

9

TITLE, DEEDS, AND OWNERSHIP RESTRICTIONS

1 LEARNING OBJECTIVES

2 *When you have completed this unit, you will be able to accomplish the following.*

- 3 ■ Differentiate between voluntary and involuntary alienation, explain the various methods of acquiring
- 4 title to real property, and describe the conditions necessary to acquire real property by adverse posses-
- 5 sion.
- 6 ■ Distinguish between actual notice and constructive notice.
- 7 ■ Distinguish between an abstract of title and a chain of title, and explain the different types of title insur-
- 8 ance.
- 9 ■ Describe the parts of a deed and the requirements of a valid deed.
- 10 ■ List and describe the four types of statutory deeds and the legal requirements for deeds.
- 11 ■ List and describe the various types of governmental and private restrictions on ownership of real prop-
- 12 erty and distinguish among the various types of leases and liens.

13 KEY TERMS

- | | | |
|--------------------------|------------------------|-----------------------|
| abstract of title | encroachment | net lease |
| acknowledgment | equitable title | opinion of title |
| actual notice | escheat | owner's policy |
| adverse possession | further assurance | percentage lease |
| alienation | general lien | police power |
| appurtenance | general warranty deed | quiet enjoyment |
| assignment | grantee | quitclaim deed |
| chain of title | granting clause | restrictive covenants |
| condemnation | grantor | seisin |
| construction lien | gross lease | specific lien |
| constructive notice | ground lease | sublease |
| deed | habendum clause | superior lien |
| deed restrictions | intestate | testate |
| easement | involuntary alienation | title |
| easement appurtenant | junior lien | title insurance |
| easement by necessity | legal title | variable lease |
| easement by prescription | lender's policy | voluntary alienation |
| easement in gross | lien | warranty forever |
| eminent domain | mechanic's lien | |

1 INTRODUCTION

2 This unit concerns the legal instruments and methods used to transfer title to real
3 property. The unit also discusses the following concepts regarding title to real property:
4 voluntary and involuntary alienation, title insurance, the two types of notice to title, the
5 essential elements of a valid instrument of conveyance, certain covenants found in deeds,
6 governmental and private restrictions on ownership, and the various types of leases.

7 9.1 LEGAL VS. EQUITABLE TITLE TO REAL PROPERTY

8 A person who holds ownership rights in property is said to have **title** to the property.
9 **Legal title** is ownership of a freehold estate. Recall from Unit 8 that freehold estates
10 include fee simple estates and life estates. Title to real property is a legal concept signify-
11 ing ownership of the collection of rights called an estate.

12 **Equitable title** implies that an individual will receive legal title at a future date. When
13 the buyer and seller execute the sale contract the buyer receives equitable title in the
14 property. The law recognizes some ownership interest by the buyer even though the buyer
15 is not yet the owner of record. For example, the buyer's equitable title means the seller
16 cannot sell the property to someone else. The buyer will receive legal title when the deed
17 is delivered to the buyer at the title closing.

18 ACQUIRING LEGAL TITLE

19 **Alienation** is the act of transferring ownership, title, or an interest in real property
20 from one person to another. The alienation may be voluntary (with the owner's control
21 and consent), or the transfer may be involuntary by operation of law (without control and
22 consent of the owner).

23 Transfer by Voluntary Alienation

24 **Voluntary alienation** is the transfer of title with the owner's control and consent.
25 There are two ways to transfer title by voluntary alienation: (1) by deed and (2) by will.

26 **Deed.** A *deed* is a written instrument used to convey an interest in real property. Thus,
27 a deed conveys *legal title*. A deed is used to sell or gift real property to another person (or
28 entity) during the owner's lifetime.

29 **EXAMPLE 1:** Mary and John Green sell their home to Lisa and Mike Smith. Title
30 to the home is transferred from the Greens to the Smiths by deed.

31 **EXAMPLE 2:** Mary and John Green gift their home to The Arc as a residential
32 home for persons with intellectual disabilities. Title to the home is transferred from the
33 Greens to The Arc by deed.

34 **Will.** A will is a legal instrument used to convey title to real and personal property after
35 the person's death. To die **testate** indicates the *decedent* (deceased person) prepared a will
36 before death. Conveyance of property according to a *last will and testament* is voluntary
37 alienation because the person who left a will—the *testator* (male) or *testatrix* (female)—
38 intended to gift property to a particular individual. A gift of real property is a *devise* and
39 the recipient of the gift is the *devisee*. A gift of personal property is a *bequest* and the recipi-
40 ent is the *beneficiary* (see Figure 9.1).

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FIGURE 9.1 ■ Parties to a Will

Deceased Creator of Will	Property Conveyed by Will	Recipient of Property by Will
Testator (male)	Devise (real property)	Devisee (real property)
Testatrix (female)	Bequest (personal property)	Beneficiary (personal property)

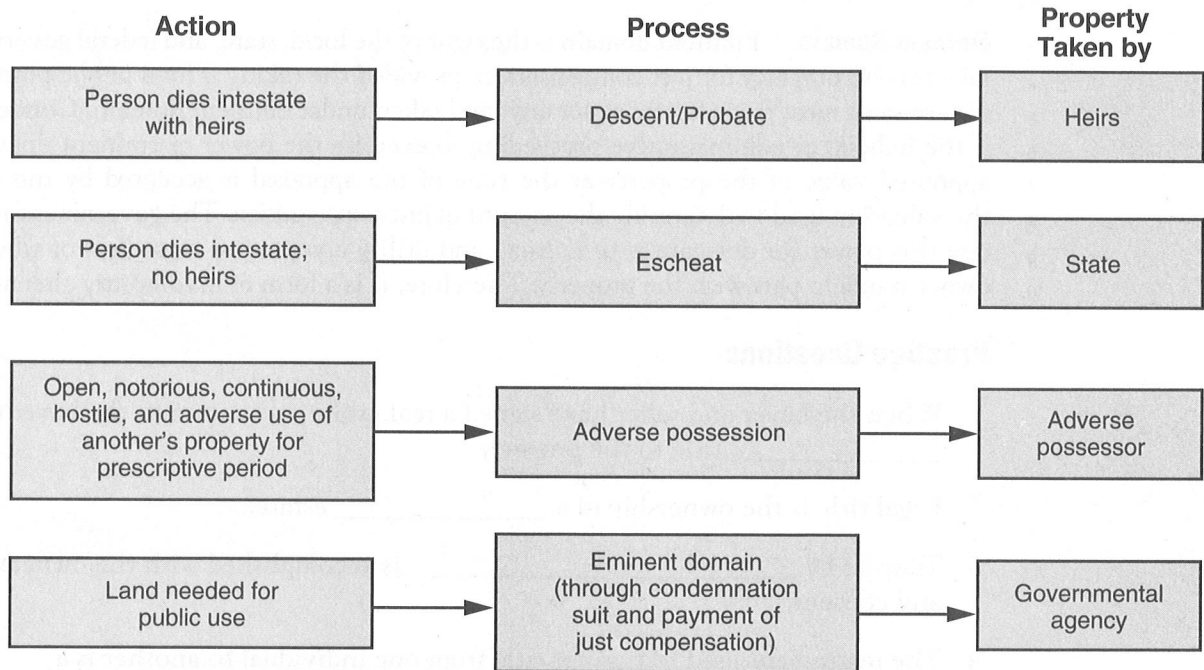
1 **Transfer by Involuntary Alienation**

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2 Title to property may be transferred without the owner’s consent by **involuntary alien-**
3 **ation**. Involuntary property transfers are usually carried out by operation of law.

4 **Descent.** When a person dies **intestate** (without leaving a will), all the property the
5 deceased person owned at the time of death passes (descends) to the deceased person’s
6 legal descendants. The legal descendants are called *heirs*. Transfer of property by descent
7 is a form of involuntary alienation because the state (not the deceased) determines the
8 disposition of the property (see Figure 9.2).

FIGURE 9.2 ■ Involuntary Alienation



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9 **Escheat to the State.** Escheat provides for a government, normally a state government,
10 to take the property of an owner who dies intestate and who has no known heirs entitled
11 to receive the property. The power of escheat is a practical solution to ensure that property
12 is always owned by someone.

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13 **Adverse Possession.** Adverse possession arises when the true owner of record fails to
14 maintain possession and the property is seized by another. If the true owner “sleeps on his
15 rights” and does not use the legal means available to remove a hostile trespasser, the owner
16 will lose the right to the property after a period of time. In Florida, the person attempting
17 to acquire property by adverse possession must comply with all the conditions listed in the
18 text box below.

**TO REMEMBER: CONDITIONS FOR ALIENATION
BY ADVERSE POSSESSION**

H	Hostile possession of the property (without owner's permission), to the exclusion of the true owner or any who may contest it
O	Open possession with no attempt to conceal occupancy
T	Taxes paid on the property by the adverse possessor during all the years of possession
C	Claim of title, even an imperfect one, exists (sometimes called color of title), thus creating a reasonable basis for the action
A	Adverse possession must continue for seven or more consecutive years without the consent of the owner
N	Notorious and flagrant public possession of the property

1 Always seek competent legal advice before acquiring real property if the title is based
2 on adverse possession.

3 **Eminent Domain.** Eminent domain is the right of the local, state, and federal government to
4 take private property for just compensation, provided the taking is for a public purpose. The
5 government must pay a fair price for any land taken under eminent domain. **Condemnation**
6 is the judicial or administrative proceeding to exercise the power of eminent domain. The
7 appraised value of the property at the time of the appraisal is accepted by the courts as
8 the valuation used to determine the amount of *just compensation*. The government may exer-
9 cise this power (or delegate it to railroad and utility companies) regardless of whether the
10 owner wants to part with the property. Therefore, it is a form of involuntary alienation.

Practice Questions

1. When the buyer and seller have signed a real estate sale contract, the buyer receives _____ title to the property.
2. Legal title is the ownership of a _____ estate.
3. Transfer by _____ is accomplished with the owner's control and consent.
4. The instrument used to transfer title from one individual to another is a _____.
5. A person who did not prepare a will before death died _____.
6. Involuntary alienation is usually accomplished by _____ of _____.
7. Title by adverse possession may be obtained after _____ or more consecutive years.

9.2 NOTICE TO LEGAL TITLE

12 In early English history, conveyances of title to real property did not depend on writ-
13 ten instruments. Instead, the parties conducted their business on the land, and the towns-
14 people assembled around them to witness the event. The seller verbally announced to the
15 townspeople that he was transferring the land to the buyer. He symbolically "did the deed"

1 by handing the buyer a twig or a clump of earth to give the world *actual notice* of the trans-
2 fer of ownership rights. Today, there are two types of notice that have equal legal priority:

3 1. **Actual notice** is direct knowledge acquired in the course of a transaction.

4 When the townspeople witnessed the transfer of earth or twig from one party to
5 another, they witnessed the buyer's physical possession of the land. Actual notice
6 was accomplished when the townspeople viewed the transfer of ownership rights.
7 Assume that a seller verbally discloses to the buyer that there is a construction
8 lien on his home for an unpaid pool repair job. The seller has given the buyer
9 actual notice that there is a lien on the property.

10 2. **Constructive notice** (also called *legal notice*) is accomplished by recording a
11 document in the public records. When the pool company records a construction
12 lien on the property for the unpaid repair job, it gives the world constructive
13 notice of the lien.

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14 Recording an instrument of conveyance puts the world on notice regarding an owner's
15 interests in real property. Legal documents may be recorded in the public records of the
16 county where the property is located. Recorded instruments are considered notice to the
17 world. Actual notice and constructive notice have the same legal priority. In a court of
18 law, it is easiest to prove constructive notice; therefore, constructive notice provides the
19 best evidence of ownership.

20 People dealing with the real property are bound by all recorded documents. Recor-
21 dation of a conveyance protects both the holder of the title and the public from fraud
22 because the true ownership of real property is open to verification by the public. To be
23 recorded, a deed must first be acknowledged by the grantor and the acknowledgment must
24 be witnessed and certified by a notary public. **Acknowledgment** is the formal declara-
25 tion before a notary public declaring that signing the document is a voluntary act. Other
26 requirements for recording include the signatures of two witnesses. In Florida, the notary
27 public taking the acknowledgment may be one of the witnesses (see Figure 9.4). (Note
28 that Florida law does not require that documents be recorded.)

Practice Questions

8. List the two types of notice to legal title.
1. _____
 2. _____
9. Recording a document in the public records provides _____ notice.
10. _____ is a formal declaration made before a notary public by a person sign-
ing a document declaring that the person signing the document is doing so voluntarily.

9.3 PROTECTION OF TITLE

30 **Chain of Title.** A **chain of title** is the complete successive record of a property's owner-
31 ship. Beginning with the earliest owner, title may pass to many individuals. Each owner
32 is "linked" to the next so that a "chain" is formed. A chain of title can be traced through
33 linking conveyances from the present owner back to the earliest recorded owner.

34 **Abstract of Title.** An **abstract of title** is a search of the recorded documents concern-
35 ing a parcel of real property. It is a condensed history that discloses those items about the
36 property that are of public record. An abstract is conducted to determine the legal owner
37 of the property and to reveal any mortgages, liens, judgments, or unpaid taxes that have

1 not been satisfied to date. All recorded liens and encumbrances are included, along with
2 their current status. The abstract of title does not guarantee or ensure the validity of the
3 title of the property. The abstract of title does not reveal such items as encroachments or
4 forgeries, or any interests or conveyances that have not been recorded.

5 **Title Opinion.** Some buyers will accept an **opinion of title** executed by an attorney who
6 has studied the abstract of title. The opinion will list any defects or clouds on the title,
7 such as liens, easements, or other encumbrances, and it will include the attorney's opin-
8 ion of whether the seller has a *marketable title* (merchantable title). Most attorneys do not
9 guarantee the opinion of title. It is an opinion only, backed by legal training and experi-
10 ence. If the opinion should prove to be in error, negligence must usually be proved for the
11 attorney's client to receive reimbursement.

12 **Title Insurance.** The limited protection afforded buyers of real property by an opinion
13 of title led to the need for title insurance. **Title insurance** is a contract that protects the
14 policyholder from losses arising from defects in the title. Florida law does not require title
15 insurance; however, it is a unique type of insurance because it protects a policyholder
16 against loss from an occurrence that has happened in the past, such as a forged deed some-
17 where in the chain of title. Other insurable title defects include, for example, flaws due to
18 incorrect marital status (failure to reveal a marriage where the spouse has a title interest),
19 and incapacity of a grantor due to mental incompetence (see "Elements of a Deed," later
20 in this unit). The title insurance company will defend a lawsuit based on an insurable
21 defect, and it will pay claims up to the face amount of the policy if the title proves to be
22 defective. Policies do not cover exceptions (exclusions) listed in the policy, such as an
23 unrecorded easement or a lien arising after the policy was issued.

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24 Some buyers pay for the added protection of a municipal lien search. A municipal lien
25 search is conducted to determine whether there are unrecorded special assessment liens,
26 unrecorded liens existing by virtue of local ordinances, and unpaid waste fees payable to
27 the county or municipality. A municipal lien search allows the title company to remove
28 a standard exception in title insurance policies for special assessments, service changes,
29 and waste fees.

30 There are two types of title insurance (see Figure 9.3):

- 31 1. **Owner's policy** is issued for the total purchase price of the property. It helps to
32 protect the new owner (or the owner's heirs) against unexpected risks such as
33 forged deed signatures and damages for any defect in the title (unless listed as an
34 exception in the policy). A one-time premium is paid when the policy is issued.
35 The policy is not transferable to another owner.
- 36 2. **Lender's policy** is issued for the unpaid mortgage amount. The lender policy
37 (or *mortgagee policy*) protects the lender against title defects. Unlike the owner's
38 title insurance, the lender's title insurance is transferable. If the mortgage lender
39 sells the mortgage to another investor, the title insurance is *assignable* to the new
40 lender. The lender policy will protect the new owner of the mortgage up to the
41 unpaid balance of the mortgage loan. Most lenders require lender's title insur-
42 ance as a condition of issuing a mortgage loan.

FIGURE 9.3 ■ Title Insurance Comparison

Owner Policy	Lender (Mortgagee) Policy
Issued for purchase price	Issued for loan amount
Claim will pay up to the purchase price	Claim will pay up to current loan balance
Benefits owner and owner's heirs	Benefits mortgage lender
Not transferable	Transferable (assignable)
Local custom determines who pays this closing expense	Buyer typically pays this closing expense
One-time premium	One-time premium

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1 Florida uses a standardized title insurance policy called the American Land Title
2 Association (ALTA) form. ALTA provides a detailed explanation of the closing process,
3 owner's title insurance, and lender's title insurance at <http://www.homeclosing101.org>.

4 **Giving Opinions to Title.** Brokers must handle statements regarding title to property with
5 extreme caution. Real estate licensees are not qualified to render an opinion of title.
6 Licensees must advise the buyer to either contact an attorney or a title insurance company
7 to determine the condition of the seller's title. Florida law requires that when questions
8 of title arise, licensees first must obtain a current opinion from an attorney before offering
9 an opinion that title to a property is good or marketable. Real estate licensees are further
10 required to advise prospective buyers to have their attorneys examine the abstract or to
11 obtain a title insurance policy. In the event a licensee knows that the title to a property
12 is not marketable or that liens exist, the licensee is required to inform prospective buyers
13 of all such conditions.

Practice Questions

11. List the two types of title insurance policies.
 1. _____
 2. _____
12. An attorney's opinion of title is prepared after studying the _____ of _____.
13. The owner's policy is issued for the total _____.
14. Florida law does _____ require title insurance.
15. Real estate licensees must advise buyers to contact either an _____ or a _____ company to determine the condition of the seller's title.

9.4 DEEDS

15 A **deed** is a written instrument that conveys legal title to real property. It is an instru-
16 ment of conveyance whereby legal ownership to real property is transferred from one party
17 to another. The two parties to a deed are the **grantor** (owner giving title) and the **grantee**
18 (new owner receiving title). Title passes at the time of voluntary delivery and acceptance—
19 when the grantor delivers a valid deed that is accepted by the grantee.

T O R E M E M B E R :

Important facts concerning the grantor include the following:

- The grantor must be *competent* (of sound mind and legal age).
- The grantor must sign the deed (if the property is homesteaded, the grantor's spouse must also sign the deed).
- Two witnesses must sign to attest that the grantor signed the deed.

Important facts concerning the grantee include the following:

- The grantee *does not have to be competent*.
- The grantee's name must be indicated on the deed.
- The grantee *does not sign* the deed (there is no signature line for the grantee).

1 Parts of a Deed Instrument

2 A deed must be in writing, and certain elements must be present in a deed to spell
3 out clearly the necessary intent and the property to which it applies. The following items
4 refer to the example of a general warranty deed (see Figure 9.4). The general warranty
5 deed contains the most comprehensive collection of clauses. Other types of deeds will not
6 include some of the clauses that are discussed as follows.

7 **Premises.** The premises section of the deed names the parties to the deed (grantor and
8 grantee), marital status of the parties, address of the grantor and grantee, and the date of
9 the deed. The date should be the date of execution by the grantor (see ①, Figure 9.4).

10 **Consideration.** The premises section of the deed also states the consideration that is
11 given. Consideration is anything of value being given in exchange for title. The entire
12 amount of the consideration need not be indicated. The wording “ten dollars and other
13 good and valuable consideration” is common (see ②, Figure 9.4).

14 **Granting Clause.** The **granting clause** (also called words of conveyance) states the
15 grantor's intention to transfer title to the grantee. Every deed must include a granting
16 clause. The necessary words used to convey the property are *grants*, *bargains*, and *sells* or
17 similar words (see ③, Figure 9.4).

18 **Legal Description.** A legal description of the property must be included in a deed to
19 clearly identify the property being conveyed. A street address is insufficient because it
20 may change over time and does not identify the exact boundaries of the property (see ④,
21 Figure 9.4).

22 **Appurtenances.** An **appurtenance** is a right or privilege associated with the property.
23 Typical appurtenances include parking spaces in multiunit buildings, easements, water
24 rights, and other improvements. An appurtenance is connected to the property, and own-
25 ership of the appurtenance transfers to the grantee along with ownership of the property
26 (see ⑤, Figure 9.4).

FIGURE 9.4 ■ Example of a Warranty Deed

Prepared by and return to:

Real Estate Law
Attorney at Law
Central Florida, P.A.
21 Center World Drive
Orlando, FL 32801
407-000-3333
File Number:

[Space Above This Line For Recording Data]

Warranty Deed

This Warranty Deed made this ___ day of _____, 20__ between _____ whose post office address is _____, grantor, and _____ whose post office address is _____, grantee: ①

(Whenever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees)

Witnesseth, that said grantor, for and in consideration of the sum of _____ ② (\$____,000.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in _____ County, Florida to-wit: ③

Lot ___ as recorded in Plat Book ___, Page ___, Public Records of ___ County, Florida.

Parcel Identification Number: _____ ④

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining. ⑤

To Have and to Hold, the same in fee simple forever. ⑥

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; ⑧ and that said land is free of all encumbrances, except taxes accruing subsequent to **December 31, 20__**. ⑨

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Grantor

Witness Name: _____

Witness Name: _____

State of Florida
County of _____

The foregoing instrument was acknowledged before me this ___ day of ___, 20__ by _____. He/she [] is personally known to me or [] has produced a driver's license as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

1 **Habendum Clause.** The habendum clause defines the bundle of legal rights being con-
 2 veyed to the grantee. The clause starts with the words *to have and to hold*. Then, the word
 3 *forever* usually follows if the estate is fee simple, or the words *for the life of the grantee* if it
 4 is a life estate (see ⑥, Figure 9.4).

5 **Covenant of Seisin.** The covenant of **seisin** (also called **seizin**) is a promise that the
 6 grantor owns the property and has the right to convey the property to the grantee (see ⑦,
 7 Figure 9.4).

8 **Signature Lines.** The deed must be signed by a competent (of sound mind and legal
 9 age) grantor and witnessed by two people. The grantee does not have to be competent to
 10 receive title to property. The grantee does not sign the deed (see ⑩, Figure 9.4).

11 Requirements of a Valid Deed

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12 A deed containing all the requirements of state law is said to be valid. A valid deed
 13 will be recognized by the courts. In Florida, for a deed to be valid, the following elements
 14 are required:

- 15 ■ In writing (statute of frauds)
- 16 ■ Names of the grantor and the grantee
- 17 ■ Grantor must be of legal capacity (competent and of legal age)
- 18 ■ Consideration must be described
- 19 ■ Granting clause (words of conveyance)
- 20 ■ Legal description
- 21 ■ Signed by the grantor and two witnesses (deeds do not have to be acknowledged,
 22 notarized, or recorded to be valid in Florida, but if the grantee wants to give
 23 constructive notice of ownership, the deed must be notarized before it can be
 24 recorded in public records)
- 25 ■ Voluntary delivery and voluntary acceptance of the deed

Practice Questions

16. Transfer of riparian rights or easements to the grantee are examples of _____.
17. The deed must be signed by a _____ and _____.
18. The words “to have and to hold for the life of the grantee” are found in the _____ clause and indicate that a _____ estate is being conveyed to the grantee.
19. Title to real property is transferred from the grantor to the grantee when the deed is voluntarily _____ and _____.

26 9.5 TYPES OF STATUTORY DEEDS

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27 A *statutory deed* is a deed whose format is defined by state law. Florida law provides for
 28 a short form of deed in which the covenants or warranties mentioned are implied to exist
 29 just as though they were written out in complete and detailed form. There are four types of
 30 statutory deeds: (1) quitclaim deed, (2) bargain and sale deed, (3) special warranty deed,
 31 and (4) general warranty deed.

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1 **Quitclaim Deed.** A **quitclaim deed** provides the least protection to the grantee. A quit-
2 claim deed contains a premises section with a granting clause that conveys what interest
3 (if any) the grantor may have when the deed is delivered. The grantor makes no warran-
4 ties about the quality or extent of the title being conveyed. Quitclaim deeds are used to
5 clear existing or potential *clouds* on the title. To clear the title of possible trouble spots and
6 defects, the grantor releases any claim or interest in the property. Words of conveyance
7 used in a quitclaim deed are *remise*, *release*, and *quitclaim*.

2

8 **Bargain and Sale Deed.** A **bargain and sale deed** is similar to a quitclaim deed because
9 the grantor makes no warranties about the quality or extent of the title being conveyed.
10 Unlike the quitclaim deed, the bargain and sale deed contains a *seisin* clause indicating the
11 grantor has title to the property; however, the grantor makes no express warranty against
12 encumbrances. The granting clause in a bargain and sale deed uses the words *grants*, *bar-*
13 *gains*, and *sells*. The bargain and sale deed is most often the deed that is transferred from a
14 foreclosure or tax sale. In such cases, the grantor is a bank or tax authority, and therefore
15 would not necessarily know of any encumbrances that may have been attached to the land
16 by the previous owner. A bargain and sale deed is used when the grantor does not want
17 to guarantee against any encumbrances. The bargain and sale deed includes a **habendum**
18 **clause** (ownership interest) that declares the bundle of legal rights (estate) the grantor is
19 transferring (see Figure 9.5).

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20 **Special Warranty Deed.** A **special warranty deed** is similar to the bargain and sale deed
21 because it contains a *seisin* clause indicating the grantor has title to the property. Like the
22 bargain and sale deed, the special warranty deed uses the words *grants*, *bargains*, and *sells*.
23 An important distinction between a bargain and sale deed and a special warranty deed is
24 that the grantor in a special warranty deed guarantees the title against title defects arising
25 during the period of the grantor's ownership of the property, but not against defects exist-
26 ing before that time. Like the bargain and sale deed, the special warranty deed includes a
27 habendum clause (see Figure 9.5).

27

28 **General Warranty Deed.** The **general warranty deed** (or sometimes *warranty deed*) pro-
29 vides the greatest protection to the buyer because the general warranty deed contains all
30 the covenants and warranties available to give the grantee every possible future guarantee
31 to title protection. The general warranty deed is the most commonly used deed in Florida.
32 If a real estate sale contract does not specify the type of deed to be delivered, a general
33 warranty deed must be used. In addition to the granting clause and the habendum clause,
34 the general warranty deed contains the following covenants:

- 35 ■ **Covenant of seisin.** The covenant of seisin (also *seizin*) is included in three of four
36 types of statutory deeds; the covenant of seisin is not included in the quitclaim
37 deed (see ⑦, Figure 9.4 and Figure 9.5).
- 38 ■ **Covenant against encumbrances.** The grantor warrants that the property is free
39 from liens or other encumbrances, except as noted in the deed. This clause gives
40 the grantee notice of all encumbrances (liens, restrictions, and so forth) associ-
41 ated with the property (see ⑨, Figure 9.4).
- 42 ■ **Covenant of further assurance.** The grantor promises to sign and deliver any
43 legal instrument in the future that might be required to make the title good.
- 44 ■ **Covenant of quiet enjoyment.** The grantor guarantees peaceful possession undis-
45 turbed by hostile claims of title.
- 46 ■ **Covenant of warranty forever.** The grantor guarantees to forever warrant and defend
47 the grantee's title against all lawful claims (see ⑧, Figure 9.4 and Figure 9.5).

FIGURE 9.5 ■ Covenants in Four Types of Statutory Deeds

	Quitclaim Deed	Bargain and Sale Deed	Special Warranty Deed	General Warranty Deed
Features:	Grantor does not claim to hold title	Grantor does not promise to defend title	Grantor will only defend title during grantor's ownership	Grantor will defend title forever
Covenants/clauses:				
Granting	✓	✓	✓	✓
Habendum		✓	✓	✓
Seisin (seizin)		✓	✓	✓
Quiet enjoyment				✓
Further assurance				✓
Warranty forever				✓

1 Special Purpose Deeds

2 Legal problems may be encountered when property is being conveyed from one owner
3 to another. Several types of deeds have evolved to provide solutions for these and other
4 situations in which an owner cannot or refuses to sign a deed.

- 5 ■ *Personal representative's deed.* A personal representative is an individual either
6 appointed by will or by order of a court to settle the estate of a deceased person.
7 The testator typically identifies a trusted person to serve as personal representa-
8 tive who will be charged with carrying out the provisions of the will under the
9 direction of the court in which the will was probated. If an owner should die
10 without leaving a will, the probate court having jurisdiction will appoint a per-
11 sonal representative to settle the decedent's affairs. A personal representative's
12 deed is used to formalize and record the transfer of title. It should show the full
13 consideration paid for the property and contain a covenant of no encumbrances.
- 14 ■ *Guardian's deed.* A guardian acts on behalf of a minor (or other ward) and is also
15 a fiduciary. Normally, the permission of a court is required for a guardian to sell
16 or convey property belonging to the minor. When authorized by the courts, a
17 guardian's deed legally conveys the minor's property.
- 18 ■ *Committee's deed.* One of the essentials of a valid deed is a competent grantor.
19 When an owner is declared legally incompetent or is committed to an institu-
20 tion, a committee is often appointed by the court to administer the affairs of
21 the incompetent. The committee functions under the direction of the court if
22 conveying or disposing of the incompetent's estate. All members of a commit-
23 tee must sign the deed. A committee also must adhere to fiduciary disclosure
24 requirements.
- 25 ■ *Tax deed.* The instrument used to convey title to property sold for nonpayment
26 of taxes. No covenants are given, and the buyer assumes all risks for title defects.
27 Extreme caution should be taken when purchasing property at a tax sale.

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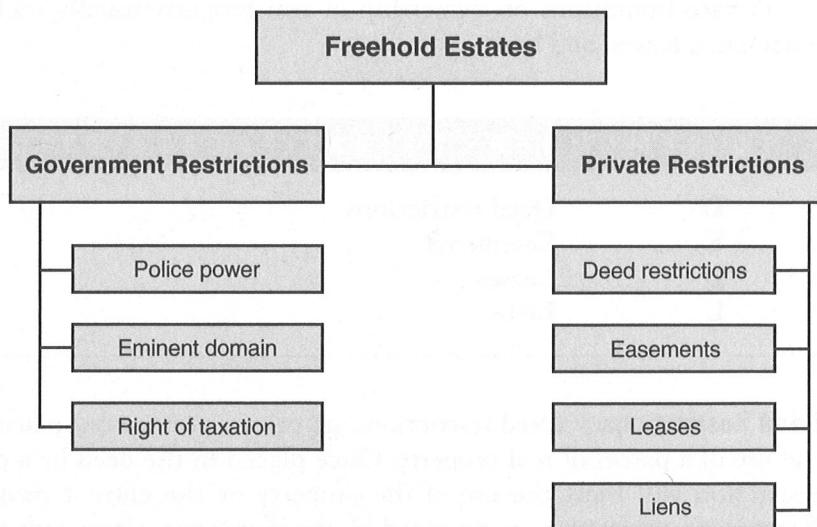
Practice Questions

20. List the five covenants contained in a general warranty deed.
1. Covenant _____
 2. Covenant _____
 3. Covenant _____
 4. Covenant _____
 5. Covenant _____
21. The deed that provides the greatest protection to the grantee is the _____ deed.
22. The covenant in a general warranty deed guaranteeing that the grantee is receiving title free from hostile claims against the title is the covenant of _____.

9.6 OWNERSHIP LIMITATIONS AND RESTRICTIONS

The two general categories of restrictions are government restrictions and private restrictions. Both have several subcategories of restrictions and limitations (see Figure 9.6).

FIGURE 9.6 ■ Ownership Restrictions



Government Restrictions on Ownership

The three most important subcategories of governmental limitations on ownership of real property are (1) police power, (2) eminent domain, and (3) taxation.

T O R E M E M B E R : G O V E R N M E N T R E S T R I C T I O N S

P	Police power
E	Eminent domain
T	Taxation

1 **Police Power.** The U.S. and state constitutions provide for the government to apply
 2 restrictions deemed necessary in the interest of the general health, welfare, or safety of its
 3 citizens. Under police power, the use of real property may be regulated. From these pow-
 4 ers come the many ordinances and regulations governing zoning, building codes, health
 5 standards, city planning, and rent controls. **Police power** represents the broadest power of
 6 the government to limit or regulate the rights of property owners.

7 **Eminent Domain.** Eminent domain is also called a *taking for just compensation*. The con-
 8 stitutions of the U.S. government and state governments grant the power (right) to take
 9 private property for a public use (see “Transfer by Involuntary Alienation,” earlier in this
 10 unit).

11 **Property Taxation.** This power was specifically limited to the various states by the U.S.
 12 Constitution. Citizens pay for the benefits and protection provided by the various levels of
 13 government. Property is usually the primary basis for local taxation. Local taxing authori-
 14 ties can foreclose on real property for nonpayment of taxes.

15 **Private Restrictions on Ownership**

16 Private limitations on ownership of real property usually include deed restrictions,
 17 easements, leases, and liens.

T O R E M E M B E R : P R I V A T E R E S T R I C T I O N S

D	Deed restrictions
E	Easements
L	Leases
L	Liens

18 **Deed Restrictions.** Deed restrictions are private restrictions placed in a deed that affect
 19 the use of a parcel of real property. Once placed in the deed by a previous owner, a deed
 20 restriction will limit the use of the property by the current owner and future owners.
 21 **Restrictive covenants** are recorded by the developer, along with the subdivision plat to
 22 maintain specific standards in the subdivision, such as requiring certain architectural
 23 or design specifications. Any restriction that does not discriminate against race, color,
 24 religion, sex, national origin, families with children, disability, or public policy may be
 25 included in a deed or in the restrictive covenants.



RESTRICTIVE COVENANTS AND DEED RESTRICTIONS

The terms *restrictive covenants* and *deed restrictions* are sometimes used interchangeably. However, deed restrictions refer to a single parcel of land, whereas restrictive covenants concern entire subdivisions.

Restrictive covenants impose limitations on the use of land in an entire subdivision. Examples of restrictive covenants that may affect a particular subdivision control such things as the minimum allowable square footage, whether the garage doors may face the street, or whether recreational vehicles and boats may be parked within view of the street.

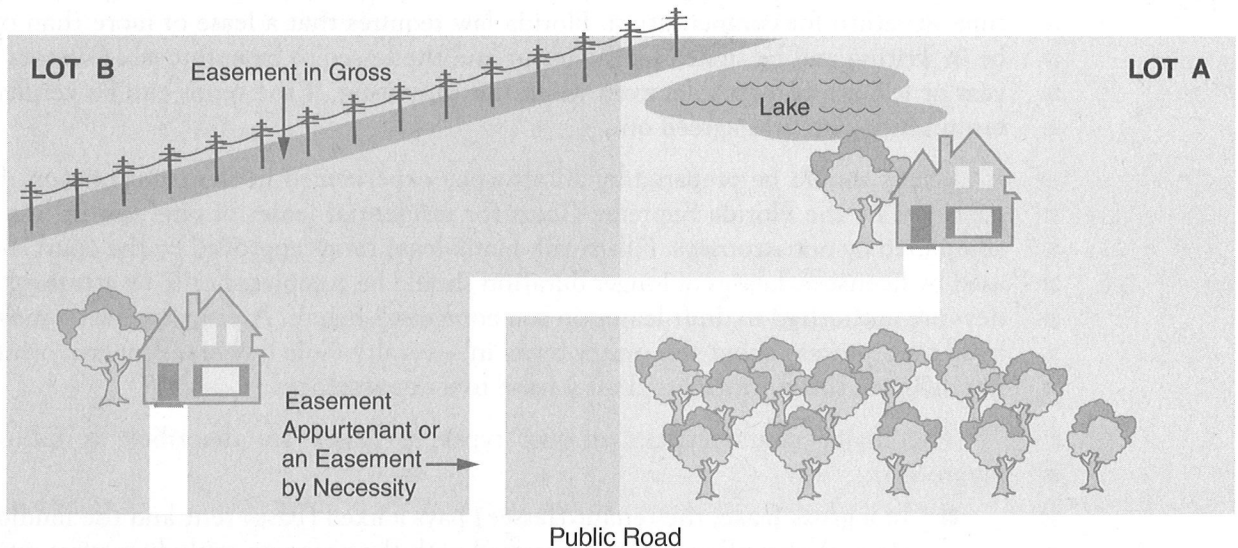
Deed restrictions are placed by an owner who has created a restriction on future owners of the parcel of real estate. A deed restriction, for example, may prevent future landowners from selling alcoholic beverages on the site.

1 **Easements.** An **easement** is a right to use the land of another for a specific and limited
 2 purpose. Easements do not convey ownership (possession). Most commonly, an easement
 3 entails the right of a person (or the public) to use the land of another in a certain manner,
 4 such as utility easements, railroad rights-of-way, and ingress-egress easements.

5 An **easement appurtenant** involves two or more parcels of property and continues
 6 from owner to owner (the easement transfers with the title). An easement appurtenant
 7 allows an owner the use of an adjacent property.

8 **EXAMPLE:** The owner of a parcel of land subdivides the parcel into lots A and B
 9 (see Figure 9.7). The owner of lots A and B sells A and transfers with the title to A an
 10 easement appurtenant to cross B.

FIGURE 9.7 ■ Easement Appurtenant and Easement in Gross



The owner of Lot A has the right to cross Lot B to access his property on Lot A. The right to the easement was granted by the owner of Lot B and created an easement appurtenant. If the property owner of Lot A had been given no such access and the home on Lot A was landlocked, the court would grant the owner of Lot A an easement by necessity. The utility company has an easement in gross across Lots A and B for its power lines.

11 An **easement in gross** does not benefit another specific parcel of land; the easement
 12 benefits the company that owns it.

1 **EXAMPLE:** There is a right-of-way utility easement across lots A and B in Figure
 2 9.7 for power lines. The easement allows the utility company to access the land, trim
 3 trees, and so forth to maintain utility equipment. The easement in gross does not create a
 4 benefit to A over B or vice versa.

5 An **easement by prescription** is acquired by continually using another person's real
 6 property for the statutory period when such use is adverse to the owner's interest. The
 7 easement is created after 20 years of open, continuous, uninterrupted use. (Note the simi-
 8 larity to adverse possession; however, the adverse user in an easement by prescription
 9 acquires only an easement and not title.)

10 With an **easement by necessity**, if a landowner subdivides land, conveying part of it in
 11 a way that causes a parcel to be landlocked, the court may authorize creation of an ease-
 12 ment by necessity to allow property owners to enter and exit their landlocked property.

13 **EXAMPLE:** The property owner of Lot A in Figure 9.7 has by court order been
 14 granted an easement by necessity to cross Lot B so that the property owner can reach his
 15 landlocked home. The property owner of A has been given the right of ingress (enter) and
 16 egress (exit). It is an easement by necessity rather than merely for convenience.

17 Unlike an easement, an **encroachment** is the unauthorized use of another's property.
 18 A fence or a garage located beyond a legitimate boundary without the owner's consent is
 19 an infringement or intrusion on property. An encroachment that has continued for more
 20 than seven years may create an *implied easement*. If encroachments are not known and
 21 a contract for sale is created before a survey reveals that one exists, the title might be
 22 unmarketable and the contract might be voidable.

23 **Leases**

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24 A *lease* is an agreement between the landlord (lessor) and a renter (lessee) that grants
 25 the lessee the right of possession and use of the property (not ownership) for a specified
 26 time in return for compensation. Florida law requires that a lease of more than one year
 27 be in writing and be signed by the lessor and the lessee to be enforceable. Leases for one
 28 year or less are enforceable, even when not in writing, if the terms can be verified and a
 29 termination date was agreed on.

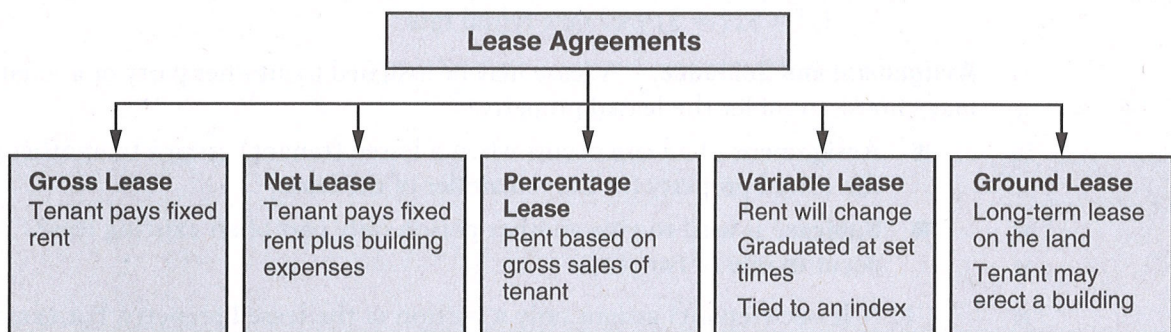
30 Leases should be prepared by an attorney experienced in their preparation. Formats
 31 approved by the Florida Supreme Court for residential leases of one year or less may be
 32 completed by nonattorneys. Fill-in-the-blank lease forms approved by the court should be
 33 used by licensees. Leases of longer duration should be completed only by attorneys. Attor-
 34 neys are authorized to draft leases on someone else's behalf. A property owner may draft a
 35 lease for a property that the owner owns in severalty (sole owner). Property owners may
 36 not delegate the authority to draft a lease to a nonattorney.

37 The major characteristics of five types of leases are described as follows (see
 38 Figure 9.8):

- 39 ■ In a **gross lease**, the tenant (lessee) pays a fixed (base) rent and the landlord
 40 (lessor) pays all expenses associated with the property, including taxes, utilities,
 41 insurance, and repairs. However, it is not uncommon for the tenant to pay unit-
 42 related utility costs. Most residential and office building leases are gross leases
 43 (also called *straight leases* or *flat leases*).
- 44 ■ In a **net lease**, the tenant (lessee) pays fixed rent plus property costs such as
 45 maintenance and operating expenses (taxes, insurance, and utilities). Net leases
 46 are typically used on commercial property. The terms *net*, *net-net*, and *triple-net*
 47 are often used in commercial real estate. The number of "nets" indicates that

- 1 the tenant is assuming more and more of the expenses. In a triple-net lease, the
 2 tenant pays all operating and other expenses in addition to the fixed rent. These
 3 expenses include taxes, insurance, assessments, maintenance, utilities, and other
 4 charges associated with the property.
- 5 ■ In a **percentage lease**, the tenant pays rent based on gross sales received by doing
 6 business on the leased property. Percentage leases are common with large retail
 7 stores, especially in shopping centers. A percentage lease can be either net or gross.
 - 8 ■ In a **variable lease**, the tenant pays specified rent increases at set future dates. A
 9 variable lease is usually tied to an index, such as the consumer price index (CPI).
 - 10 ■ In a **ground lease**, the tenant leases the land only and erects a building on the
 11 land. These leases are commonly used by government, commercial, or agricul-
 12 tural entities. Ground leases (or *land leases*) are long-term leases that will run
 13 for terms up to 99 years. Ground leases are characterized by separate ownership
 14 of the land and building(s). A land lease generally stipulates that the property
 15 owner will own the improvements and developments at the end of the lease
 16 unless otherwise specified.

FIGURE 9.8 ■ Types of Lease Agreements



17 These five types of leases are not mutually exclusive. A triple-net lease, for example,
 18 can have its base rent increases tied to an index (a variable lease) and also require the
 19 tenant to pay a percentage of gross sales.

20 **Calculating the Rent Owed for a Percentage Lease.** Typically, percentage leases involve
 21 a base or minimum monthly rent plus a percentage of the gross sales in excess of an
 22 amount specified in the lease.

93

Formula: Percentage Lease

total gross sales – excess sales = sales subject to additional rent

sales subject to additional rent × percentage (%) charged = additional annual rent

additional annual rent + annual base rent = total annual rent

23 For example, assume that a lease calls for monthly minimum rent of \$1,000 plus 3% of
 24 annual gross sales in excess of \$325,000. What is the annual rent for the year if the annual
 25 gross sales were \$450,700?

26 *Step 1.* Begin by determining how much of the gross sales are subject to the 3% charge.
 27 \$450,700 total gross sales – \$325,000 = \$125,700 subject to 3%

28 *Step 2.* Multiply the amount subject to the 3% charge.
 29 \$125,700 × .03 = \$3,771 additional annual rent

1 Step 3. Add the additional annual rent to the base rent to determine total annual rent
2 due.

3 $\$1,000 \times 12 \text{ months} = \$12,000 \text{ annual base rent}$

4 $\$12,000 \text{ annual base rent} + \$3,771 \text{ additional rent} = \$15,771 \text{ total rent}$

5 **Calculating Rent Owed for a Variable Lease.** A variable lease features rent that changes
6 at set times as specified in the lease agreement. A variable lease (or sometimes index lease)
7 provides for adjustments of rent according to changes in a price index.

Formula: Variable (Index) Lease

$$\frac{\text{new index}}{\text{original index}} \times \text{original rental rate} = \text{new rental rate}$$

8 For example, assume that a building rents for \$12 per square foot with an index of 1.5.
9 The index increases to 1.8. What is the adjusted rental rate?

10 Step 1. Divide the new index by the original index.

11 $1.8 \div 1.5 = 1.2$

12 Step 2. Multiply the number from step one by the original rental rate.

13 $1.2 \times \$12 = \$14.40 \text{ new rental rate}$

14 **Assignment and Sublease.** A lease may be assigned to another party or a tenant (lessee)
15 may choose to sublet the leased property.

16 ■ **Assignment** of a lease occurs when a lessee (tenant) assigns to another person all
17 the leased property for the remainder of the lease.

18 ■ **Sublease** is used to give another person only part of an existing lease. This can
19 occur in one of two ways:

20 1. A lessee (tenant) assigns only a portion of the leased property. For example, a
21 college student who rents a three-bedroom home might sublet one of the bed-
22 rooms to another student.

23 2. A lessee (tenant) assigns all the property for a period that is less than the
24 remaining term of the lease (such as for the summer only). Subleasing is also
25 called *subrogation* and *subordination* of space. The original tenant remains obli-
26 gated for the lease terms.

27 Liens

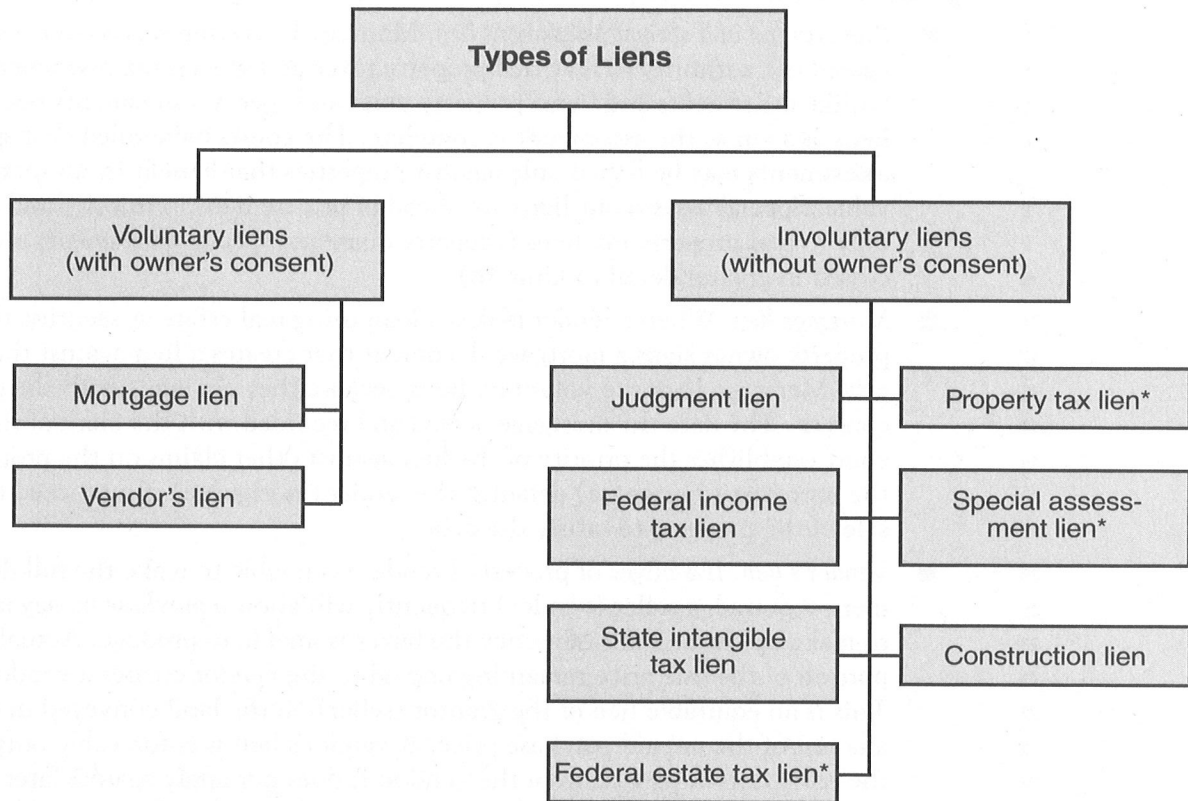
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28 A **lien** is a claim to have a debt or other obligation satisfied out of property belonging
29 to another. Common examples are mortgage liens, construction liens, property tax liens,
30 and judgment liens. Liens can entitle the holder (lienor) to have property sold, regardless
31 of the desires of the owner (lienee).

32 Liens are usually recorded with the clerk of the circuit court in the county where the
33 property is located. A lien is an encumbrance on the title to real property. However, not
34 all encumbrances on property are liens. Encumbrances can also be easements, covenants,
35 deed restrictions, encroachments, and governmental regulations.

36 Liens can be voluntary or involuntary (see Figure 9.9). *Voluntary liens* are ones the
37 owner places against the property to secure payment of a long-term debt, such as a mort-
38 gage lien. *Involuntary liens* are created by law to protect interests of persons who have valid
39 monetary claims against the owner of real property.

FIGURE 9.9 ■ Liens



*Superior lien (ahead of other liens)

1 General and Specific Liens

2 Liens are divided into two major classifications: general liens and specific liens.

3 **General Liens.** A **general lien** is not restricted to one property but may affect all prop-
 4 erties of a debtor. A general lien attaches to all of the lienee's (debtor's) real property
 5 located in the county where the lien is recorded. General liens include judgment liens,
 6 income tax liens, and estate tax liens.

7 ■ *Judgment lien.* A judgment lien is an involuntary lien attaching to real property
 8 when a judgment is obtained against the owner. A judgment lien is a general lien
 9 on all property of the debtor (unless specifically exempt by law) in the county
 10 where the judgment was recorded into the public records. In Florida, a judgment
 11 lien remains a lien on real property until it has been paid or expires by passage of
 12 time.

13 ■ *Income tax (IRS) lien.* Florida does not have a state income tax. However, failure
 14 to pay federal income taxes can result in a lien on property of the delinquent
 15 taxpayer. A federal tax lien, once filed, becomes a lien on all property owned by
 16 the taxpayer at the time of filing as well as on all future property acquired by the
 17 taxpayer until the lien is satisfied.

18 ■ *Estate tax lien.* Estate tax is a federal tax on a deceased person's taxable assets.
 19 Estate taxes are levied on the total value of a deceased person's money and prop-
 20 erty and are paid out of the decedent's assets before any distribution to beneficia-
 21 ries. Estate tax liens are general liens because they attach to all the decedent's
 22 property. However, only the wealthiest estates pay federal estate tax.

1 **Specific Liens.** Liens classified as specific do not affect all of the debtor's property, apply-
 2 ing only to certain specified property. **Specific liens** include the following:

- 3 ■ *Property tax and special assessment lien.* Municipal governments have been del-
 4 egated the authority to levy real property taxes and special tax assessments.
 5 Unlike other debts and liens, property taxes and special assessments become
 6 liens as soon as the assessment is complete. The courts have ruled that special
 7 assessments may be levied only against properties that benefit by an increase in
 8 value. Special assessment liens are ahead of private liens in priority and second
 9 only to real property tax liens (property taxes and special assessments are dis-
 10 cussed in greater detail in Unit 18).
- 11 ■ *Mortgage lien.* When a lender makes a loan using real estate as security, the
 12 property owner signs a mortgage document that creates a lien against the prop-
 13 erty. Mortgage liens are voluntary liens because they are made with the owner's
 14 consent. The date the mortgage is filed and recorded with the clerk of the circuit
 15 court establishes the priority of the lien against other claims on the property. If
 16 the borrower (mortgagor) defaults, the lender (mortgagee) can proceed to force
 17 sale of the property to satisfy the debt.
- 18 ■ *Vendor's lien.* If a buyer of property (vendee) is unable to make the full down pay-
 19 ment required, a seller (vendor) frequently will allow a *purchase money mortgage*
 20 to make up the amount of money the buyer is unable to produce. Actually, any
 21 portion of the sale price remaining unpaid to the vendor creates a vendor's lien.
 22 This is an equitable lien of the grantor (seller) on the land conveyed in the
 23 amount of the unpaid purchase price. A vendor's lien is enforceable only against
 24 the party obtaining title from the vendor. It does not apply against later purchas-
 25 ers unless a written mortgage has been executed and placed in the public records.
 26 A valid vendor's lien is enforceable by foreclosure. Priority is established by the
 27 recording date of the purchase-money mortgage.
- 28 ■ *Construction lien.* This lien is based on the principle of law called *unjust enrich-*
 29 *ment.* Unjust enrichment means that property owners may not use the labor or
 30 material of another party to add value to their property without reimbursement
 31 to that party. A **construction lien** (or *mechanic's, materialman's, or laborer's lien*)
 32 is a statutory right of material suppliers or laborers to place a lien on property
 33 that has been improved by their supplies and/or labor. This lien must be filed
 34 with the clerk of the circuit court no later than 90 days after the last supplies are
 35 delivered or the last labor is performed in order to assume priority over any mort-
 36 gage liens created after the first material/work appeared on the property affected.
 37 This, in effect, allows a construction lien filed after work is completed to become
 38 retroactive to the first delivery of material or first day of work. If a mortgage is
 39 placed on the property during the period when construction is in progress, a lien
 40 filed after construction is completed will precede the mortgage in priority. Once
 41 filed, a construction lien is effective for one year. The party who places the lien
 42 on the property must initiate court action to collect the debt during the lien's
 43 one-year life or forfeit the privilege. This lien may be discharged or canceled by
 44 expiration of time, payment of the debt, or court action through a suit.

45 Lien Priority

46 When there are two or more liens on a property, the *priority* of the liens determines
 47 the order in which the liens will be satisfied (paid off) if the property must be sold. Lien
 48 priority is important because the lienor (creditor) receives no compensation until all liens

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1 senior to the lienor's lien have been fully satisfied. Once a lien has been satisfied, a *release*
2 or *satisfaction* of lien should be recorded to remove the lien.

3 **Superior Liens.** Superior liens take priority over all other liens. They are automatically
4 superior to any other lien. Three superior liens are as follows:

- 5 1. Real estate (property) tax liens, which become a lien January 1 each year
- 6 2. Special assessment liens
- 7 3. Federal estate tax lien (at time of death)

8 **Junior Liens.** The priority of junior liens is based on the date of recording in the public
9 records. The priority of most liens is the date and time that the lien was recorded in the
10 public records. Four important junior liens are the following:

- 11 1. Mortgage liens
- 12 2. Judgment liens
- 13 3. Vendor's liens
- 14 4. Income tax (IRS) liens

15 **Construction Liens.** Construction liens (also called **mechanics' liens**) are an exception
16 to the priority rule regarding the recording date. A construction lien's priority in a fore-
17 closure sale is retroactive to the date the work was first performed or materials were first
18 delivered to the property.

19 **Subordination Agreement.** The priority of liens may be changed by a written agreement
20 called a subordination agreement. Under a **subordination agreement**, the holder of a prior
21 lien (lien with an earlier recording date) agrees to allow a junior lienholder's interest to
22 move ahead of the prior lien.

Practice Questions

23. List three government restrictions on ownership.

1. _____
2. _____
3. _____

24. List four types of private restrictions.

1. _____
2. _____
3. _____
4. _____

25. List three general liens.

1. _____
2. _____
3. _____

26. An easement that attaches to the land and transfers from one owner to the next is
an easement _____.

27. An easement that does not benefit a specific property, such as easements for railroads, utility companies, and so forth, are easements _____.
28. A wooden fence that extends one foot into the neighbor's side yard is an _____.
29. A _____ lease agreement stipulates that the lessee will pay fixed rent plus certain expenses, such as the utilities.
30. Lien priority can be changed to allow a lien to move ahead in priority over a prior lien using a _____ agreement.
31. A lease calls for a minimum rent of \$2,800 per month plus 4% of annual gross sales in excess of \$500,000. What is the annual rent if the annual gross sales were \$725,500?
32. A tenant's lease requires a payment of \$2,000 per month. The lease provides for an adjustment based on an index of 1.25. The index increases to 1.6. What is the new rent payment?

1 9.7 SUMMARY OF IMPORTANT POINTS

- 2 ■ *Alienation* is the act of transferring ownership, title, or an interest in real prop-
- 3 erty from one person to another. Alienation may be voluntary (with the owner's
- 4 control and consent) or involuntary (without control and consent).
- 5 ■ Voluntary alienation is accomplished using a deed or a will. Involuntary alien-
- 6 ation occurs (1) when a person dies intestate (without leaving a will) and the
- 7 property descends to the decedent's heirs, (2) when property transfers to the
- 8 state through escheat because the owner died intestate and had no known heirs,
- 9 (3) by adverse possession when the true owner fails to maintain possession and
- 10 the property is seized by another, and (4) by eminent domain through a condem-
- 11 nation proceeding.
- 12 ■ *Actual notice* is direct knowledge acquired during a transaction; whereas, con-
- 13 structive notice is recording the information in the public record.
- 14 ■ A *chain of title* is the complete successive record of a property's ownership. An
- 15 abstract of title is a summary report of what exists in the public record.
- 16 ■ The two types of title insurance are (1) owner policy, which is not transferrable
- 17 and protects for the purchase price of the property and (2) lender (mortgagee)
- 18 policy, which is transferable and protects for the balance of the mortgage loan.

- 1 ■ The two parties to a deed are the grantor (owner giving title) and the grantee
2 (new owner receiving title). The deed must be signed by a competent grantor
3 and witnessed by two people. The grantee does not sign the deed.
- 4 ■ The premises section of a deed names the parties to the deed and the date of the
5 deed. The premises section contains the granting clause with the words used to
6 convey the property. The habendum clause indicates the type of estate being
7 conveyed. The seisin clause is a promise that the grantor has the legal right to
8 convey title.
- 9 ■ The four types of statutory deeds are (1) quitclaim, (2) bargain and sale,
10 (3) special warranty, and (4) general warranty. A general warranty deed pro-
11 vides the most comprehensive guarantee and contains three unique covenants:
12 (1) quiet enjoyment, (2) further assurance, and (3) warranty forever.
- 13 ■ Public (government) restrictions on ownership include police power, eminent
14 domain, and taxation. Private restrictions include deed restrictions, easements,
15 leases, and liens.
- 16 ■ The five types of leases are (1) gross lease, (2) net lease, (3) percentage lease,
17 (4) variable lease, and (5) ground lease.
- 18 ■ Assignment occurs when a tenant assigns to another all the leased property for
19 the remainder of the lease. A sublease occurs when a tenant assigns only a por-
20 tion of the leased property or the tenant assigns all the property for a portion of
21 the remaining term of the lease.
- 22 ■ A general lien may affect all properties of a debtor. General liens include the fol-
23 lowing: judgment, income tax (IRS), and estate tax liens. A specific lien affects
24 only a particular property. Specific liens include property tax and special assess-
25 ment, mortgage, vendor, and construction liens.
- 26 ■ Lien priority of junior liens is the date and time a lien was recorded in the public
27 records. However, property tax liens, special assessment liens, and federal estate
28 tax liens are superior liens and take priority over all other liens (including IRS
29 liens), regardless of recording date.

Note to Readers

A real estate broker or sales associate is allowed by Florida statutes to draw listing and sale contracts, but not deeds, unless conveying property in which the licensee owns an interest. In addition, only residential lease forms previously discussed may legally be completed by licensees. The drawing of any other lease or deed, or giving an opinion of title, may be construed as the unlicensed practice of law.

UNIT 9 EXAM

1. Which type of easement gives an electric company the authority to install and maintain electric power lines?
 - a. In gross
 - b. Prescription
 - c. Appurtenant
 - d. Implied
2. The government may take the property of an owner who has died without heirs through a process called
 - a. condemnation.
 - b. probate.
 - c. escheat.
 - d. adverse possession.
3. For a deed to be valid, a competent
 - a. grantor, grantee, and two witnesses must sign the instrument.
 - b. grantor and two witnesses must sign the instrument.
 - c. grantee and two witnesses must sign the instrument.
 - d. grantee only must sign the instrument.
4. The type or form of deed MOST commonly used to clear clouds on the title of real property is the
 - a. general warranty deed.
 - b. special warranty deed.
 - c. bargain and sale deed.
 - d. quitclaim deed.
5. If the sale contract does not specify the type of deed to be delivered, the seller is required to provide a
 - a. general warranty deed.
 - b. special warranty deed.
 - c. bargain and sale deed.
 - d. quitclaim deed.
6. The process of taking property under the power of eminent domain is called
 - a. escheat.
 - b. foreclosure.
 - c. condemnation.
 - d. voluntary alienation.
7. The type of deed in which the grantor does not warrant the title in any manner except against the grantor's acts or the acts of the grantor's representatives is called a
 - a. general warranty deed.
 - b. special warranty deed.
 - c. bargain and sale deed.
 - d. quitclaim deed.
8. The covenant against encumbrances in a deed is designed to guarantee that the
 - a. grantor has not encumbered the property in any manner except as noted on the deed.
 - b. grantee is responsible for any unpaid encumbrances.
 - c. grantee has not encumbered the property.
 - d. grantor will not encumber the property.
9. In answering questions pertaining to quality of title, real estate licensees are
 - a. required to give opinions because of their role as experts.
 - b. required to advise prospective buyers to have a lawyer render an opinion or obtain title insurance.
 - c. allowed to give their opinions because of their role as experts.
 - d. allowed to give their opinions only when specifically asked by the buyer.
10. The seisin clause in a deed specifies
 - a. the type of estate being conveyed.
 - b. the improvements being transferred with the land.
 - c. the rights reserved by the grantor.
 - d. that the grantor actually owns the property and has the right to sell it.
11. The provision in a deed that names the parties and contains the granting clause is the
 - a. premises.
 - b. encumbrance clause.
 - c. habendum clause.
 - d. seisin clause.

12. A developer states that homes in a specified development cannot be less than 1,800 square feet. This is an example of
 - a. police power.
 - b. a deed restriction.
 - c. subdivision restrictive covenants.
 - d. governmental restriction on ownership.
13. An example of an encumbrance on title to real property does NOT include
 - a. an easement.
 - b. a deed restriction.
 - c. a lien.
 - d. a premises clause in the deed.
14. The lender's title insurance policy is issued for
 - a. an amount no greater than the purchase price and is not transferable.
 - b. an amount no greater than the purchase price and is transferable.
 - c. the loan balance and is transferable.
 - d. the loan balance and is not transferable.
15. Which lien is first in priority?
 - a. A property tax lien effective on January 1, 2023
 - b. A special assessment lien certified on December 31, 2022
 - c. A first mortgage lien filed on July 15, 2018
 - d. A construction lien filed on November 30, 2017
16. A business has a five-year variable lease for a suite in an office park. The first year of the lease calls for rent of \$21.50 a square foot based on a beginning index of 189. The index increases to 195 at the beginning of the second year. What is the new rental rate?
 - a. \$22.18
 - b. \$22.58
 - c. \$22.89
 - d. \$23.05
17. A married couple signed a contract to purchase a home in a residential subdivision. When the couple had the lot surveyed before closing, they discovered that the contractor had built the neighbor's garage three inches inside the west boundary of their lot. The garage in its present location is an example of
 - a. a deed restriction.
 - b. an easement by prescription.
 - c. an implied easement.
 - d. an encroachment.
18. When a pathway to a property has been used continuously and without interruption for more than 20 years, it creates an
 - a. implied easement.
 - b. encroachment.
 - c. alienation by adverse possession.
 - d. easement by prescription.
19. Soon after a man's death a deed was discovered in his desk. The deed is for the man's home and it deeded the property to a charitable organization. The man is survived by his son, who discovered the deed. The man died intestate. Based on this information, the house belongs to the
 - a. state because the man died intestate.
 - b. charitable organization because the deed conveyed ownership to it.
 - c. legal heir because the deed was never voluntarily delivered and accepted.
 - d. legal heir because the deed was not signed by the grantee.
20. A retail business rents a space in a mall. The lease calls for a base rent of \$2,000 a month plus 5% of the annual gross sales that exceed \$400,000. If the annual gross sales are \$550,000, what is the total annual rent for the business?
 - a. \$20,600
 - b. \$24,000
 - c. \$27,500
 - d. \$31,500