of a judgment or some other lien against the title. There is a variety of situations in which courts establish legal title regardless of the desires of the record owners.

**Foreclosure**

The legal process used by a lender to seize property of a homeowner, usually due to the homeowner not making timely payments on the mortgage is called **foreclosure**.

**Bankruptcy**

The court proceeding to relieve a person’s or company’s financial insolvency is called **bankruptcy**. A person whose debts exceed assets and who is unable to pay current liabilities is financially insolvent.

In a Chapter 7 bankruptcy, known as a liquidation bankruptcy, title to all of the debtor’s real property is vested in a court-appointed trustee. The debtor lists (schedules) all of the debts he or she owes. The bankruptcy judge may discharge the debts or may sell the debtor’s property to satisfy the claims of the creditors. Creditors’ claims are discharged as of the date of the filing. Although most of the person’s or company’s debts are forgiven, not all debts can be discharged through bankruptcy. Non-dischargeable debts include income taxes, child support, alimony, student loans, and criminal fines.

**Quiet title action**

**Quiet title action** is a court proceeding to clear a cloud on the title of real property. It is frequently used to clear tax titles, titles based on adverse possession, and the seller’s title under a forfeited, recorded land contract.

**Execution sale**

An **execution sale** is a forced sale of property under a **writ of execution** with the proceeds used to satisfy a money judgment. A **sheriff’s deed** is given to a
buyer when property is sold through court action in order to satisfy a judgment for money or foreclosure of a mortgage.

**Partition action**

Partition action is a court proceeding to settle a dispute between co-owners (joint tenants or tenants in common) about dividing their interests in real property. The court can physically divide either the property or the money derived from its sale.

**Escheat**

Escheat is a legal process in which property reverts to the state because the deceased owner left no will and has no legal heirs. The state must wait five years before trying to claim the property.

**Eminent domain**

The power of eminent domain is the power of the government to take private property for public use after paying just compensation to the owner. Just compensation is fair and reasonable payment due to a private property owner when his or her property is condemned under eminent domain.

Condemnation is the process by which the government acquires private property for public use, under its right of eminent domain. This right is based on the Fifth Amendment of the U.S. Constitution and is not an example of police power or zoning.

Inverse condemnation is the opposite of eminent domain. With inverse condemnation, a private party forces the government to pay just compensation if the property value or use has been diminished by a public entity. For example, if part of a farmer's land is condemned for freeway construction, leaving an unusable piece that is cut off from the rest of the farm, the farmer could sue for inverse condemnation since the small piece that has been effectively taken without just compensation.
Summary

Ownership of real property requires a title. A title is evidence that a person has a legal right in the land. An encumbrance is anything that affects or limits title to property, such as a mortgage. There are two types of encumbrances: (1) those that affect the title to the property (money encumbrances, called liens) and (2) those that affect the use of the property (non-money encumbrances).

A lien is a claim that a person has on the property as security for a debt or obligation. Trust deeds or mortgages used in real estate financing create voluntary, specific liens against real property. Anyone who supplies labor or materials for improvements and remains unpaid by the property owner can place a mechanic’s lien against the property. There are four steps to verify and record a lien: (1) preliminary notice, (2) notice of completion, (3) no notice of completion, and (4) foreclosure action.

A lis pendens is a recorded notice that indicates pending litigation affecting the title on a property. The lis pendens clouds the title, preventing the sale or transfer of the property. A property owner initiates proceedings to remove the cloud on the title by a quitclaim deed or court action.

A non-money encumbrance affects the use of property. Types of non-money encumbrances are easements, building restrictions, and encroachments. There are two types of easements: servient tenement, and dominant tenement. Abandonment, destruction of the servient tenement, and adverse possession, can also terminate easements. CC&Rs can place restrictions on the use of property. There are two types of CC&Rs: condition subsequent and condition precedent. Encroachment is the placement of permanent improvements on adjacent property owned by another.

A Declaration of Homestead is the recorded document that protects a homeowner from foreclosure by certain judgment creditors.
UNIT 3 REVIEW

Matching Exercise

Instructions: Write the letter of the matching term on the blank line before its definition. Answers are in Appendix B.

Terms

<table>
<thead>
<tr>
<th>Terms</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. abandonment</td>
<td>H. easement in gross</td>
</tr>
<tr>
<td>B. accession</td>
<td>I. encroachment</td>
</tr>
<tr>
<td>C. accretion</td>
<td>J. executor</td>
</tr>
<tr>
<td>D. alienate</td>
<td>K. grantee</td>
</tr>
<tr>
<td>E. avulsion</td>
<td>L. grantor</td>
</tr>
<tr>
<td>F. bequest</td>
<td>M. homestead</td>
</tr>
<tr>
<td>G. codicil</td>
<td>N. instrument</td>
</tr>
</tbody>
</table>

Definitions

1. ________ An easement that is not appurtenant to any one parcel. For example, the rights given to public utilities to install power lines.

2. ________ Permission to use a property which may be revoked at any time.

3. ________ The unauthorized placement of permanent improvements that intrude on adjacent property owned by another.

4. ________ Status provided to a homeowner’s principal residence that protects the home against judgments up to specified amounts.

5. ________ A gift of personal property by will.

6. ________ Dying without leaving a will.

7. ________ The acquisition of title to additional land or to improvements as a result of annexing fixtures, or as a result of natural causes, such as alluvial deposits along the banks of streams by accretion.

8. ________ A buildup of soil by natural causes on property bordering a river, lake, or ocean.
9. _______ Occurs when land that has been covered by water is exposed by receding of the water.

10. _______ The act of transferring ownership, title, or interest.

11. _______ The person receiving the property, or to whom it is being conveyed.

12. _______ The person conveying or transferring the property.

13. _______ A document in real estate.

14. _______ It is a court proceeding to clear a cloud on the title of real property.

15. _______ A recorded notice that indicates pending litigation affecting title on a property, preventing a conveyance or any other transfer of ownership until the lawsuit is settled and the lis pendens removed.

**Multiple Choice Questions**

Instructions: Circle your response and go to Appendix B to read the complete explanation for each question.

1. Which of the following is the best definition of encumbrance?
   a. The degree, quantity, nature, and extent of interest that a person has in real property.
   b. Anything that affects or limits the fee simple title to or value of property.
   c. The use of property as security for a debt.
   d. Any action regarding property, other than acquiring or transferring title.

2. The form of encumbrance that makes specific property the security for the payment of a debt or discharge of an obligation is called a:
   a. reservation.
   b. fief.
   c. lien.
   d. quitclaim.

3. A recorded abstract of judgment is classified as a(n)_______ lien.
   a. equitable
   b. involuntary
   c. inferior
   d. superior
4. Recording a lis pendens:
   a. does not affect the title.
   b. clouds the title but does not affect marketability.
   c. clouds the title and affects marketability.
   d. affects the current owner but not a subsequent owner.

5. The owner of an apartment building does not declare the income from the rental units. The IRS filed a government tax lien as a result of the omission. This is called a:
   a. voluntary lien.
   b. general lien.
   c. judgment lien.
   d. none of the above

6. The personal, revocable, unassignable permission to use the property of another without a possessor interest in it is called a(n):
   a. license.
   b. easement.
   c. encroachment.
   d. option.

7. Roger, who owns a ranch, gave Sam who owns no property, a non-revocable right to cross his ranch to fish in the stream. Sam has a(n):
   a. easement in gross.
   b. license.
   c. easement appurtenant.
   d. easement by prescription.

8. Private restrictions on land can be created by deed:
   a. only.
   b. or written agreement.
   c. or zoning ordinance.
   d. or written agreement or zoning ordinance.

9. Alienation of title to real property most nearly means to:
   a. cloud the title.
   b. encumber the title.
   c. record a homestead.
   d. convey or transfer title and possession.
10. To be binding on a buyer and a seller, a deed to transfer real property must be:
   a. recorded.
   b. delivered and accepted.
   c. acknowledged.
   d. all of the above.

11. A grant deed is considered executed when it is:
   a. recorded by the grantee.
   b. signed by the grantor.
   c. acknowledged by the grantee.
   d. delivered by the grantor.

12. Effective delivery of a deed depends on:
   a. the intention of the grantor.
   b. recording the deed.
   c. knowledge of its existence by the grantee.
   d. acknowledgement of the grantor’s signature before a Notary Public.

13. Dana sold a property to Kim, who did not record the deed but did occupy the premises. Dana then sold the same property to Lee, who did not inspect the property but did record the deed. After the second sale, who would have legal title to the property?
   a. The title would revert to Dana as the remainderman.
   b. The title would remain with Kim.
   c. The title would be Lee’s due to Kim’s failure to record his deed.
   d. Lee would be able to sue Kim for his failure to record his deed.

14. An owner of a parcel of real property gave his neighbor a deed conveying an easement for ingress and egress. The easement was not specifically located in the deed. Under the circumstances, the neighbor’s right to use the easement is:
   a. enforceable because the location of the easement does not need to be specified.
   b. enforceable only if the easement is an easement in gross.
   c. unenforceable because the location of the easement must be specified.
   d. unenforceable because easements are never created by deed, only by written agreement.

15. Which of the following actions is a quiet title action?
   a. Court action to foreclose
   b. Court action in ejectment
   c. Police action to quiet a noisy neighbor
   d. Court action to remove a cloud on title