

# **Effective Legal Office Administration**

## **Lesson 11 – Real Estate**

# **WORKBOOK**



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## Real Estate – Overview

- Elements of Real Estate Law
- Documenting the Real Estate Transaction
- Real Estate in Litigation

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## The Basics

- Real estate law, also referred to as real property law, involves rights to own, use, encumber, and transfer land and property.
- The term real property relates to
  - land,
  - the buildings affixed to it
  - the natural objects growing on it.
- Property may be owned in terms of:
  - Space – the actual physical property
    - Air
    - Water
  - Occupancy – the right to possess the property
  - Time – the time a person may own the property



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## Basic Ownership Rights

- Right of Disposition – the right to dispose of property in the way that you choose
- Right of Use – the right to use one's property in any lawful manner
- Right of Possession – the right to occupy ones property in peace

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## 4 Methods of Acquiring Property

- Purchase
- Inheritance – a gift of real property made within a will or the passing of property when a person dies without a will
- Gift – Generally must be in writing, evidenced by a transfer of deed
- Adverse Possession – the acquiring of title to property by taking possession of the property
  - Without the owner's permission
  - Remaining for a period of time proscribed by law
  - 'Squatters Rights'
    - Several other requirements necessary (Actual, Open & Notorious, Exclusive, Hostile, Continuous for full period)

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## Real Estate Practice

- As it relates to a legal practice, real estate lawyers are generally categorized into one of two types of practices
  - Transaction oriented –
    - real estate transfers,
    - purchases,
    - leases,
    - title searches,
    - real estate closings
  - Litigation –
    - may represent mortgage companies in foreclosures,
    - landlord and tenant disputes,
    - construction disputes

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## The Basics on Estates

- The Estates – estates represent levels of ownership
- There are six, divided into two categories; Freehold Estates and Non-Freehold Estates
  - This course will only discuss the Freehold Estates
- Freehold Estates:
  - The Fee Simple – an interest in property that allows its holders and their heirs to own and possess the property in perpetuity
  - The Fee Tail – an interest in land that is inheritable by and transferable to only lineal descendants of the original grantee (now obsolete)
  - The Life Estate – an interest in land that lasts only as long as the life of a specific person

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## Types of Concurrent Ownership

- Basic Rule – every co-tenant of a concurrent estate has the equal right with all the other co-tenants to possess and use at the same time any and all of the property
- Concurrent Ownership – the joint ownership of property by two or more people
- Conveyance – the giving of property from one person to another
- Tenancy – the possession or occupancy of land by right of title or right of possession

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## Types of Concurrent Ownership

- Three types of concurrent ownership in use today:
  - Tenancy-in-common – ownership held by two or more people,
    - in equal or unequal shares,
    - each person having an equal right of possession over the entire property,
    - but no right of survivorship (right to succeed an estate upon the death of another tenant)
  - Joint tenancy – a type of co-tenancy in which each of the co-tenants has a right of survivorship in the shares of the other co-tenants.
    - Each co-tenant has an equal share
    - They all must receive title to the property under the same instrument



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## Types of Concurrent Ownership

- Tenancy by the entirety – an interest in property that can only be held between a husband and wife
  - Each party has 100% ownership interest and a right of survivorship.
  - Neither party can terminate without the consent of the other

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## Documenting Transactions

- Every jurisdiction in the United States maintains a system of all real property transfers (or actions) at the county level
- Every transfer of property (and other actions affecting the property), must be recorded properly in the county records office
- The purpose of the system is to allow buyers to make sure the seller legally owns the property, has the right to sell the property, and that there are no other claims against the property
- A title search is conducted by the buyer to ensure the above is true prior to purchasing the property

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## Documenting Transactions

- Recording System – a system in which each county keeps records of all land transfer transactions so that potential buyers of land can make sure that their sellers have proper authority to sell the land
- Land Records Index – the file, usually in the “county registry of deeds” office, under which people can look to see the status of a parcel of land
- Grantor-Grantee Index – a land record index that is categorized and organized by the names of grantors and grantees
- Tract Index – a land record index organized by tracts of land

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## Recording Transactions

- Recording Acts – there are state laws that determine which party prevails when the same property is transferred to multiple people and the recording documents have not been properly delivered or recorded to the registry office
- Notice Jurisdiction – in this system, a subsequent bona-fide purchaser will prevail over an earlier purchaser if the earlier purchaser's deed was not recorded and the subsequent purchaser did not know of the earlier transfer
- Race-Notice Jurisdiction – in this system, a subsequent bona-fide purchaser will prevail over an earlier purchaser, if, and only if, the subsequent purchaser did not know of the earlier transaction and the subsequent purchaser's deed was recorded before the first purchaser's deed
- Race Jurisdiction – first deed recorded prevails

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## Deeds

- The Property Deed – a legal instrument that transfers some property right in real estate
- A deed normally contains at least:
  - Granting Clause – a statement to the effect that the transferor is transferring the land to the transferee (listing consideration not required)
  - A description of the real estate involved
  - The names of the respective parties
  - The signature of the person transferring the real estate
- There are normally three types of property deeds:
  - Warranty Deed
  - Grant Deed
  - Quitclaim Deed



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## Deeds

- Warranty Deed – this transfers ownership and provides additional promises including that the property is free of liens and other claims of ownership. If this is later found to be untrue, the transferring party agrees to compensate the buyer.
- Grant Deed – this transfers ownership of the property and the transferring party promises the property has not been transferred to someone else
- Quitclaim Deed – this transfers ownership of the property rights the transferring party may have in the property, whatever those rights may be

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# Warranty Deed Sample

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## Mortgages

- Mortgage – the pledge of real property as collateral for a loan.
  - Many people cannot afford to pay the entire purchase price for real property, so they get a loan. The mortgage is the most common way for the bank to receive collateral for the loan; if the buyer fails to pay the loan, the bank (or lender) may take the real property and sell it to pay off the loan.
- A mortgage must be recorded in the county recording office.
- If property is transferred with an outstanding mortgage, the property remains subject to the mortgage. Thus, one cannot simply eliminate the mortgage by transferring the property to another party.
  - This requires that the mortgage was properly recorded.

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## Sample Mortgage

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**MORTGAGE**

THIS MORTGAGE, made as of the \_\_\_\_\_, by and between  
Lender of \_\_\_\_\_  
Buyer of \_\_\_\_\_  
hereinafter called "Mortgagee"; and  
hereinafter called "Mortgagor".

**WITNESSETH**

**AMOUNT OF LIEN: "NOTE"**

WHEREAS, Mortgagee is partly indebted to Mortgagor in the sum of  
DOLLARS (\$ \_\_\_\_\_) in lawful money of the United States, and  
has agreed to pay the same, with interest thereon, according to the terms of a certain note (the  
"Note") given by Mortgagor to Mortgagee, bearing date hereof;

**DESCRIPTION OF PROPERTY SUBJECT TO LIEN: "PREMISES"**

NOW, THEREFORE, in consideration of the premises and the sum hereinabove set forth,  
and to secure the payment of the Secured Indebtedness as defined herein, Mortgagee has  
granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and  
convey unto Mortgagee property situate in \_\_\_\_\_ County, \_\_\_\_\_ State  
particularly described as Exhibit "A" attached hereto and by this reference made a part hereof.

TOGETHER with all buildings, structures and other improvements now or hereafter  
located on, above or below the surface of the property hereinbefore described, or any part and  
parcel thereof; and

TOGETHER with all and singular the tenements, hereditaments, easements, riparian and  
tidal rights, and appurtenances thereto belonging or in anywise appertaining, whether now  
owned or hereafter acquired by Mortgagee, and including all rights of egress and access to and  
from adjoining property (whether such rights now exist or subsequently arise) together with the  
reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all  
the estate, right, title, interest, claim and demand whatsoever of Mortgagee of, in and to the same  
and of, in and to every part and parcel thereof; and

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, whether actually  
or constructively attached to said property and including all trade, domestic and ornamental  
furniture, and articles of personal property of every kind and nature whatsoever (hereinafter  
collectively called "Equipment"), now or hereafter located in, upon or under said property or any  
part thereof and used or to be used in connection with any present or future operation of said  
property and now owned or hereafter acquired by Mortgagee; and

TOGETHER with all the common elements appurtenant to any parcel, unit or lot which is  
all or part of the Premises, and, ALL the foregoing encumbered by the Mortgage being  
collectively referred to herein as the "Premises".

TO HAVE AND TO HOLD the Premises hereby granted to the use, benefit  
and behalf of the Mortgagee, forever.

U.C.C. SECURITY AGREEMENT

## Purchase Transactions

- Purchasing Real Estate – in many states, purchases of real estate are conducted by realtors and lending institutions alone
- The law firm is normally only involved in performing “title searches”, a review of the records in the county where the property is located to determine if the seller legally owns the property and if there are any other known claims against the property
- An attorney may be used to draft contracts for the sale of real estate. When doing so, the attorney will follow normal contract law procedures and incorporate any specific (state and federal) requirements for contracts involving the sale or purchase of real estate.

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## Purchase Agreement

### Real Estate Sales Contract

1. The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, the following real property, all that tract or parcel of land lying and being in Land Lots) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section, \_\_\_\_\_ County, Georgia, and being ☐ improved ☐ unimproved real property more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, and having an address of \_\_\_\_\_ together with all improvements, appliances, lighting fixtures, all electrical, mechanical, plumbing, air conditioning, and any other systems or fixtures as are attached thereto; also all plants, trees and shrubbery now on the premises (collectively the "Property"). The Purchase Price of the property shall be \$ \_\_\_\_\_ to be paid as follows:

a. Initial earnest money deposit paid by Purchaser to ☐ Seller ☐ Other \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ (the "Earnest Money") by check, receipt of which is hereby acknowledged by Seller, to be applied as partial payment of purchase price of the Property at the time sale is consummated.

b. ☐ a. This is a cash transaction with no contingencies for financing.

☐ b. Loan Condition: This Agreement is made conditioned upon Purchaser's "ability to obtain" (as hereinafter defined) a loan in the principal amount of ☐ \_\_\_\_\_ % of the purchase price or ☐ \$ \_\_\_\_\_, to be secured by a first priority deed to secure debt on the Property (the "Loan"); said Loan to be paid in consecutive monthly installments of principal and interest over a term of not less than \_\_\_\_\_ years. Initial monthly installments of principal and interest shall not be more than \$ \_\_\_\_\_. Purchaser shall make application for such loan within \_\_\_\_\_ days (five (5) days if left blank) of Effective Date (as hereinafter defined). "Ability to Obtain" as used herein shall mean that Purchaser is qualified to receive the loan based upon customary and standard loan underwriting criteria. Proceeds of the Loan, together with any balance of the Purchase Price, shall be paid in cash or its equivalent by Purchaser to Seller at Closing. The Loan shall be a ☐ fixed rate ☐ variable rate; ☐ fixed rate or variable rate loan with an interest rate of not more than \_\_\_\_\_ % per annum on the unpaid principal balance.

2. \_\_\_\_\_ (Purchaser if left blank) shall pay all usual and customary closing costs for said Loan in a sum not to exceed \_\_\_\_\_ % (N/A if left blank) of said loan amount. Purchaser shall pay any usual and customary closing costs exceeding said sum. Purchaser shall pay the cost of any required survey. Purchaser shall pay any Loan Discount payable in connection with said loan in a sum not to exceed \_\_\_\_\_ % of said loan amount.

3. Seller warrants and represents that Seller presently has title to the Property, and that at the time the sale is consummated, Seller will convey to Purchaser good and marketable title to the Property by Warranty Deed. It is understood and agreed that the title herein required to be furnished by the Seller shall be good and marketable and that marketability shall be determined in accordance with Georgia law as supplemented by the Title Standards of the State Bar of Georgia. It is also agreed that any defect in the title which comes within the scope of any of said Title Standards shall not constitute a valid objection on the part of the Purchaser provided the Seller furnishes the affidavits or other title papers, if any, required in the applicable Standard to cure any such title defect, then at the option of Purchaser evidenced by written notice to Seller, this agreement shall be null and void and the Earnest Money shall promptly be refunded to Purchaser.

4. Purchaser shall have a reasonable time after acceptance of this agreement in which to have a survey

- Sample documents – <http://http://www.easytitlesearch.com/sample.pdf>

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## Litigation

- Real estate litigation is a specialty practice
- Normally a law firm will be associated with either a lending institution or a real estate company
- Items of litigation normally revolve around claims against the property or disputes between the owners of property
- Other areas of litigation may concern:
  - The mortgage on property
  - Zoning requirements
  - Land use regulations
  - Other state and federal regulations

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## Real Estate – Review

- Elements of Real Estate Law
  - Ownership Rights
  - Acquisition of Property
- Documenting the Real Estate Transaction
  - Recording of Ownership Interests
- Real Estate in Litigation

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Questions

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Answers

## Review Questions:

1. True or False: A property owner has the right to control not only the buildings on their property, but the air above it.
  - A. True
  - B. False
2. This legal concept is sometimes commonly referred to as 'Squatter's Rights':
  - A. Adversarial System
  - B. Advance Possession
  - C. Adverse Possession
  - D. Adverse System
3. True or False: A real estate law office may be involved in title searches for properties being transferred.
  - A. True
  - B. False
4. True or False: Recording property records is a good idea, but doesn't really have any impact on the property or property owners.
  - A. True
  - B. False
5. A deed must be recorded by sending a copy of it where:
  - A. The Superior Court
  - B. The Opposing Attorney
  - C. The Property Owner
  - D. The County Land Records Office

## **Answer Key:**

1. A  
True. Property rights include the air and the water or ground below the buildings on a given property owners land.
2. C  
Adverse Possession is the method of gaining the legal rights to property by taking possession of it without permission of the actual owner.
3. A  
True. A real estate lawyer is often asked to perform title searches for companies engaged in property sales.
4. B  
False. Recording mortgages and deeds is very important and the order in which documents are recorded can have a huge impact on the rights of property owners.
5. D  
The deed must promptly be sent to the county recording office, where it will become part of the official land records.