

## CHAPTER 2

### TRANSFER OF PROPERTY

(Approximately 8% of Salesperson Exam)

- I. **DEED** - the written instrument which, when properly **executed, delivered, and accepted**, conveys title to real property from one person (the grantor) to another person (the grantee). If a deed is recorded, it is recorded in the county where the property is located and **indexed by the names of the parties (grantor and grantee)**.

#### A. Essentials of a Valid Deed

1. **Grantor Competent to Convey** (18, married, or veteran). A deed signed by a minor who is not emancipated is void.
2. **Adequate Description of the Property.**
3. **Grantee Capable of Receiving** (not a fictitious person).
4. **Action Clause (Granting Clause)** - must say "grant," "transfer," or "convey."
5. **Proper Description of the Parties.**
6. **In Writing.**
7. **Grantor's Signature (Executed)** - a deed is deemed by law to be executed when it is signed by the grantor. A deed may be signed by a witnessed "X."

#### B. Delivery and Acceptance - necessary for the deed to be effective.

1. **Intention - of the grantor** to pass title immediately must be present. A deed **cannot be delivered upon death**.
2. **Acceptance - grantee must accept the deed.**
3. **Possession - of the deed** by the grantee, **or recording, presumes a valid delivery and acceptance**, but such presumption is rebuttable in court.

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Question #1 Deeds are indexed at the County Recorder's office by: (A) legal descriptions; (B) sales price; (C) names of grantor and grantee; (D) tax assessor parcel number.

Question #2 A valid deed may be: (A) assigned to another grantee; (B) foreclosed by the lender; (C) revoked at a later date by the grantor; (D) signed by an "X."

Question #3 A valid grant deed passes title when the deed is: (A) notarized; (B) signed; (C) delivered; (D) recorded.

### **C. Acknowledging and Recording**

- 1. Acknowledgment** - declaration before a notary by a person (grantor) who has executed a document stating that he did in fact sign the document. A deed must be acknowledged to be recorded. Once acknowledged, a deed is accepted as “prima facie” evidence in court. It is not legally required to acknowledge or record a deed for a deed to be valid or transfer title.

**Note:** *An employee of a corporation who is a notary may notarize a deed involving the corporation as long as she does not have a personal interest in the subject matter of the transaction.*

- 2. Recording** - very few documents must be recorded to be effective (**some documents which must be recorded include mechanic’s liens, homestead exemptions, lis pendens, and abandonment of homestead**).

a. **Notice** - can be actual or constructive.

(1) **Actual Notice** - a person actually knows something (for example, you know someone has taken possession of a property).

(2) **Constructive (Legal) Notice** - events which by law put people on notice regardless of whether they actually know of the events or not. **Recording a document gives constructive notice.** The act of taking possession of land, while holding an unrecorded deed also gives constructive notice.

b. **Priority of Valid Deeds** - the first valid deed that is recorded determines the owner unless that person, prior to recording, had either actual or constructive notice of the rights of others. A deed signed, delivered and accepted, but not recorded, is valid between the parties but invalid as to subsequent recorded interests without notice.

### **D. Types of Deeds:**

- 1. Grant Deed - most commonly used deed.** It contains **two implied warranties:**

a. The grantor has not conveyed title to any other person.

b. The estate is free from undisclosed encumbrances. This is warranted by the grant deed and is not covered by title insurance.

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**Question #4** Which of the following is **not** essential to a valid deed? (A) the parties are competent to convey and capable of receiving title; (B) a granting clause; (C) the deed must be acknowledged; (D) the deed must be in writing.

**Question #5** The recording of a deed gives what type of notice? (A) actual notice; (B) positive notice; (C) negative notice; (D) constructive notice.

**Question #6** Adam sold his home to Tim but negotiated a two-year leaseback and remained in possession. Tim immediately placed the deed he received in a safe deposit box for safe keeping. Adam then sold this same home to Sally. Sally recorded the deed. Who owns the home? (A) Tim, because he received the first deed; (B) Sally, because she recorded her deed; (C) Adam, because he still has three more deeds ready to be sold; (D) Adam, because both sales were improper.