



Stewart Legal Services

Deeds and Warranties
Adverse Possession

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Deeds and Warranties

- Requirements and warranties generally defined by state statutes.
- Defined:
 - A conveyance of realty, a writing signed by grantor, whereby title to realty is transferred from one to another. Must pass a present interest, although it isn't necessary that the grantee take a present interest in the property conveyed.



Deeds and Warranties

- Formal requirements:

Grantor – the conveying party. Grantor's name must appear in the grantor clause;

Grantee – the party to whom the property is conveyed;

Words of conveyance;

Adequate description of the property;

Acknowledgement;



Deeds and Warranties

- Not always required:
 - Private seal;
 - Corporate seal;
 - Witnesses;
 - Words -- “heirs and devisees”;
 - Statement of Consideration – statement of the nominal consideration is sufficient. ie: ten dollars and other good and valid consideration



Deeds and Warranties

- **Grantor**

- Grantor's name must appear in the body of the document, or be described so as to be identified; ie: "I or we, the undersigned".
- Grantor should be record owner.
 - Both spouses;
 - Name[s] match vesting deed;
 - Full name versus initials -- John B. Martin vs J.B. Martin
 - Middle names and initials – John Benton Martin vs John B. Martin
 - Difference in middle initials – John B. Martin vs John R. Martin
 - Derivations or nick names – John Martin vs. Johnny B. Martin
 - Suffixes – Dr., Jr., Sr., III.
 - Change of name



Deeds and Warranties

- **Grantee**
 - Must be capable of taking title, ie: a grantee in existence (person or entity) capable of taking title;
 - General public;
 - Estate of deceased rather than personal representative;
 - Trust rather than trustee or trustee named without identifying the trust
 - Unincorporated association;
 - Grantee name is blank;
 - Minors
 - Deed to minor not void;
 - Deed from a minor requires further examination



Deeds and Warranties

- Words of conveyance — to be effective a deed must contain words that manifest the intention to pass title
 - Warranty deed – Conveys and warrants
 - Bargain and sale deed – Bargains, sells and conveys
 - Quit claim deed – Conveys and quit claims

What about a deed that doesn't have conveyance language that exactly matches that statute?

May be able to determine parties intent by facts of case and language used.



Deeds and Warranties

- **Adequate description** – the description must be capable of being located on the ground with reasonable certainty.
 - Rectangular survey descriptions- section, township and range identified, metes and bounds;
 - Platted property



Deeds and Warranties

- Three main types of deeds:
- Warranty
- Bargain and Sale (sometimes called Special Warranty deed)
- Quit Claim



Deeds and Warranties

- **Warranty deed** – most common form of conveyance.
- Conveys fee title and includes the following warranties:

Seisen – guarantees that the grantor has the possession, the right to possession and the complete legal title to the property. This includes that the property was free from encumbrances, (except those stated in the deed);

Quiet and peaceable enjoyment – this guarantees that the grantee will not be evicted from the property or deprived of the use by a claimant with better title;

Defense - The grantor will defend the title against all parties that who may make a claim to the property



Deeds and Warranties

- **Bargain and Sale deed** – warranty deed “light”
- Grantor warrants only against those encumbrances done or suffered by the grantor and not any that arose as a result of the prior owner.
- **Quit claim deed** – no warranties are expressed or implied, but conveys all the then existing legal and equitable rights of the grantor in the described premises.
- **Other variations of deeds:**
 - Trustee deed;
 - Special Warranty deed;
 - Fulfillment deed;
 - Deed in lieu of foreclosure;
 - Transfer on death deed



Deeds and Warranties

- **After acquired title** – involves a conveyance from a party who, at that time did not have title to the property being conveyed, but later becomes vested in title. In that case, title immediately vests in the grantee of the earlier deed.
- **Example** – John sells property to Bob on a real estate contract. Bob sells the property to Sunny by an assignment of contract and deed sufficient to convey after acquired property. Sunny pays off the contract and a fulfillment deed is recorded with Bob as grantee.
- Warranty deeds and Bargain and Sale deeds convey after acquired property without specifically stating so. Quit claim deeds do not automatically convey after acquired title and must contain an affirmative statement to that effect.



Deeds and Warranties

- Appurtenances and fixtures are conveyed unless they are specifically excepted.
- Examples:
 - buildings permanently affixed;
 - minerals and other subterraneous substances;
 - Water rights;
 - Easements over adjoining land for the benefit of land conveyed. This is true even if the conveying deed does not expressly describe the easement.
- **Example** – an easement is recorded for access for the benefit of parcel A over parcel B. Parcel A is subsequently conveyed by a deed that does not specifically reference the easement. Despite that omission, the easement is conveyed as being appurtenant to parcel A.



Recording statutes

- **Purpose of recording statutes** – to protect parties that have paid value for property and have acted in good faith in real property transactions.
- **Race Statutes** – race to the courthouse statutes. The rule is that a document recorded before another document has priority. Only three states have Race statutes.
 - Example: A sells Blackacre to B for fair value. The next day A sells to C for value. If C records before B, C has priority even if C knew of the sale to B. Yikes!
- **Notice Statutes** – a party that pays fair value for property and does not have notice that there were any earlier conflicting will have priority over the earlier interests.
 - Example: A sells Blackacre to B for value. The next day A sells to C for value and B has not yet recorded the deed. If C does not have notice of B's interest, C will have priority over B, even if B later records her deed before C records his. Yikes!



Recording statutes

- **Race Notice** – a party that pay fair value, does not have notice of an earlier, conflicting interest and records first has priority over later recorded interests.
 - Example: A sells Blackacre to B. The next day A sells Blackacre to C. C will have priority only if she records before B and did not know about B.

RCW 65.08.070

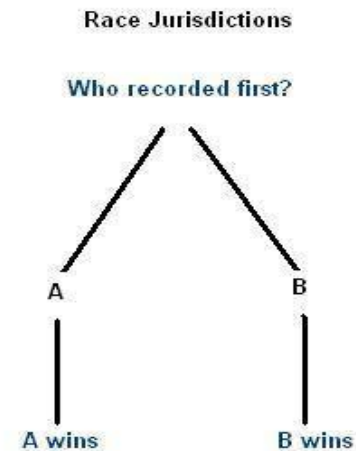
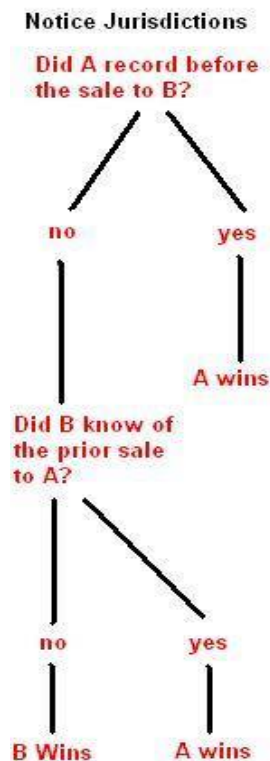
Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.

Recording Statutes

THE RECORDING ACTS

Assume: O sells his property first to A and then to B





Bona Fide Purchaser for Value

- A purchaser for valuable consideration paid or parted with in the belief that the vendor had a right to sell and without any suspicious circumstances to put her on inquiry.
- A good faith purchaser of land is one who purchases for valuable consideration without notice of any suspicious circumstances which would put a prudent person on inquiry notice.
- A bone fide purchaser is a purchaser for value in good faith and without notice of any adverse claim.



Bona Fide Purchaser for Value

- Notice:

Actual Notice – Knowledge or notice of a fact that is within one's comprehension;

Constructive Notice – Notice that a party will be deemed to have by law whether they in fact actually have notice or not. ie: Recorded documents.

Inquiry Notice – Facts or other circumstances that give rise to a suspicion that should provoke further investigation



Bankruptcy Trustee as Super BFP

- The Bankruptcy Code provides the bankruptcy trustee powers to avoid matters in title as part of the trustee's obligation to marshal assets of the estate for the benefit of creditors.
- Liens
- Preferential transfers
- Fraudulent conveyances
- Defective instruments

- The trustee is able to avoid these interests without regard to notice of the trustee.



Adverse Possession





Adverse Possession

- Virtual Underwriter:

Adverse Possession is a method of acquiring title to property through the possession of the property for a statutory period of time (which varies from state to state) either under color of title or by a mere naked claim.



Adverse Possession

- Basic principle – after a certain number of years, a party may become the owner of property that had been someone else's, even though there was no payment, deed or even the consent of the other party. In fact, the other party's consent would actually prevent adverse possession. (Mind blown).



Adverse Possession

- Purpose of adverse possession laws –

Settle land title disputes and bar stale claims;

Discourage land owners from sleeping on their rights and promote maximum utilization and certainty of title.

ie: the true owner of the property didn't put it to use and someone else did, so that person should be rewarded. All land should be fully used.



Adverse Possession

- Elements of adverse possession:
- Possession of property that is:
- Actual
- Hostile
- Open and Notorious
- Exclusive
- Continuous for statutory period



Adverse Possession

- Actual possession:
- Possessor must have actual possession of the property to the extent that a party having such property would actually use it.
- Must be consistent with the condition, appropriate use and size of parcel and must be the type of use common to that of similar parcels.



Adverse Possession

- Hostile possession:
- In effect the possessor is claiming to be the owner as against the actual owner and the rest of the world.
 - Occupation with belief of ownership
- Permission negates hostility;
 - Lease
 - REC
 - License
 - Verbal



Adverse Possession

- Open and Notorious:
- Not hidden or secret, but visible to anyone and in same manner of actual owner.
- The purpose of this requirement is to give the actual owner notice that there is a another party claiming ownership to the property and to allow the actual owner to take action to protect the property.



Adverse Possession

- Exclusive possession:
- No other parties other than the possessor or those with the possessor's permission may occupy the property.
- The possession is to the exclusion of the true owner and the public. Any use by the true owner during the time claimed by the possessor will defeat adverse possession.



Adverse Possession

- Continuous for statutory period:
- Possession must be continuous for the entire period required for adverse possession. No gaps.
- Possession must be consistent with the nature of the property
 - Farm property used during usual farming times.
 - Vacation property used during vacation times.
- Tacking possession is permitted – The original possessors occupancy may be added to that of successors. Privity between possessors is required.
 - Contract, estate or operation of law
- The time for adverse possession varies among state and generally runs from ten to twenty years. The time may be shortened if the possessor claims under color of title and pays taxes.
 - Color of title- some documentation, albeit defective that that facially appears to convey title. This could be a deed from the wrong party, a defective legal description, defective sheriff's deed.



Adverse Possession

- Some property may not be subject to adverse possession – property owned by the federal or state or local government.
 - Some states also include Indian lands, railroads, canals, pipelines, and utility properties such as gas, power and telephone lines.
- The title acquire by adverse possession is fee as if the actual owner had deeded the property.



Adverse Possession

Title Insurance –

- We cannot insure property where title is solely based on adverse possession.
- Quiet Title
 - Final, non-appealable judgment vesting title in the proposed insured.
 - Statutory basis for action;
 - Jurisdiction;
 - All proper parties joined and served;
 - Specific terms or provisions in the judgment;
 - No right to appeal or review



Adverse Possession

- VU:

Deviations from the foregoing are sometimes permitted particular where the ownership to be insured is based upon a record chain of title for a period of time substantially longer than the required period for adverse possession and the adverse possession is intended for the purpose of overcoming an ancient "break" or defect in the chain of title.



Adverse Possession

- Survey coverage – deleting the survey exception or issuing some endorsements (ALTA 9, for example) may cause adverse possession concerns.
 - Encroachments onto our property
 - Unrecorded easements



Adverse Possession

- Marketable Title Acts:
- Remove ancient title defects, acting as statutes of limitations to clear public record of remote property rights clouding title.
- In effect, owners of ancient interests must take action to place those interests in the recent records.
- Generally twenty to forty years.
- Seventeen states, mostly in the east have Marketable Title Acts.
 - North Dakota
 - South Dakota
 - Utah
 - Wyoming
 - Iowa



Questions?

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FOR LPO/C.E. CREDIT, PLEASE EMAIL YOUR LICENSE NUMBER TO FOLLOWING:

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