



SALES ASSOCIATE COURSE

CHAPTER 9

Titles, Deeds and Ownership Restrictions

go

Live Stream Students: WEBCAM POLICY

- To receive credit for this course:
 1. Camera must be ON

AND

 2. Student must be visible to instructor for the ENTIRE time class is in session
- **No Exceptions!**
- This policy also applies to Repeat and Review students.
- Credit for the course will NOT be given if camera policy is not followed.
- No driving around during class, running errands, etc. We can see you!

A young woman with dark hair wearing a black hijab is looking directly at the camera. Her hands are raised, with her index and thumb fingers touching to form a rectangular frame around her face. The background is a soft-focus outdoor scene with green foliage and a blue sky.

Webcam Policy Reminder!



Title to Real Property

- **Title** - ownership enforceable by law
- **Equitable title** – right to gain ownership interest in the future

Actual Notice

- Possession
- Learned by reading, seeing, or hearing

Constructive Notice (legal notice)

- Recorded in the public record
- Lis Pendens - a recorded notice of pending legal action
- Best evidence of ownership



Notice of Ownership



Protecting Title

- **Marketable or Merchantable**
 - Not proof but evidence
 - Root of title
- **Abstract**
 - Chain of title
 - History of title
- **Opinion of Title** (not guarantee)
 - Issued by an attorney
 - After examining an abstract of title
 - Most attorneys do not guarantee it

Title Insurance

- One time premium
 - Pays damages for any defect not listed as an exception in the policy
- **Lender's (Mortgagee's) Policy**
 - Issued for an amount equal to the loan
 - May be transferred to new lender
 - Most lenders require borrower to purchase
- **Owner's (Mortgagor's) Policy**
 - Issued for the total purchase price
 - May not be transferred
- Not required by Florida law





Title Insurance

Lender's (Mortgagee's) Policy

Loan Amount

Protects Lender

May be transferred

Not required by law

Most lenders require
borrower to purchase

Owner's (Mortgagor's) Policy

Total Purchase Price

Protects Owner

May not be transferred

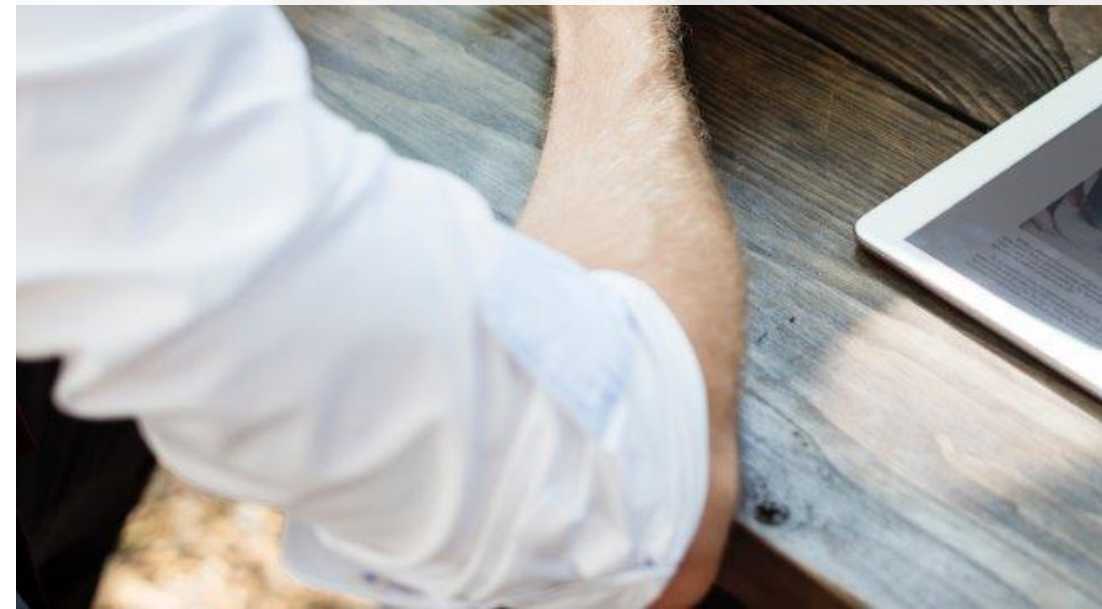
Optional (not required
by law)

Voluntary Alienation

- Separated from property by choice
 - **Public Grant**- transfer of title from the government to an individual
 - **Deed** – written instrument used to convey interest in real estate
 - **Will** – interest in real estate conveyed by last will and testament
 - **Testate** - died with a will



Methods of Acquiring Title





Methods of Acquiring Title

Involuntary Alienation

- **Descent & Distribution**
 - Heirs receive the property of an owner that dies intestate
 - Determined by Florida Probate
- **Escheat**
 - No known heirs dies intestate
- **Eminent Domain**
 - Government takes private property for public benefit
 - Condemnation proceedings

Methods of Acquiring Title

Involuntary Alienation

- **Adverse Possession** – True owner fails to maintain possession and property is taken by another
 - Conditions
 - **H**ostile
 - **O**pen
 - **T**axes Paid
 - **C**laim
 - **A**dverse Possession for 7 years
 - **N**otorious
 - Owner Sleeps On Their Rights
 - Separated from property not by choice





Alienation of Title

Voluntary Alienation

Public Grant

Deed

Will

Involuntary Alienation

Adverse
Possession

Descent &
Distribution

Eminent Domain

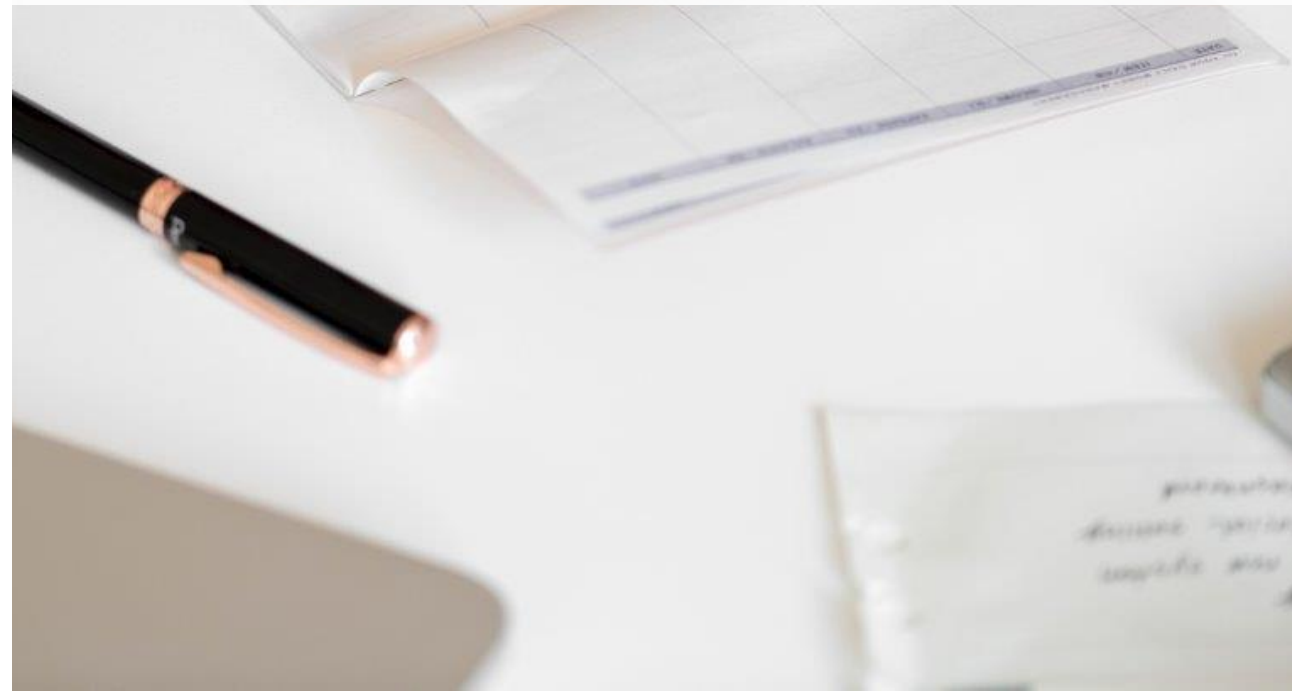
Escheat

Parties

- **Grantor** - owner giving title
 - Must be signed by a Competent Grantor and 2 witnesses
 - Must be acknowledged (notarized) only if it will be Recorded
- **Grantee** - new owner receiving title
 - Need not sign nor be competent
 - Voluntarily delivered and accepted



Deeds



Essential Elements of a Deed

- Writing
- Parties
- Grantor – legal capacity
- Consideration
- Granting clause
- Legal description
- Legal rights (interest) conveyed
- Grantor's signature & two witnesses
- Delivery and acceptance
- Acknowledged (notarized only if recording)





Clauses in Deeds

- **Premises clause (Granting clause)**
 - Only required clause
 - Parties
 - Words of conveyance
 - Consideration
 - Date of transfer
 - Legal description

Habendum clause

- “to have and to hold”
- bundle of legal rights being conveyed
- E.g. fee simple, life estate, etc.

Reddendum clause

- reserves a right in the title not the land (remainder estate) called reservations or restrictions

Clauses in Deeds



Warrant of:

- **Seisin(seizin)** promises that the grantor owns the property and has the right to convey
- **Encumbrances** - grantor has not burdened the title except as disclosed in the deed
- **Quiet enjoyment** - promises that the grantee will not suffer hostile claims
- **Warrant forever** - promises the grantee will enjoy uninterrupted use of property
- **Further assurances** - promises that the grantor will protect and defend the title

The clauses (promises) are only as good as the grantor, if the grantor cannot or will not stand behind them then they are of little or no value


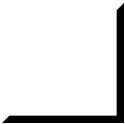
Warrants or Covenants



A close-up photograph of a person's hands writing in a white notebook with a black pen. The person is wearing a grey sweater and a ring on their left hand. In the background, a laptop screen displays a financial chart with a green arrow pointing up and the text '85%'. The overall scene suggests a professional or financial setting.

Types of Deeds

- **Quit Claim Deed** - conveys all rights that the grantor **may** have, if any
- Rarely used in day-to-day transfers
 - Grantor does not claim to have any rights
 - Used most often to clear defects (clouds) on title
 - Includes Granting Clause
 - Used: divorce actions, remove easements, etc.
 - **(best type of conveyance for seller)**

- 
- **Bargain and Sale Deed** – conveys all rights that the grantor has
 - Includes
 - Granting clause
 - Habendum clause
 - Covenant of Seisin (seizin)
 - No promise to defend the title
- 



Deed Types



Deed Types

- **Special Warranty Deed** - conveys all rights that the grantor has
 - Includes
 - Granting clause
 - Habendum clause
 - Covenant of Seisin (seizin)
 - Promise to defend the title for defects that occurred during period of ownership

- **General Warranty Deed** - conveys all rights that the grantor has
 - Includes
 - Granting clause
 - Habendum clause
 - Covenant of Seisin (seizin)
 - Plus
 - Quiet Enjoyment
 - Further Assurance
 - Warranty Forever
 - Promise to defend the title against all lawful claims
 - **(Best protection for buyer)**

Deed Types



Deed Types

Quit Claim

Granting Clause

No Promises

Bargain & Sale

Granting Clause
Habendum Clause
Covenant of Seisin
(seizin)

I own it but no
promise to defend

Special Warranty

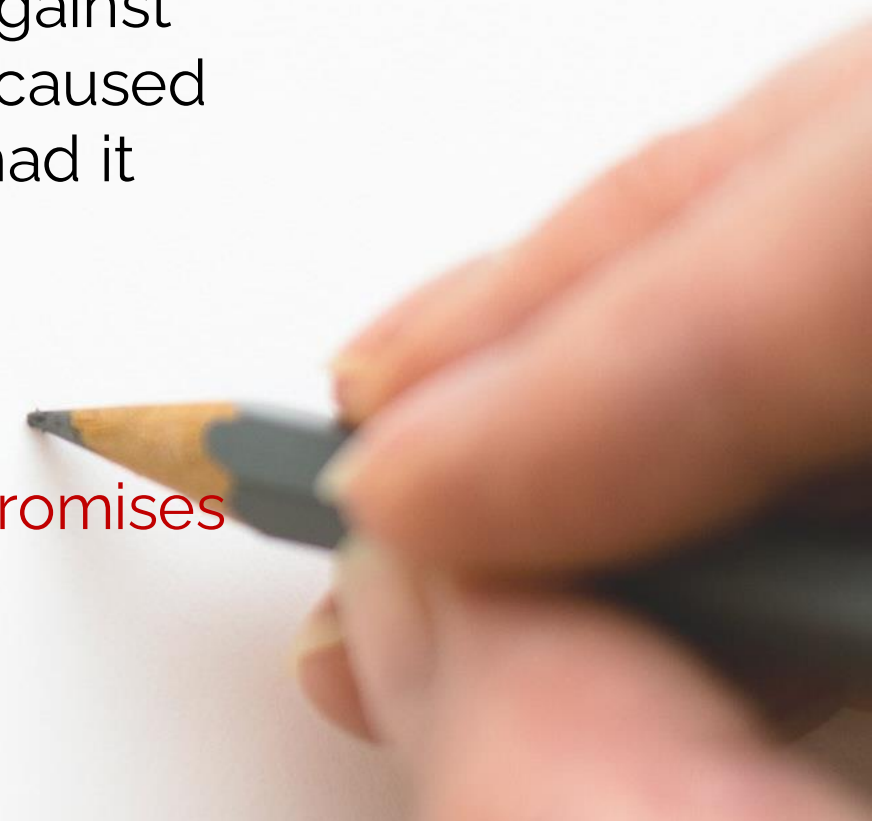
Granting Clause
Habendum Clause
Covenant of Seisin
(seizin)

I own it and will
defend against
problems caused
while I had it

General Warranty

Granting Clause
Habendum Clause
Covenant of Seisin
(seizin)
Quiet Enjoyment
Further Assurance
Warranty Forever

All of the promises



Special Purpose Deeds

A photograph of a lecture hall. In the foreground, there are several rows of wooden chairs with slatted backs. Some of the chairs have graffiti on them, including the word "LANE" and a star. In the background, there is a wooden podium on the left with a laptop on it. Behind the podium is a white door and a blackboard. A clock is visible on the wall above the door.

When the owner (grantor) can not sign a deed*

- Guardian's Deed* – Minor
- Committee's Deed* - Declared legally incompetent
- Personal Representative's Deed* – Deceased (intestate)
- Master Deed – developer
- Unit Deed – condo assoc. to public
- Certificate of Title – foreclosure (owner will not sign deed)
- Tax Deed – government sells for delinquent taxes

“Cloud on Title”

- **Quitclaim deed –**
 - Party with the claim releases interest
- **Suit to Quiet Title**
 - Court proceedings
- **Marketable Record Title to Real Property Act (MARTA)**
 - Root of title in Florida
 - 30 years



Curing Defects in Title

Government Limitations on Property Ownership

- **Police Power** - the right for the government to protect the health, welfare and safety of its citizens.
 - Health, Zoning, and Building Codes
 - Broadest power
- **Eminent Domain** - the right that government has to take private land for public use
- **Taxation** – Gov't levies property taxes
Can foreclose for non-payment
- **Escheat** – owner dies intestate
 - No lawful heirs – State acquires property



Private Limitations on Property Ownership



- **Deed Restrictions**
(restrictive covenant)
- Usually placed by developer, builder or owner
- May limit:
 - Height
 - Color
 - Architectural style
 - Fencing
 - Use
 - Size

Easements

- Authorized use of another owner's property for specific purpose
- Encumbrance affecting use
- May affect value
- Created by
 - Contract
 - Deed
 - Operation of law



Private Limitations on Property Ownership



Private Limitations on Property Ownership

- **Easement appurtenant**–“runs with the land”
 - **By necessity**
 - Servient estate
 - Dominant estate
- **Easement in gross** – utilities (power, phone)
- **Easement by prescription** – uninterrupted use for at least 20 years (pathway)
- License – temporary, revocable
- **Encroachment** – physical intrusion

- To be enforceable
 - Must be in writing
 - If term is longer than 1 Year
- A lease survives a sale of the property so any deposits or advance rents would be given to the buyer at closing
- Preparing leases for someone else is practicing law
 - Licensees are exempt only if using the forms approved by the Florida Supreme court

Leases



- **Legal interest in property**
 - not ownership
- **Owner – lessor**
- **Tenant – lessee**
- Oral or written
- Lease termination
 - Destruction of property
 - Lien foreclosure
 - Condemnation through eminent domain
 - Term expiration
 - Bankruptcy of tenant
 - Agreement by parties
 - Breach of lease provisions



Leases



Types of Leases

- **Gross lease**
 - Landlord receives “gross” amount
 - Landlord pays expenses
 - Taxes, insurance, maintenance
 - Example:
 - Residential

- **Ground lease** (land lease)
 - Long-term commercial
 - Tenant may develop property
 - Tenant pay expenses
 - Taxes, maintenance, insurance, financing costs
 - Lease termination – structures and improvements revert to owner
 - Usually long term – 50 – 99 years

Types of Leases

The image shows a close-up of an open book with a black pen resting on its pages. The book is open to a page with dense, small text. The background is a blurred bookshelf filled with various books, creating a professional and academic atmosphere. The lighting is soft, highlighting the texture of the paper and the metallic tip of the pen.



Types of Leases

- **Net Lease**
 - Landlord receives “net” amount
 - Tenant pays fixed rent
 - Tenant pays taxes, insurance & maintenance
 - Examples:
 - Commercial & industrial

Percentage Lease

- Tenant pays fixed rent
 - plus-
- Percentage of annual or monthly sales
- Example:
 - Retail centers
 - Shopping malls

Types of Leases



Types of Leases



- **Lease-Option**
 - Lease with option to purchase
 - Specified time frame
- **Sale-Leaseback**
 - Owner sells property to investor
 - Investor leases property back to owner
- **Variable/Index**
 - Rent is based on changes in the Consumer Price Index (CPI)

- **Assignment**

- Lessee transfers all of the space for entire lease period
- Assignor – lessee
- Assignee- tenant receiving rights
- Specified time frame

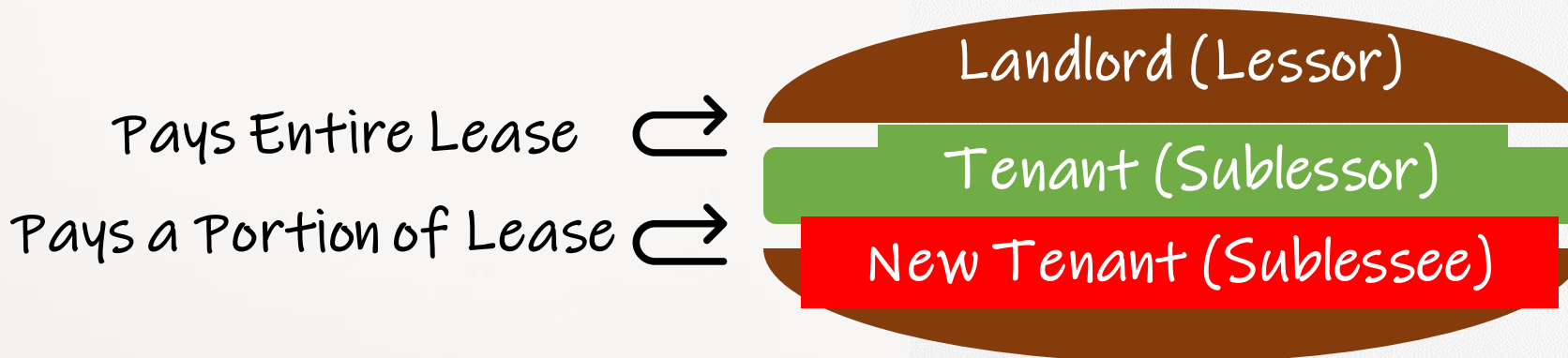


Assignment and Sublease

Assignment and Sublease

- **Sublease** (sandwich lease) (tenant)
 - Lessee transfers less than 100% of space or less than the entire lease period
 - Sublessor – (original tenant) makes payments to landlord whether sublessee pays or not
 - Sublessee – new tenant
 - Original tenant is sandwiched between landlord and sublessee

Sandwich Lease





Superior Liens

- Real Estate Property Taxes (**specific**)
 - Before all other liens
- Special Assessment (**specific**)
 - Sidewalks, sewers, etc.
- Federal Estate Tax (**general**)
 - Assessed at time of death





Junior Liens

- Mortgage Lien (**specific**)
 - Pledge property as security
- Vendor's Lien (**specific**)
- Judgment lien (**general**)
- Construction Lien (**specific**)
 - Protects contractor not paid for property improvements
- Federal Income Tax Lien (**general**)
- State Corporate Income Tax Lien (**general**)



Lis Pendens

- Notice of pending lawsuit
- Not a lien
- Lawsuit successful – lien
- Lawsuit not successful – no effect on title
- Serves notice to potential purchasers

- Broker cannot file liens against residential property for payment
- Two Exceptions
 - Authority granted in listing contract
 - Judgment rendered in Florida court

Brokers Right to Record Documents Affecting Title





Coffee Break

15 Minutes