

## TITLE AND CONVEYANCING BASICS

### I. Validity of Deed

#### A. Competency of Grantor

1. The question is the competency of the Grantor at the time of execution of the deed.
2. A deed executed by an incompetent Grantor is not automatically void – but is voidable.
3. A deed for entireties property executed by both husband and wife is voidable if either one of them is incompetent.

#### B. Capacity of Grantee

Grantee need not be competent but must be alive or must be a legally recognized entity.

#### C. Forgery

A forged deed is a nullity.

#### D. Delivery and Acceptance

1. A deed must be delivered during the lifetime of the Grantor to be effective.
2. A deed must be accepted by Grantee, acceptance is ordinarily presumed, but cannot force property on Grantee.
3. An unrecorded deed is effective as between the Grantor and the Grantee.

### II. Types of Deeds

#### A. Quit Claim Deed

Conveys whatever right, title and interest the Grantor has in the property at the time the deed is provided.

#### B. Warranty Deed

Includes a warranty of the Grantor's title.

#### C. Covenant Deed (also known as "Limited Warranty Deed" or a "Deed C"

Includes covenants pertaining to the acts of the Grantor, but not anyone else.

### III. Ownership by Multiple Parties

#### A. Tenants in Common

Distinct and separate interests; presumed equal unless otherwise stated.

#### B. Joint Tenants

Equal and undivided interests, such that when one tenant dies, the surviving tenant takes title. A joint tenant can sever (terminate) the joint tenancy by conveying his/her interest to a third party unless the property is held as "joint tenants with rights of survivorship."

#### C. Tenants by the Entireties

1. Only a husband and wife can hold property by the entireties.
2. Unlike a joint tenancy, entireties cannot be severed by either husband or wife.
3. The presumption is that husband and wife hold property by the entireties.

### IV. Title Insurance

#### A. Types

1. Owner's policy insures owner's interest
2. Lender's policy insures the priority of lender's mortgage.

#### B. Covered risks

Defects in title and the lack of a right of access.

#### C. Exclusions/Standard and Specific Exceptions

1. Standard exclusions (listing on commitment/policy jacket), standard exceptions plus exceptions specific to the property (*i.e.*, matters of record).
2. No coverage for things that happen after the date of the policy.
3. No coverage for matters known to the buyer (or the buyer's agent).
4. Generally no coverage for construction liens, zoning restrictions, shortages in acreage, matters not of public record, or encroachments. There may be special endorsements available to add various special coverage matters.

D. Generally Not Assignable

If property is transferred, need to get a new policy (or an endorsement). Title insurance does not “run with the land.”

E. Claims/Coverage

For covered claims, the insurer will try to cure the defect. If the defect cannot be cured, the insured is entitled to the difference in the value of the property with and without the title defect (up to the amount of coverage or the value of the property, whichever is less.)