

Transfer and Control of Real Property

Contract of Sale

- Contract of Sale
- Formation - a contract to transfer any interest in land must be in writing to be enforceable.
- Marketable Title - the seller must transfer marketable title, which is a title free from any defects or encumbrances.

Quality of Improvements

- Common Law Rule - under caveat emptor ("let the buyer beware") the seller is not liable for any undiscovered defects.
- Implied Warranty of Habitability - in a number of States, the builder-seller of a dwelling impliedly warrants that a newly constructed house is free from latent defects.

Requirements

- The deed must (1) be written, (2) contain certain words of conveyance and a description of the property, (3) end with the signature of the grantor, a seal, and an acknowledgment before a notary public, and (4) be delivered.

Recordation

- Required to protect the buyer's interest against third parties; consists of delivery of a duly executed and acknowledged deed to the appropriate recorder's office.

Secured Transactions

Elements - a secured transaction involves (1) a debt or obligation to pay money, (2) an interest of the creditor in specific property that secures performance, and (3) the debtor's right to redeem the property (remove the security interest) by paying the debt.

Secured Transactions 2

- Mortgage - interest in land created by a written document that provides security to the mortgagee (secured party) for payment of the mortgagor's debt.
- Deed of Trust - an interest in real property which is conveyed to a third person as trustee for the benefit of the creditor.

Transfer of Mortgage Interests

- Assumes the Mortgage - the purchaser of mortgaged property becomes personally liable to pay the debt.
- Subject to the Mortgage - purchaser is not personally liable to pay the debt, but the property remains subject to the mortgage.
- Foreclosure - upon default, sale of the mortgaged property to satisfy the debt.

Rights of Mortgagor and Mortgagee

- Debtor/Mortgagor (D)
 - (1) To redeem property by payment of debt
 - (2) To possess general rights of ownership as limited by mortgage
- Creditor/Mortgagee (C)
 - (1) To recover amount of debt
 - (2) To foreclose the mortgaged property upon default to satisfy debt

Adverse Possession

- Definition - acquisition of title to land by open, continuous, and adverse occupancy for a statutorily prescribed period.
- Possession - must be actual and without intervening domination by true owner.

Zoning

- Principal method of public control over private land use; involves regulation of land but may not constitute a taking of the property.
- Authority - generally delegated to local authorities by statutes known as enabling acts.
- Judicial Review - zoning ordinances may be reviewed to determine if they are invalid or a confiscation of property.

Exceptions to Zoning

- Variance - a use differing from the zoning ordinance; granted to avoid undue hardship.
- Nonconforming Use - a use not in accordance with, but existing prior to, a zoning ordinance; permitted to continue for a reasonable time.

Eminent Domain

- Definition - the power of a government to take (buy) private land for public use.
- Public Use - public advantage.
- Just Compensation - the owner of the property taken by eminent domain must be paid the fair market value of the property.

Eminent Domain

- Constitutional
 - If there has been a taking for public use and the owner has received just compensation

Restrictive Covenants

- Definition - private restrictions on property contained in a conveyance.
- Covenants Running with the Land - covenants that bind not only the original parties but also subsequent owners of the property.
- Covenants in Subdivision - bind purchasers of lots in the subdivision as if the restrictions had been inserted in their own deeds .
