

In this chapter of the national topics, we will explore the concepts of title and deeds, including:

- **The Residential Property Sales Process**
- **The Difference Between Title and Deeds**
- **How title is investigated**
- **Title insurance**
- **Marketable Title Vs. Title Insurance**
- **Transfer of Title**
- **All About Deeds**
- **Types of Deeds**
- **Recordation and Notice**

Warranty Deed

This indenture, Made the **18th** day of **April**, in the year **two thousand and twenty**, between **Samantha Seller**, hereinafter called **GRANTOR**, and **Betty Buyer**, hereinafter called **GRANTEE**

Witnesseth that: Grantor, for and in **CONSIDERATION** of the sum of Two-hundred Thousand Dollars and No Cents (\$200,000.00) paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, does

Give, Grant, Bargain, Sell and Convey unto the said Grantee, the real property ("Property") located in Montgomery County, Alabama and more particularly described as follows:

Legal Description: Lot 4, Block A, Plat #3 of 5 of the South East Acres Subdivision as recorded in Page 348, Book 1115 of the records of Montgomery County, Alabama

To Have and To Hold the said tract or parcel of land, with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in anywise appertaining, to the only property use, benefit and behoof of the said Grantee forever in **FEE SIMPLE**.

SUBJECT TO: All easements, conditions, covenants, restrictions, reservations, limitations and agreements of record, provided this instrument shall not re-impose same; Real estate taxes for the year 2020 and all subsequent years; and the large oak tree located on the southwest corner of the property may not be cut down during the grantee's ownership.

And Said That Grantor will warranty and forever defend the right and title to the above described property unto the said Grantee against the claims of all persons whomsoever.


In Witness Whereof, the Grantor has signed and sealed this deed, the day and year above written.

<p style="text-align: center;"><u><i>Samantha Seller</i></u> Samantha Seller, GRANTOR</p>	<p style="text-align: center;"><u><i>William Witness</i></u> Witness Name</p> <p style="text-align: center;"><u><i>William Witness</i></u> Notary Public's Signature</p>
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State of Alabama On before me, Samantha Seller, personally appeared before me, a notary public, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Montgomery County

In Testimony Whereof, I have hereunto set my hand and official seal at Montgomery, Alabama, this 18th day of April, 2020.



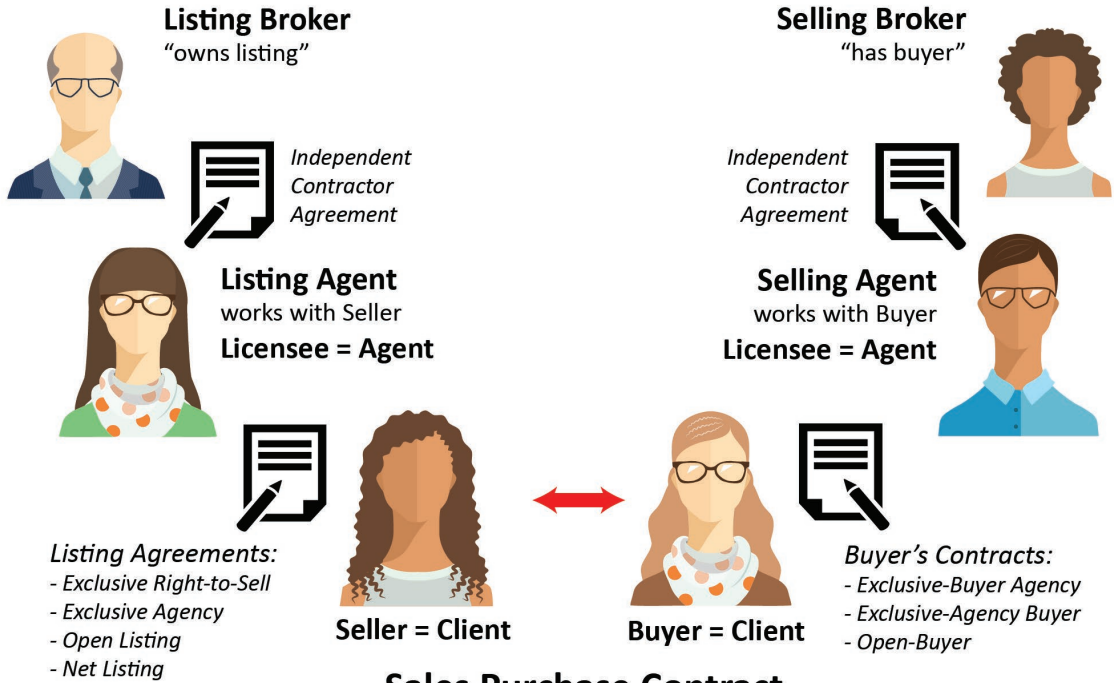
John Smith
Notary Public's Signature
12/31/2021
My commission expires

The Residential Property Sale Process

Before we explore title and deeds, let's take a look at what is actually happening when a residential property is sold. Typically, home sales follow these steps:

- The seller decides to sell his home and hires a real estate broker to list the home on the local market via the **Multiple Listing Service (MLS)**. Potential buyers tour the home.
- If a buyer likes the house, he submits an **offer** to the seller (usually through his real estate agent). The two parties negotiate the final sales price and terms of the sale. Once they agree on everything, the **offer** become a binding **sales contract** between the two parties.
- In the **sales contract**:
 - The seller is promising to deliver the **house** AND a **marketable title**.
 - The buyer is promising to deliver **valuable consideration** in the form of money. Buyers typically acquire loans from a lender to pay for the house.
- The **closing** of the sale of the house will not happen immediately. It normally takes thirty to forty-five days for a home sale to be completed once a contract has been signed. The time right after signing the contract, but before the closing is referred to as the **due diligence period**.
- During the **due diligence period** the buyer should fully investigate the house to be sure they are making a good decision. This means the buyer will examine the physical condition of the house through a **home inspection** and the ownership history of the house through a **title search**. A **closing attorney** normally performs the title search and coordinates the closing procedure between the seller and the buyer.
- The buyer's lender uses this time to complete the loan process and officially decide to make the **loan** to the buyer. The lender will order an **appraisal** to verify that the loan amount is that same as the current **market value** of the property. The **market value** is the amount the house will sell for on the current market.
- Once the seller and buyer are both satisfied with the condition of the house and the lender agrees to fund the loan, the seller and the buyer meet at the **closing**.
- At the closing the lender will release the funds from the loan so that the buyer can pay for the house. In exchange for the loan, the buyer will pledge the house as **collateral** for the loan to the lender. This means that if the buyer cannot repay the loan as agreed, the lender has the right to **foreclose** on the house.
- Once the funds have been received, the seller will pass ownership to the buyer via a special legal document called a **deed**. The seller would be the **grantor** and will sign the deed. The buyer would be the **grantee** and will accept the deed.
- After the closing the closing attorney (on the buyer's behalf) will record the deed in the public records where the property is located. Doing so provides **constructive notice** to the public that the buyer is the new owner of the property.

The Residential Property Sales Process



Sales Purchase Contract between Seller and Buyer



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Titles, Deed and Wills

Now that we understand the basic process, let's take a moment to explain the difference between title, a **deed** and a **will**.

Title is actual ownership of real property. If you "possess title," you own the property.

Convey is a verb that means to transfer. In real estate, title is conveyed either through a **sale**, as a **gift** or via an **inheritance**.

Thus, **conveyance** is the transfer of the title of real property between individuals using legal instruments called **deeds** and **wills**.

Instrument is just a fancy legal term for written legal document that outlines a transaction to occur between parties.

A **deed** is a legal document used to convey title (transfer ownership) between the old owner and the new owner while *both are still alive*. While a deed has many functions, *the primary purpose of a deed is to transfer title from the old owner to the be owner*.

A **will** is a legal document that coordinates the distribution of an individual's assets *after death* and can appoint guardians for minor children.

We'll learn more about deeds and wills later in this chapter. Let's cover title first.

Title and Marriage

Title is similar to the abstract idea of marriage and a deed is like a wedding band. Let's think about a marriage and wedding bands for a moment...

Does wearing a wedding band prove that an individual is married? Not necessarily.

Does possessing a deed to a property prove that an individual owns the property?

Not necessarily.

While most people believe having a deed proves ownership, this is not necessarily true. A deed is just like a wedding band. It is meaningless unless you have the recorded legal documents to back it up.

In order to prove or discover if an individual is actually married, what do you do?

Search through the public records for a marriage certificate (or search social media!). The same is true for real property. The public records must be carefully reviewed for recorded documents such as a deed to reveal who actually owns the property. This procedure is called a **title search** and we will cover this in detail later in the chapter.

It is important to understand exactly what title is, how it is property conveyed, how it is investigated, what can prevent a proper conveyance of title and how it can be protected.



Investigating Title

During the **due diligence period** the buyer should fully investigate the house to be sure they are making a good decision. While the buyer will examine the physical condition of the house through a home inspection, the ownership history of the house also needs to be thoroughly investigated via a **title search**.

A **title search** is an examination of public records to determine and confirm a property's legal ownership and to reveal any claims or liens that are on the property.

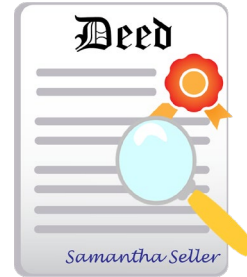
Usually performed by a title company or an attorney, the title search normally exposes any issues that can affect or prevent the transfer of title on the property called encumbrances.

- **Encumbrances:** any issue that can affect or prevent the transfer of title on the property or how the property can be used.

Examples of encumbrances include items such as liens, easements, deed restrictions and overdue property taxes.

If the title search does not reveal any issues that would prevent the title from being conveyed from the current owner to the new owner, the title is referred to as a **marketable title** or **clear title**.

- **Marketable title (“clear title”):** A title that is free of any issues that would prevent it from being freely conveyed to a new owner. This is merely a way of *describing* a property's title. It is not a type of title like legal title or equitable title.



Title search



Marketable Title

Abstract of title

Every time the property is transferred between owners and a new title search is completed, a new layer of the findings is added to a collection of records specific to the property. This collection of records is called an **abstract of title**.

Abstract of title: A summary of everything revealed in the title search that has been *recorded* at the county courthouse and is gathered into one collection specific to that property.

However, the abstract *does not include* any interests, conveyances or encumbrances that *have not been recorded*.

Think of it like a CarFax report on a used car.

A CarFax report only reveals accidents or service appointments that were recorded with the insurance agency or performed at a dealership.

It does not reveal any work completed outside a dealership or without an insurance claim.

Title searches work the same way. *If something has transpired with the property, but it was not recorded in the public records, it will not be revealed in title search.*

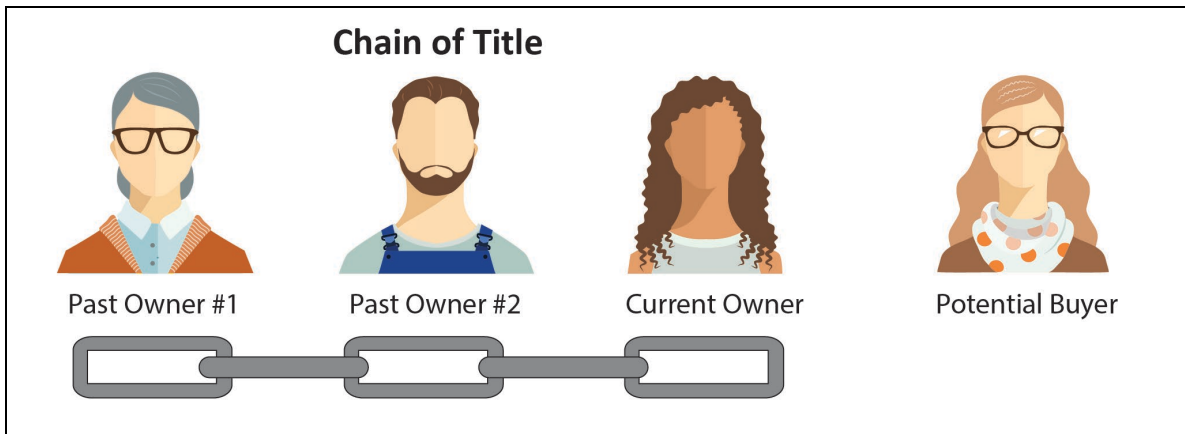


Abstract

Chain of title

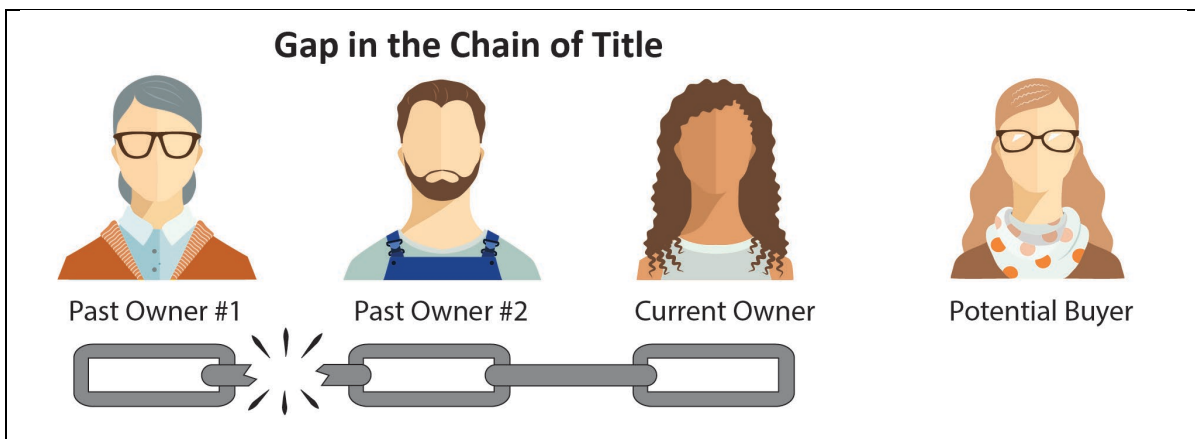
The transfer of title from one owner to the next creates a chronological history of ownership called **chain of title**. By following the chain of title through the recorded deeds, the property's ownership history can theoretically be traced back all the way to the original owner.

- **Chain of title:** The official record of ownership of a property that traces the *chronological* title transfers from the current owner back to the original owner. The “chain” refers to the sequential nature of the ownership record. Each previous owner is like a link in a chain

**Gap in chain of title**

However, if a previous transfer of title wasn't recorded in the public records, a link is missing from the chain of title. This missing link creates a **gap in the chain of title**.

- **Gap in chain of title:** A “missing link” in the chain of title. The gap occurs when the records are not complete (because something wasn't recorded) and do not accurately reflect all title conveyances. For example, if a new owner fails to record a deed, this oversight can be reflected as a gap in the chain of title.



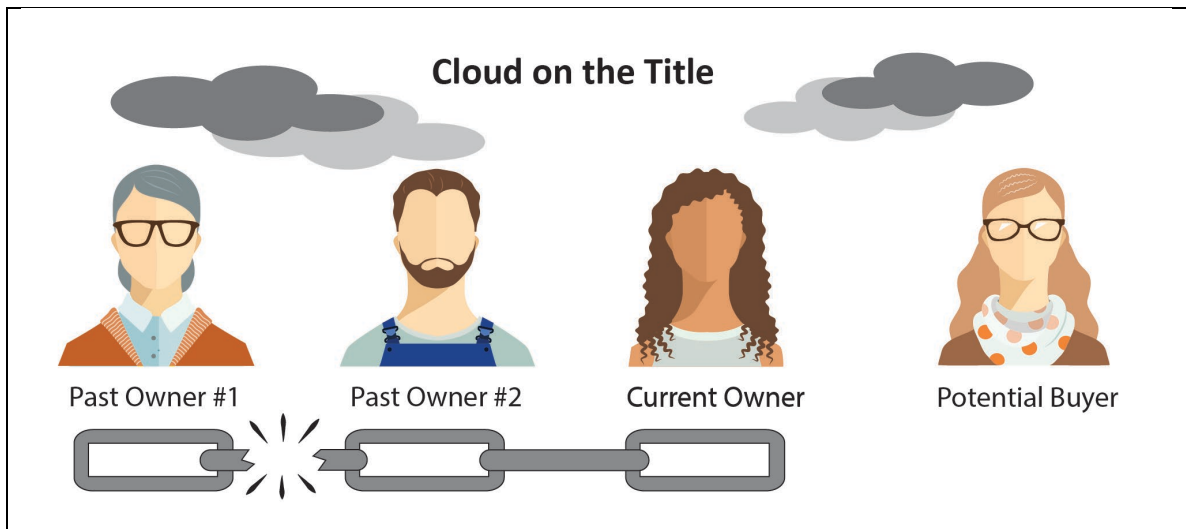
Cloud on the title

Any issue that could prevent the transfer to the title from the current owner creates a looming problem, like a thunderstorm appearing on the horizon. These issues are referred to as a **cloud on the title** or a **clouded title**.

These issues can be caused for many reasons and some are more serious than others.

Examples of clouds on a tile include disputes over the true ownership of the property, **mortgage liens**, **gaps in the chain of title**, **mechanic's liens**, incomplete deeds and **easements** just to name a few. Think of it as a dark cloud looming over the title.

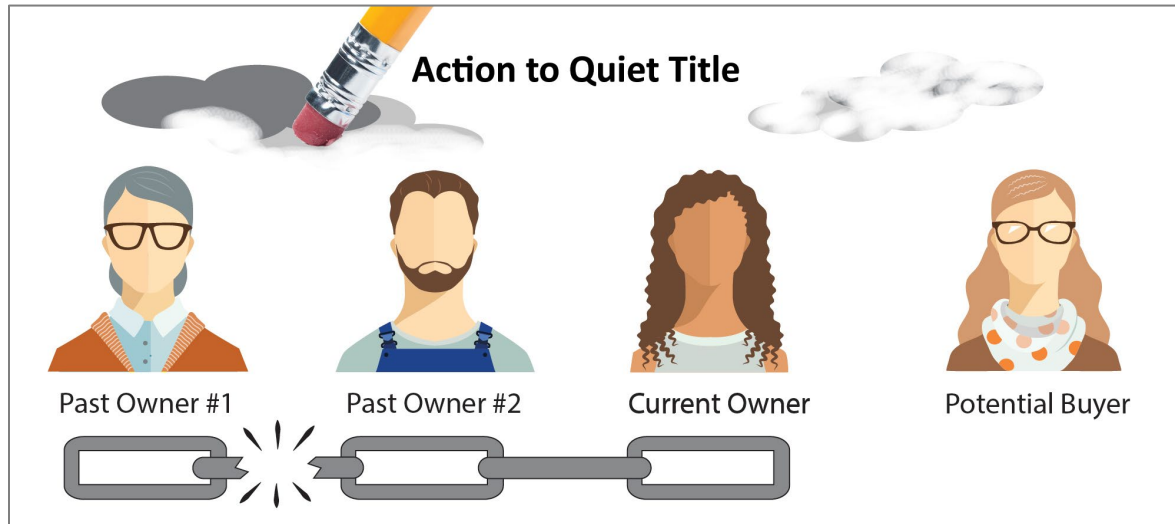
- **Cloud on the title:** Possible problems or issues that would interfere with the conveyance of title and would be on concern to any reasonable individual before accepting title.



So, if there is a cloud on the title, the current owner must start an...

Action to quiet title

- **Action to quiet title:** A move to remedy, remove or fix the cloud (problem) on a title either through a lawsuit or a quitclaim deed.



Since the cloud prevents the title from being conveyed, it must be fixed *before* the title can be transferred to the new owner (usually a potential buyer).

For a real estate sale transaction, this means the cloud must be removed before the deal can close. If there is a cloud on the title of a property that part of a real estate sale, the title company will refuse to issue the title insurance policy and the lender will refuse to fund the loan.

The solution for removing the cloud depends on the problem. For example, if the seller owes money to a contractor because of a mechanic's lien, usually this can be deducted from the proceeds of the sale depending on the amount of the lien. This would remove the cloud from the title. We will cover remedies to remove clouds later in the course.

Title Insurance

Before a property can be conveyed (meaning transferred from the old owner to the new owner), the title should be thoroughly investigated by the potential new owner.

Usually performed by a title company or an attorney, the title search normally exposes any defects or issues, called **encumbrances**, that could prevent title from being transferred from the older owner to the new owner.

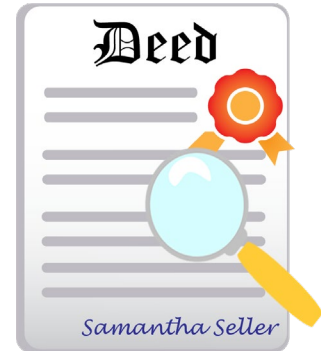
However, even the most skilled title professionals may not discover all problems associated with a property. Some risks, such as title issues due to filing errors, forgeries, or undisclosed heirs, are difficult to identify.

So, after the title company finishes the title search, it also provides a **title insurance policy** to protect the new owner from a variety of issues that might be revealed in the future.

Title insurance is an insurance policy offered by the title company to protect the new owner's interest in a property against legal defects or losses caused by title issues. Unlike traditional insurance, which protects against future events, title insurance also protects against claims for *past* occurrences. Such claims include property ownership by another person, fraud or forgery of the title documents, unidentified easements, outstanding lawsuits, liens against the property, and the like.

While requirements vary by state, there are two basic types of title insurance: a policy to protect the lender's interest, called a **loan policy** or a **lender's policy** and a policy to protect the owner called an **owner's policy**. If the property being transferred is being financed, the lender will require the buyer to purchase a **lender's policy**. The loan policy is usually based on the dollar amount of the loan and only protects the lender's interests in the property should a problem with the title arise until the loan is paid off or refinanced. It does not protect the buyer.

On the other hand, an **owner's policy** of title insurance protects the buyer's ownership rights to the property as long as he owns the property.



Standard and Extended Coverage

These policies can either be standard coverage or extended coverage (sometimes called an ALTA policy). The difference between the two is what is covered by the policy.

Standard coverage covers:	Extended coverage covers:
Title issues revealed in public records, PLUS...	Everything in standard coverage, PLUS...
Forged deeds; Erroneous grantor (old owner) documents; Legal delivery problems; Incorrect marital settlements	Rights to parties in possession such as lessees; Issues revealed by a survey; Unrecorded physical easements and mechanics liens; Certain mineral and water rights claims

Marketable Title vs. Insurable Title

We know that a **marketable title** means that the chain of title (ownership) to a particular piece of property is clear and free from defects that would impair its transfer from the old owner to the new owner and there won't be any problems when the time comes for a **title insurance policy** to be issued.

But what is an **insurable title**? An insurable title is a title that *does have* or *may have* a known defect or in the chain of title that could affect its ability to transfer from the old owner to the new owner, yet a title insurance company has agreed in advance to provide insurance against any future issues that may affect the ownership or value of the property.

Rather than curing or fixing the defect (which can be very expensive and time consuming), the title insurance company may elect to insure against any problem the defect may cause in the future. That is, the insurance company agrees to fix the problem only when – and IF – it ever becomes an immediate problem.

Some defects in title may never become a problem or threaten the value or ownership of the property. Title insurance companies, like any insurance companies are in the business of risk management, and whenever possible would rather defer the risk then to pay to address/correct it.

One of the biggest problems with insurable title is that a buyer of a property accepting insurable title (rather than marketable title) is taking a risk of their own. It's not that the defects may ever threaten the value or ownership of the property, but that upon resale of the property the next buyer may not be as willing to accept the insurable title and may demand a marketable title.

Potential Title Problems and Resolutions

When searching title, many issues may arise, most of which are usually correctable. Since at this point in the course, you may not understand these types of issues and their solutions, we will review these issues again in a few chapters.

Death of an owner

It is common to discover a gap along the chain of title due to the death of an owner. For example, suppose a deed was granted to Bob and Mary Smith, a married couple and the chain of title revealed that the title was transferred from Mary Smith only to John Doe. What happened to Bob Smith? Did he die?

If Bob Smith died *before* the transfer from Mary Smith to John Doe AND Mary and Bob held the property as **joint tenants** or as **tenancy by the entirety**, there would be no title issues. In joint tenancy and tenancy by the entirety, if one spouse dies, the title is automatically passed to the surviving spouse, a concept called **right of survivorship**. The existence of a certified copy of Bob's death certificate would resolve the issue.

On the other hand, if Bob and Mary owned the property as **tenants in common** (in which right of survivorship does not apply), there may be an issue. Proof would be required to show that Bob's will was probated properly, and the property legally passed to Mary according to the instructions of Bob's will. An executor's deed from Bob's estate to Mary would serve as proof in this situation.

Property Tax Liens

If an *ad valorem* tax lien (a property tax lien) has been attached to the property, the unpaid back taxes will need to be paid in order to remove the lien.

Mortgage or Deed of Trust

After a borrower has paid a mortgage or deed of trust in full, it is the lender's obligation to file the release in the public records. (A deed of trust is another type of financial instrument similar to a mortgage.) The release lets it be known that the debt has been paid in full. It is very common to find mortgages or deeds of trust that have been paid but not property released from the lender. For a mortgage, a **satisfaction** (release from lien document specifically for mortgages) will need to be issued from the lender and recorded in the public records. For a deed of trust, the trustee (neutral third party holding legal title) will transfer the title to the trustor (borrower) using a **release deed**. A copy of the release deed must be filed in the public records. *We'll discuss this in more detail in the Financing chapter.*

Incomplete Deed

It is not uncommon to come across a deed with a misspelling, incorrect legal description or incomplete notary acknowledgment. If the parties are still living, the individuals can sign corrective deed, which will need to be filed. If the problem is with the acknowledgment, an affidavit setting forth the missing information will need to be obtained from the notary that acknowledged the deed.

If the transfer is old and none of the parties can be located, it may be possible to ignore the defect. The opinion of an attorney may be advisable in this regard. Some title companies limit the title search to the past 50 years which eliminates some issues with very old transfers.

Judgements, Federal Tax Liens, Etc.

Judgements and other liens will usually need to be paid in full before the creditor will issue a release of lien. Once the release of lien has been obtained from the creditor, it should be recorded in the public records.

Mechanic's Lien

A **mechanic's lien** is a legal claim typically used by contractors or suppliers to collect money owed for unpaid completed work that cannot be repossessed, like a kitchen remodeling job. Assuming the contractor has been paid in full, the lien will fall off after a certain amount of time. This timeframe varies per state law. If time is of the essence, the property owner can file a lawsuit against the contractor.

It is good practice to have a contractor to sign a release of lien after he has been paid for the work performed. If he is being paid in installments, secure a partial release of lien after each payment.

Easements

An easement can be cured by a **quitclaim deed**. An **easement** is a legal right to use another's land for a specific and limited purpose. If the easement is no longer in use, it may be possible to petition the court to remove the easement, claiming "abandonment" by the owner.

Flaws, Gaps and Clouds

Sometimes the chain of title has gaps, flaws and unclear claims ("clouds") which are not solvable because the issues are very old and/or certain parties cannot be located. In this event, a "quiet title" lawsuit can be filed, which is a court proceeding in which an individual asks the court to clear up these problems and declare the individual the rightful owner of the property. If there are no objections, commonly the court will then issue a clear title to the individual.

Transfer of Title

Alienation is the transfer of title between the old and new owners. Think of it as the old owner is “alienating” the property. **Title** can be transferred by two methods: **involuntary alienation** and **voluntary alienation**.

Involuntary Alienation: The transfer of ownership without the owner’s consent. This could happen because the individual died without leaving a will or a lender or the government had a right to take the property.

Forms of involuntary alienation include **descent and distribution, escheat, foreclosure, eminent domain** and **adverse possession**.

Voluntary Alienation: The owner conveys the ownership on his own free will. The transfer (conveyance) may be via a gift, a sale or an inheritance.

- If living, the transfer is completed via a **deed**.
- If deceased, the transfer is completed via a **will**.

Descent & Distribution of Real Property after Death

Whether an individual dies with or without a will dictates how real property is handled after he or she dies. The deceased individual (the person that died) is called the **decedent**.

With a will

A **will** is a legal document that coordinates the distribution of an individual’s assets after death and can appoint guardians for minor children.

If an individual died leaving will, it is called **testate**. The property is disposed of according to the will.

Without a will

If an individual dies without leaving will, it is called **intestate**. This means that state law decides what happens to the deceased’s property.

An easy way to remember this is that is a person dies without a will, then his surviving family members will be “**IN trouble,**” like **IN-testate**.

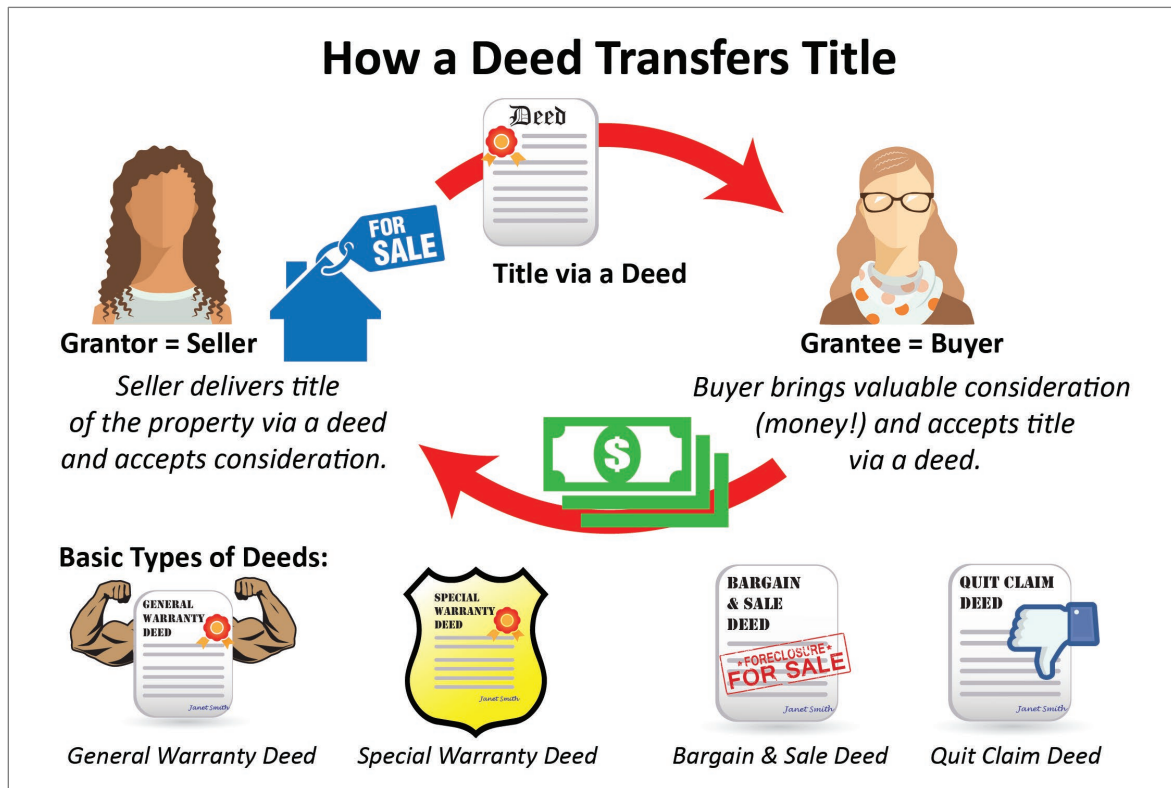
Escheat is the action of property going to the state because an individual died intestate (without a will) and no heirs can be located.

- If no heirs of a decedent can readily be found, a public notice is published to locate heirs. If none comes forward to claim the property within a statutorily mandated time, the court will order an escheat of the property to the state.
- The **right to escheat** also applies to property found to be abandoned. The primary purpose of escheat is to prevent property from remaining ownerless or abandoned.

All About Deeds

Before taking this course, most students believe that ownership of real property can be proven by simply having the deed. This is not necessarily true. A **deed** is a written legal instrument used to transfer title (ownership) of real property between the old owner and the new owner *while both are alive*.

- Every state's **statute of frauds** requires that all deeds must be in writing. The **statute of frauds** is a legal concept that requires certain types of contracts to be executed in writing.
- A deed is only valid while the **grantor** (old owner/seller) is alive. The deed must be accepted by the **grantee** (new owner/buyer) during the grantor's lifetime. Otherwise, after the owner dies, the property must be conveyed by will or descent, not a deed.
- Only a grantor with legal capacity can sign a deed; a deed signed by minors or individuals declared legally incompetent could be either void or voidable.
- Title of the property passes to the grantee once he or she has accepted the deed.
- For a deed to be recorded, it must have been acknowledged (witnessed).
- While a witnessed deed and unrecorded deed is
- **Remember, property can only be transferred with a deed while the grantor is alive!**



Requirements for a Valid Deed:

A valid deed must contain:

- **Grantor (old owner/seller):** The grantor is the current owner of the property who is conveying the title to someone else. The grantor must be legally competent and of legal age. Remember the grantor can be selling the property, exchanging it, or giving it away.
- **Grantee (new owner/buyer):** The grantee is the person receiving title to the property. An important factor in naming the grantee in a deed is that the grantee be named in such a way as to avoid any confusion about who he or she is.
- **Legal Description:** An identification that unambiguously identifies and delineates a parcel of land so that only one parcel can meet the description.
- **Statement of consideration:** Wording in a deed that signifies that something of value, either monetary value or emotional value, is being exchanged for the title; there are two types of consideration: **valuable consideration** and **good consideration**:
 - **Valuable consideration** is financial compensation or a promise of something that can be measured in terms of money and is required in sales purchase contracts between sellers and buyers for real property.
 - **Good consideration** is a promise that cannot be measured in terms of money, such as love and affection, and is commonly used in deeds when real property is being gifted, not sold, between two individuals.
- **Granting clause:** A granting clause states that the grantor is conveying ownership of the property to the grantee and is known as the *words of conveyance*. The granting clause includes words that describe exactly what rights the grantee is receiving in the deed and whether the grantee is taking title to the property with another person.
- **Habendum clause:** The habendum clause, which contains the words “to have and to hold,” further defines the rights being granted to the grantee. This can vary from state to state. The words in the habendum clause must agree with the words in the granting clause.
- **Any exceptions or reservations:** This part of the deed is where those restrictions or limitations are described. This is where any **deed conditions** are located. Think of deed conditions as the “fine print” that places limits on the property’s usage.
- **Signature of the grantor:** A deed must be signed by the **grantor** (old owner/seller) to be valid. The **grantee** (new owner/buyer) does not sign the deed.
- **Acknowledgment:** Is the witnessing of the signing of the deed that signifies that the grantor’s signature is genuine and a free and voluntary act.
- **Delivery and Acceptance:** The conveyance of title to a piece of real estate has not officially taken place until the grantor delivers the deed and the grantee accepts it. The term “passing title” refers to the acts of giving and receiving the deed. The date of the transfer of ownership is the date the deed was delivered and accepted.

Requirements for a Valid Deed:

A valid deed must contain:

GRANTEE:
new owner, buyer

GRANTOR:
Old owner, seller

Warranty Deed

Statement of consideration

Granting clause

Legal Description

Habendum clause

Any exceptions or reservations

Signature of the GRANTOR

Acknowledgment (Witness signature, Notarization)

Delivery and Acceptance

This indenture, Made the 18th day of April, in the year two thousand and twenty, between Samantha Seller, hereinafter called GRANTOR, and Betty Buyer, hereinafter called GRANTEE

Witnesseth that: Grantor, for and in CONSIDERATION of the sum of Two-hundred Thousand Dollars and No Cents (\$200,000.00) paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, does

Give, Grant, Bargain, Sell and Convey unto the said Grantee, the real property ("Property") located in Montgomery County, Alabama and more particularly described as follows:

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Samantha Seller
Samantha Seller, GRANTOR

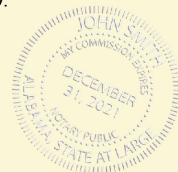
William Witness
Witness Name

William Witness
Notary Public's Signature

State of Alabama
Montgomery County

On before me, Samantha Seller, personally appeared before me, a notary public, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

In Testimony Whereof, I have hereunto set my hand and official seal at Montgomery, Alabama, this 18 th day of April, 2020.



John Smith
Notary Public's Signature
12/31/2021
My commission expires

Deed Conditions Vs Deed Restrictions

Deed conditions and **deed restrictions** are provisions placed in a deed by an individual or group of individuals limiting the use of the property and prohibiting certain uses.

Deed Conditions

A **deed condition** is a provision placed in a deed *by an individual* to control the use of the property. If a condition is violated (not followed), the grantee (new owner) will possibly lose possession of the property and ownership will revert to the grantor (original owner). We'll discuss deed conditions and their impact on a property's usage in the **Chapter 6: Real Property Ownership**.

The most typical purpose of a deed conditions is to control how the property is used after it is passed to new owners. Once recorded, deed conditions run with the land. They bind current and future owners of a property and cannot be removed. As long as the deed condition is not illegal (such as racial restrictions that violate federal fair housing laws), it may remain in the deed. An example of a deed condition would be a stipulation that alcohol cannot be sold on the property.

Deed Restrictions (CC&Rs) & Homeowner's Association

Deed restrictions or **conditions, covenants and restrictions** (or **CC&Rs** for short) are different than deed conditions. While **deed conditions** are limitations placed on one property by one individual, **deed restrictions** are created *by the developers* of planned residential, commercial, or industrial developments during the planning stage and are intended to place limitations on the use of the entire complex.

In short, they are the rules of your neighborhood. The CC&R outlines your community's household dos and don'ts, and the requirements and limitations of what you can do with your property. The goal of the CC&Rs is to protect, preserve, and enhance property values in the community.

Types of Deed

Different types of deeds exist to serve different needs. Some deeds provide a lot protection to the grantee (new owner or buyer); some deeds provide very little protection to the grantee.

Deeds provide protection by listing certain **covenants** and **warranties** in the deed. **Covenants** are promises of future action or inaction. **Warranties** are statements or promises of current and future condition of the property.

The four basic types of deeds that we will cover are:

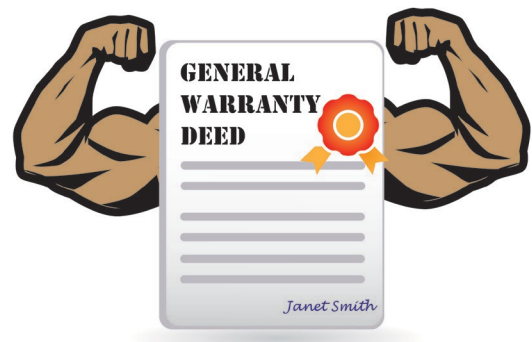
- **General warranty deed**
- **Special warranty deed**
- **Bargain and sale deed**
- **Quit claim deed**

General Warranty Deed

A **general warranty deed** offers the most protection to the grantee and covers the entire lifetime of the property, not just the time the grantor (owner/seller) owned it.

The deed provides protection to the grantee (new owner/buyer) in the form of five covenants:

- **Covenant of seisin:** Warrants the owner has full ownership and the legal right to convey the title.
- **Covenant against encumbrances:** Warrants the title is free from all liens and encumbrances except those specifically stated in the deed.
- **Covenant of quiet enjoyment:** Guarantees that no third parties will claim ownership of the property in the future...
- **Covenant of further assurance:** ...but if they do, the grantor will provide whatever documentation is needed to make them go away.
- **Covenant of warranty forever:** Promises that the grantor is responsible for the grantee for any losses suffered because of faulty title issues.



Special Warranty Deed

A **special warranty deed** indicates that the grantor holds title and possession of the property and that the property was not encumbered during the time the grantor owned it.

So, it only covers the timeframe that the grantor owned the property and any additional warranties (protections) must be specifically stated in the deed. Thus, in a sales purchase contract, this deed provides the most protection to the seller.



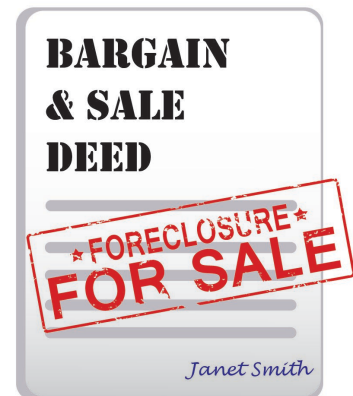
SPECIAL SHIELDS SELLER

Bargain and Sale Deed

A **bargain and sale deed** indicates that the grantor holds title and possession of the property BUT contains no protection against encumbrances.

So, basically it is saying that the grantor does own it and can convey it, BUT he's not providing any protection against future issues. This deed is most commonly used in tax and foreclosure sales.

Also known as the "**AS IS**" deed or a Sheriff's deed.



"AS IS" DEED

Quitclaim Deed:

A **quit claim deed** provides the least protection to the grantee (buyer/receiver) and carries no covenants or warranties against encumbrances.

While this deed also can be used to transfer established ownership, it is primarily used to relinquish any and all possible interest that an individual **MAY** have in a property. Thus, it is most often used to cure a defect in title (“cloud on the title”) in the case of distant relatives.

It is like saying “If I have any ownership interests in the property, I still quit my claim and want no part of it.”



For example, a quitclaim deed would be used in a situation where a long-lost relative may have a possible ownership claim on the property because the previous owner died without a will (intestate) and there was not a clear heir. In order for the current owner to transfer (convey) marketable title, the long-lost relative needs to “quit” his claim on any interest he may have on the property using this deed.

Recordation and Notice

We know that after a real estate transaction have successfully closed, the closing attorney will record the deed in the public records where the property is located on the buyer's behalf.

Even if the property is given as a gift, the new deed needs to be recorded on the public records by either the grantee or their attorney.

Doing so provides constructive notice to the public that the grantee is the new owner of the property.

Recordation is the act of putting legal document into the official records in the county where the real estate is located. When the documents are recorded, or placed in the public records, it is known as "giving notice."

Notice, or **giving notice**, is a way to ensure that an individual's interest in particular piece of real estate is made known to the public. The types of documents that are recorded are ones that could affect the title such as a deed, mortgage, deed of trust, easement, judgment, lien, foreclosure, or request for notice of default.

The main purpose of recording these documents is to protect the new owner from a third-party claim. A third-party claim is basically another person coming out of the woodwork making a claim that he or she has a legitimate claim on the property.

- **Actual Notice** is the direct or actual knowledge about a fact through direct experience or communication. *Example:* If you were selling your house and you were ACTUALLY at the closing, then you have actual notice that the title has been transferred between owners because you have firsthand knowledge of the event.
- **Constructive Notice (Legal Notice)** is knowledge of a fact that a person could have or should have obtained through reviewing properly recording documents and the physical possession of the property. The law assumes that once a deed has been recorded, the public has received constructive notice. *Example:* If your nosey neighbor was curious about if you had sold your house, he could look it up in the public records because the recorded deed provides public knowledge.
- **Transfer Tax:** A tax paid when the title is transferred between parties and the deed is recorded.

The Importance of Recording a Deed

Although a properly completed and notarized deed is valid between the grantor and grantee, all states require that the grantee records a property deed with the appropriate government office. That office varies among states. Recording allows interested parties to search public records and discern property ownership.

The purpose of the recording requirement is to allow members of the public as well as taxing authorities and lenders to know who owns which property. Property ownership carries rights and responsibilities including paying state and local property taxes, taking care of sidewalks adjacent to the property and removing nuisances. Recording a property interest transfer means that everyone is on notice that the prior owner no longer is responsible for the real estate but that the new owner is in charge.

If a closing attorney is used for the closing, it is typically their responsibility to record the deed. The grantee will receive a copy of the deed in the mail from the public records office a short while after the closing. Recording the deed at closing protects the new owner from any other party stepping forward and recording a document, such as a judgment, in its place. Technically the seller could record another deed if the buyer's deed has not been recorded yet.

If a closing attorney was not used, an individual may record a deed themselves. The individual should take the deed to the appropriate recording office in the county where the property is located. The recorder will then index and transcribe the deed in the public records, and it will be available for anyone to see. Once the deed is recorded, "constructive notice" is said to be given to the public. Until that happens, only the parties that were at the closing know that ownership has changed hands, which is "actual notice."

The newly recorded deed becomes part of the property's chain of title. If anyone were to research the property, the new buyer's name would show up as the official owner. Individuals should be sure that their name and address is correct on the deed, as the property tax bills will be sent to the name and address listed at the recorder's office. If the address or name was incorrectly listed, the individual may possibly never receive the property tax bills or any notices.

For example, suppose an individual made a quick purchase at a bargain price of some country land for cash from an elderly seller and did not record the deed. The seller dies and the executor of the estate sells the land to raise cash for estate taxes. The second buyer promptly records the deed.

Who owns the land, the first buyer or the second buyer? The second buyer does because he had no knowledge of the first purchase, and he recorded the deed first. Ouch!

Chapter 4: Title and Deeds Exam

1. While it can serve many purposes, what is the primary purpose of a deed?
 - A. Transfer of title
 - B. Proof of ownership
 - C. Recordation
 - D. Legal evidence

2. While recording a deed to give constructive notice of a change in ownership is not technically required to transfer title, who MOST LIKELY would benefit from recording the deed the most?
 - A. The grantor
 - B. The grantee
 - C. The county
 - D. The state

3. When property is sold it is very important to be able to convey marketable title as free of liens and encumbrances as possible. A general warranty deed backed by an owner's title policy guarantees the buyer's title against claims arising from which of the following?
 - A. Grantor's unknown heirs
 - B. Easements of record
 - C. Recorded Mortgages
 - D. Judgment liens of record

4. For title to real property to be conveyed from a grantor to a grantee during the grantor's lifetime, the deed conveying it must be contain, among other items, the grantor's name, the grantee's name, a legal description, a granting clause, the consideration, a habendum clause, and must be what?
 - A. Signed by the grantee
 - B. Accepted by the grantee
 - C. Mortgaged by the grantor
 - D. Recorded by the grantor

5. What is a legal concept that requires certain types of contracts to be executed in writing?
 - A. Real Estate Settlement Procedures Act
 - B. Statute of Frauds
 - C. Truth in Lending Act
 - D. Real Estate Consumers in Alabama Disclosure Act

6. What type of deed provides the most protection to the grantee?
 - A. General warranty deed
 - B. Special warranty deed
 - C. Bargain and sale deed
 - D. Quit claim deed

7. What type of deed provides the most protection to the grantor?
 - A. General warranty deed
 - B. Special warranty deed
 - C. Bargain and sale deed
 - D. Quit claim deed

8. What is the most common use of quit claim deed?
 - A. To transfer title between a trustor and a trustee
 - B. To transfer property between members of a family
 - C. To transfer property according to a court order
 - D. To transfer property from a trustor to a trustee

9. The reason that deeds and liens and other claims are recorded is to provide...?
 - A. Constructive Notice
 - B. Actual Notice
 - C. Direct Notice
 - D. Nominal Notice

10. If Tom cannot find the deed to his property, which of the following statements is true?
 - A. He can sue for quiet title.
 - B. He does not need the original deed if it has been recorded.
 - C. He can buy title insurance.
 - D. He can execute a replacement deed.

11. Bob sold his house to Anne. If Bob and Ann did not use a closing attorney and they were the only two people that are aware of the sale, what type of notice do they each have?
 - A. Constructive notice
 - B. Actual notice
 - C. Judicial notice
 - D. Informal notice

12. What type of deed provides the least protection to the grantee?
 - A. General warranty deed
 - B. Special warranty deed
 - C. Bargain and sale deed
 - D. Quit claim deed

13. What type of deed is typically used in foreclosure sales and offers no covenants or warranties?
 - A. General warranty deed
 - B. Special warranty deed
 - C. Bargain and sale deed
 - D. Quit claim deed

14. If a deed is not recorded, is it still valid?
 - A. Yes, but most states require that it be recorded.
 - B. Yes, as long as it is recorded within 30 days of signing
 - C. No, as long as the grantee is still alive
 - D. No, as long as the grantor is still alive

15. All of the following are true about deeds EXCEPT?
 - A. Every state's statute of frauds requires that all deeds must be in writing.
 - B. A deed is only valid while the grantor is alive.
 - C. Only a grantee with legal capacity can sign a deed.
 - D. For a deed to be recorded, it must have been acknowledged.

16. If a grantor is conveying an interest that is less than fee simple absolute, this explanation of the extent of ownership will be found in which part of the deed?
- A. Acknowledgement
 - B. Granting clause and habendum clause
 - C. Statement of consideration
 - D. Legal Description
17. What is a history of all recorded liens and encumbrances?
- A. Chain of title
 - B. Unrecorded documents
 - C. Abstract of title
 - D. Title insurance policy
18. If Mr. Jackson would like his home to go to youngest son, his cars to go to his daughter and his personal property to go to his wife after his death, what document would be used to do this per his wishes?
- A. A general warranty deed
 - B. A quitclaim deed
 - C. A will
 - D. An order of escheat
19. A cloud on the title can cause all of the following to happen during a real estate transaction EXCEPT?
- A. The lender will refuse to fund the loan.
 - B. The title insurance company will not issue a title insurance policy.
 - C. The seller will not convey marketable title.
 - D. The buyer will not order a home inspection.
20. If an individual dies without a will, this is known as what?
- A. Testate
 - B. Intestate
 - C. Escheat
 - D. Decedent

Exam answers are located on page 383.