In Part I of this chapter, you will study land descriptions, stressing the lot, block, and tract; metes and bounds; and U.S. Government survey methods for describing and locating land.

You will also explore five ways of acquiring title to real estate, including an explanation of deeds used in California. At the conclusion of Part I, you will be able to:

1. List the three major methods used to legally describe and locate land.
2. Find a parcel of land using each of the three location methods and be able to calculate acreage.
3. Outline five ways of acquiring title to real estate.
4. Discuss the difference between a grant deed, quit-claim deed, and warranty deed.
5. Briefly describe the purpose of the California recording system.

### 2.1 LAND DESCRIPTIONS

Three reasons the description of real property is essential are as follows:
1. To specifically identify and locate areas of real property ownership

2. To satisfy buyers who are interested in the precise dimensions and area of their property

3. To minimize land description disputes between neighbors by establishing set boundary lines

In addition to these three reasons, the law requires that every parcel of land sold, mortgaged, or leased must be properly described or identified. Legal descriptions are usually based upon the field notes of a civil engineer or a surveyor. When dealing with property, recorded descriptions usually can be obtained from title insurance policies, deeds, deeds of trust, or mortgages.

Engineers and surveyors establish exact directions and distances by means of transits and measuring devices. Aerial photography is also used in modern mapping.

Early Methods Used

Today’s survey methods are a far cry from the methods used in early California. One early method of land measurement employed two people on horseback. Each rider dragged an end of a cord or rawhide strip, called a thong, which was about 100 varas in length. (A vara is about 33 inches.) One rider remained stationary while the other rode past. When the length of the thong was reached, the process was repeated by the other rider until one of them arrived at the end of the property. The number of thong lengths passed was counted, and the dimensions of the property were determined.

In another early method, the circumference of a wagon wheel was measured. A leather strip was tied to a spoke, and then, by rolling the wheel on the ground, the revolutions of the wheel were counted and the distance recorded.

Present-Day Land Descriptions

Three major methods are used today to legally describe and locate land. They are as follows:

1. Lot, block, and tract system
2. Metes and bounds system
Lot, Block, and Tract System

Dividing a large parcel of land into smaller parcels is called subdividing. The California Subdivision Map Act requires that all new subdivisions be either mapped or platted. A map of each subdivision is recorded in the recorder’s office of the county in which the land is located.

At the time a subdivision map is filed in the county recorder’s office, it is assigned a tract name and/or number. Once subdivision maps are recorded, legal descriptions are created by making reference to a particular lot in the block in that tract in which the property is located.

**EXAMPLE.** “All of lot 4 in Block A of Tract number 2025 in the city of Bellflower, Los Angeles County, California. As per map recorded in Book 76 page 83 of maps in the office of the recorder of said county.” This type of iden-

![Tract 2025 Diagram](image-url)

**Figure 2.1**
tification is commonly found in urban areas of California, where extensive subdividing has taken place. (See Figure 2.1.)

**Metes and Bounds System**

The metes and bounds system of land location is used most often when the property in question is not covered by a recorded subdivision map or when the property is so irregular in shape that it is impractical to describe under the section and township system.

*Metes* refers to the measurement of length, using items such as inches, feet, yards, rods, meters, and miles. *Bounds* refers to the use of boundaries, both natural and artificial, such as rivers, roads, fences, boulders, creeks, and iron pipes. So metes and bounds means to measure the boundaries. This system is one of the oldest methods used to describe land, and it is used in both rural and urban areas. A common term used in the metes and bounds system is *bench mark*. A bench mark is a mark on a fixed or enduring object, such as a metal stake or rock, and it is often used as an elevation point by a surveyor.

![Figure 2.2](image-url)
Another term is *angular lines*. Many surveys using metes and bounds descriptions are based on angles and directions from a given north-south line, which is obtained with a compass. Angles are a deflection from this north-south line. Deflections are to the east or west of the north-south line.

There are 360° in a circle and 180° in a half-circle. Each degree is divided into 60 minutes, and each minute is divided into 60 seconds. The bearing of a course is described by measuring easterly or westerly from the north and south lines. (See Figure 2.2.)

Although the metes and bounds land description is one of the oldest forms, it is also one of the most complicated. The system ranges from simple distances between given landmarks to surveyor readings based on angles found in the arc of a circle.

In using the metes and bounds method, three important points must be stressed:

1. You must start at a given point of beginning.
2. You must follow, in detail, the boundaries of the land in courses, distances, and directions from one point to another.

3. You must return to the point of beginning, thus enclosing the boundary lines.

**EXAMPLE.** Here is a legal description using the metes and bounds method. “Beginning at a point on the southerly line of Harbor Ave., 200 ft. westerly of the southwest corner of the intersection of Harbor Ave. and 8th St.; running thence due south 300 ft. to the northerly line of Cribbage St.; thence westerly along the northerly line of Cribbage St., 200 ft.; thence northerly and parallel to the first course, 300 ft. to the southerly line of Harbor Ave.; thence easterly along the southerly line of Harbor Ave., 200 ft. to the point of beginning.” (See Figure 2.3.)

One major weakness in using a metes and bounds system is that markers or points of beginning often disappear or are moved or replaced. In later years, this makes it difficult to find the exact corners of a parcel.

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**CALIFORNIA BASE LINES AND MERIDIANS**

![California Base Lines and Meridians Diagram](image)

*Figure 2.4*
U.S. Government Section and Township System

The U.S. Government section and township method of survey is used primarily to describe agricultural or rural land. The system originated in the 1800s with a survey of public lands made by the U.S. Surveyor General. The U.S. Government survey system establishes monuments as points of beginning. The monuments are intersected by two imaginary lines, one running east and west, called a base line, and another running north and south, called a meridian line.

Because of its peculiar shape, the state of California requires three of these principal base lines and meridians, as shown in Figure 2.4. They are:

1. **Humboldt Base Line and Meridian**, which is the point of beginning for describing land in the northwestern part of California. The actual point of beginning is on Mt. Pierce, just south of Eureka, California.

2. **Mt. Diablo Base Line and Meridian**, which is the point of beginning for describing land in the central and northeastern part of California. The actual point of beginning is on Mt. Diablo, near Walnut Creek, California.

![Figure 2.5](image-url)
3. *San Bernardino Base Line and Meridian*, which is used to describe land in southern California. The actual point of beginning is the intersection of Base Line Street and Meridian Avenue in the city of San Bernardino, California.

*Range lines* run parallel to the principal meridians at six-mile intervals. *Township lines* run parallel to the principal base lines at six-mile intervals. The result is a grid of squares, or *townships*, each township containing approximately 36 square miles.

<table>
<thead>
<tr>
<th>TOWNSHIP</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 5 4 3 2 1</td>
</tr>
<tr>
<td>7 8 9 10 11 12</td>
</tr>
<tr>
<td>18 17 16 15 14 13</td>
</tr>
<tr>
<td>19 20 21 22 23 24</td>
</tr>
<tr>
<td>30 29 28 27 26 25</td>
</tr>
<tr>
<td>31 32 33 34 35 36</td>
</tr>
</tbody>
</table>

Figure 2.6

**MAP OF A SECTION**

<table>
<thead>
<tr>
<th>N 1/2 OF NW 1/4</th>
<th>20A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>SW 1/4 OF NW 1/4</td>
<td>80A.</td>
</tr>
<tr>
<td>SW 1/4</td>
<td>160 A.</td>
</tr>
</tbody>
</table>

Figure 2.7
To identify each of these townships, a numbering system utilizing an assignment of two location numbers was devised. The identity of each township is determined by its position north or south of the base line and east or west of the meridian line. An example of a legal description might be “Township 2 North, Range 3 East, San Bernardino Base Line and Meridian. (T2N, R3E, SBBL & M).” The X indicates the township. (See Figure 2.5.)

Sections in a Township

Townships are, in turn, divided into sections. Each township contains 36 squares, or sections. Each section is one mile square. These sections are uniformly numbered from 1 to 36, with Section 1 located in the northeast corner of the township.

Not only is each section one mile square, but each contains 640 acres. Each section can be divided into smaller parcels of land, such as:

- A quarter of a section = 160 acres
- A quarter of a ¼ section = 40 acres
- A quarter of a ¼ of a ¼ section = 10 acres

The division can be smaller and smaller until the size of the parcel is identified. The division need not be in quarters; it can also be in halves. (See Figures 2.6 and 2.7.)
Because of the earth’s curvature, some sections in townships are distorted and may not contain a full 640 acres; thus, computing acreage under the U.S. Government system provides approximate figures. An accurate measure of actual acreage is best left to licensed engineers and surveyors.

The following additional measurements will help in computing land measurements:

- One mile = 5,280 feet or 320 rods
- One rod = 16\(\frac{1}{2}\) feet
- One acre = 43,560 square feet
- One square acre = 208.71 feet × 208.71 feet
- Commercial acre = standard acre less land needed for streets, sidewalks, curbs

### 2.2 METHODS OF ACQUIRING TITLE

Chapter 1 discussed the difference between real and personal property. Section 2.1 of this chapter illustrated the three main ways of legally describing real property. The next logical step is to describe how a person goes about acquiring legal title to real property. According to the California Civil Code, the five ways of acquiring property are by will, succession, accession, occupancy, and transfer.

#### Acquiring Property by Will

A will is a legal instrument by which a person over the age of 18 and of sound mind disposes of property upon his or her death. California law recognizes three types of wills: (1) a witnessed will, (2) a holographic will, and (3) a statutory will. (See Figure 2.8.)

A **witnessed will** is a formal typewritten document signed by the individual who is making it, wherein he or she declares in the presence of at least two witnesses that it is his or her will. The two witnesses, in turn, sign the will. This document should be prepared by an attorney.

A **holographic will** is a document written, dated, and signed in its entirety in the handwriting of the maker. It requires no witnesses.
A statutory will is a preprinted form approved by the state in which a person merely fills in the blanks, usually without formal legal assistance. This statutory will requires at least two witnesses.

At one time, another will—an oral will in contemplation of death, called a nuncupative will—was occasionally recognized. But today oral dying declarations are, for the most part, ignored by the probate courts.

**Special Terms**

A will is also called a testament. Special terms relating to wills are as follows:

- **Testator**: Male person who makes a will
- **Testatrix**: Female person who makes a will
- **Executor**: Male person named in the will by the maker to handle the estate of the deceased
- **Executrix**: Female person named in the will by the maker to handle the estate of the deceased
- **Administrator**: Male person appointed by the court to handle the estate when no will is left
- **Administratrix**: Female person appointed by the court to handle the estate when no will is left
- **Devise**: A gift of real property by will
- **Devisee**: Person receiving real property by will
- **Bequest, legacy**: A gift of personal property by will
- **Legatee**: Person receiving personal property by will
- **Codicil**: A change in a will

---

**Figure 2.9**

INTESTATE SUCCESSION

NO WILL

<table>
<thead>
<tr>
<th>SEPARATE PROPERTY</th>
<th>COMMUNITY PROPERTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>... spouse and one child (50/50)</td>
<td>... all goes to surviving spouse</td>
</tr>
<tr>
<td>... spouse and two or more children (1/3 and 2/3)</td>
<td>... nothing to children</td>
</tr>
<tr>
<td>... no spouse, no children — all goes to next of kin</td>
<td></td>
</tr>
</tbody>
</table>

26 Legal Description, Method of Acquiring Title, and Deeds
**Intestate:** A situation where a person dies without leaving a will; he or she is said to have died intestate

**Testate:** A situation where a person dies leaving a will

**Probate** Legal title to property being acquired by will is subject to the control of the probate court. The purpose of a probate hearing is to identify the creditors of the deceased and to pay off these creditors. Then if any property remains, the probate court determines the identity of the rightful heirs and distributes the remaining property.

The law requires that upon the death of the owner, all property is subject to the temporary possession of an executor(trix) or an administrator(trix).

Probate action takes place in superior court, and the estate property may be sold during the probate period for the benefit of the heirs or to cover court costs. If a probate sale takes place, certain guidelines are set by the court. The general guidelines are as follows:

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**Key Point**

On matters regarding wills and estates, *always* consult an experienced attorney! Do-it-yourself estate planning is not recommended!

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1. The initial offer in a probate real estate sale must be for at least 90 percent of the appraised value of the property.

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![Figure 2.10](image)
2. Once the initial offer is made, the court is petitioned to confirm the sale, and at the hearing, the court may accept additional bids.

3. The first additional bid must be an increase of at least 10 percent of the first $10,000 of the original bid and 5 percent of any excess. Subsequent bids may be for any amount set by the court.

4. The court confirms the final sale and sets the broker’s commissions if a broker is involved.

Probate fees paid to executors, administrators, and attorneys are set by the courts and vary depending on the size and complexity of the estate. Certain types of property holdings need not be probated, which is discussed in Part II of this chapter.

**Acquiring Property by Succession**

When a deceased person leaves no will, the law provides for the disposition of his or her property. The state of California dictates who will get the property under the law of *intestate succession*. *Succession* means the handing down of property to another person. (See Figure 2.9.)

When a person dies intestate, the property of the deceased is divided into two categories: separate property and community property. The laws of intestate succession are different for each of these categories. When a person dies without a will and leaves separate property, this means that the surviving spouse did not have an interest in said property. If a person leaves community property, this means a surviving spouse has a one-half interest in the property.

When *separate property* is involved, the following disposition of property is made:

1. When a deceased person leaves a spouse and one child, the separate property is divided one-half to the spouse and one-half to the child.

2. When a deceased person leaves a spouse and two or more children, the spouse receives one-third and the children equally divide the other two-thirds.
3. Other divisions are made by the courts in the event that a person dies leaving no spouse or children. The usual rule is the property goes to the next of kin, such as parents, brothers, sisters, and so on.

When a person dies intestate and leaves community property, the deceased person’s community interest passes to the surviving spouse. The children, if any, get nothing.

Acquiring Property by Accession

You may acquire title to property that is added to your existing real estate. This process is called accession.

Examples include (1) accretion, (2) avulsion, (3) addition of fixtures, and (4) improvements made in error. (See Figure 2.10.)

ACCRETION

The gradual accumulation of soil on property bordering a stream, a river, or an ocean shoreline is called accretion. The soil thus deposited is referred to as alluvion or alluvion deposits. The gradual wearing away of land by the action of water and wind is known as erosion. Reliction occurs when the waterway, sea, or river recedes permanently below the usual water line. When this takes place, the owner of the property that borders on the waterway, sea, or river may acquire title to the newly exposed land.
**AVULSION**

Avulsion occurs when a river or stream, during a storm or earthquake, carries away a part of the bank and bears it to the opposite bank or to another part of the same bank. The owner of the part carried away may reclaim it within one year after the avulsion. However, the owner must reclaim the title by applying some act of ownership, such as cultivation of the soil, within one year; if not, the land belongs to the property owner to whom the land is now attached.

For urban readers, this discussion regarding rivers and water rights may seem out of place. But in rural California, especially northern California, those topics are an important aspect of real estate principles.

**ADDITION OF FIXTURES**

Addition of fixtures occurs when a person affixes something to the land of another without an agreement permitting removal. The thing so affixed may then become the property of the landowner.

**IMPROVEMENTS MADE IN ERROR**

An improvement made in error occurs when a person, in good faith, erroneously affixes improvements to the land of another. In some cases, these erroneous improvements may pass to the landowner. But in most cases, the person who made the improvements in error is permitted to

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**Figure 2.12**

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30 Legal Description, Method of Acquiring Title, and Deeds
remove the improvements and pay the cost to restore the property to its original condition.

**Acquiring Property by Occupancy**

Real property or the use of real property can be gained through (1) abandonment and (2) adverse possession. (See Figure 2.11.)

**ABANDONMENT**

A party who holds a leasehold interest (the tenant) in a piece of property may abandon his or her interest or any improvements made thereon. If this should occur, the landlord may reacquire possession and full control of the premises. In other words, when a tenant leaves before the lease expires, the landlord may reacquire the use of the property at that time and in some cases not be obligated to refund rental payments or return any improvements made on the property. There are technical rules regarding the landlord’s right to re-rent the property. If a tenant abandons the premises and leaves personal property, the landlord may, after due notification, dispose of such personal property.

**ADVERSE POSSESSION**

Adverse possession is a method of acquiring physical possession of property by a person who is not the actual owner. This physical possession may develop into legal title if five conditions are met.

*Five elements of adverse possession*

1. There must be actual occupation, *open and notorious*. This means the claim of possession must not be kept a secret. In other words, if the present owner inspects the property, the possession or use by another person should be apparent. You do not actually have to reside on the property, but you must show your intentions of holding and possessing the land through some type of improvement to the land. For example, if the property were farmland, the cultivation of crops, the grazing of cattle, or the fencing of the property might constitute possession.

2. There must be occupancy *hostile* to the true owner’s title (wishes). Hostile does not mean physical con-
frontation. Hostile means a person is using the property without permission and not making rental payment of any kind to the owner. Permission to use the property defeats the hostile use and prevents acquiring title by adverse possession.

3. There must be a claim of right or color of title. Under claim of right, the claimant enters as an intruder and remains; under color of title, claimants base their right on some court decree or upon a defective written instrument.

4. There must be continuous and uninterrupted possession for a period of five years.

5. There must be the payment of all real property taxes levied and assessed for a period of five consecutive years. The fact that the true owner is also paying the taxes does not necessarily defeat the rights of the adverse possessor, as long as the possessor pays the taxes first.

Adverse possession is not common in California because of the five requirements listed previously. It is not possible to obtain title by adverse possession to public lands or against an incompetent private landowner. Title insurance and marketable title cannot be obtained until a court, under a quiet title action, rules that the adverse possession vested valid title. In short, if you acquire title by adverse possession, it will be difficult to finance or sell the property without first going to court.
Without question, the most common method of acquiring property is by transfer. When property is conveyed from one person to another by act of the parties or by act of law, title is acquired by transfer. There are five basic types of property transfers: (1) private grant, (2) public grant, (3) gift, (4) public dedication, and (5) court action (or involuntary transfer). (See Figure 2.12.)

Private grant occurs when an owner voluntarily conveys his or her ownership rights to another. The basic instrument used in this transaction is a deed. (Deeds are discussed in detail in Section 2.3.)

When a governmental agency deeds property to an individual or institution, it is called a public grant. In the early years of U.S. history, public grants were made through laws enacted by Congress.

*The Preemption Act of 1862* allowed persons living on federal land, who were known as squatters, to acquire 160 acres of land at a small fee.

*The Homestead Act of 1862* allowed vast stretches of public land to be homesteaded. The heads of families or persons over 21 years of age could obtain 160 acres. They had to file a declaration of homestead with the county recorder or at a land office and had to agree to occupy and improve the land. After residing on it for five years and paying a small fee, they received a document from the government called a *patent*, which conveyed ownership to the homesteader.

Other public grants were made by the government for railroads, educational institutions, national parks, cities, and towns.

A property owner may voluntarily transfer property to a private person or an organization without giving or receiving any consideration or compensation. In case of real property, the transfer normally is evidenced by a gift deed. Depending on the value of the gift, there may or may not be a gift tax liability. The person who gives the gift is called the *donor*; the person who receives the gift is called the *donee*. 

2.3 Instruments Used in the Transfer of Real Property  33
A property owner may also give land to a public body for a particular use such as a street, a park, bridges, schools, playgrounds, and so on. This act is called public dedication. The dedication is valid only if the public body accepts the property.

A court of law may be called upon to transfer legal title in a variety of situations. The most common of these involuntary transfers are partition action, foreclosure action, bankruptcy, escheat, and eminent domain. (See Figure 2.13.)

Partition action is a court action wherein the co-owners of property may sue other co-owners for severance of their respective interests. If the property cannot be physically divided, the court can order a sale and divide the proceeds among the former owners.

Foreclosure action takes place when a person holding a delinquent lien on a property institutes proceedings requesting the forced sale of property. In California, delinquent real estate loans are foreclosed using a process called a trustee’s sale, which is discussed in Chapter 7.

Bankruptcy can be either voluntary or involuntary. When an individual cannot meet credit obligations, he or she may voluntarily file bankruptcy or may be adjudged bankrupt by the courts. Title to real property is then vested in a court-appointed trustee, who sells the property to pay the claims of creditors. Under certain circumstances, a family home can be protected against forced sale by the bankruptcy court.

Escheat is the legal process whereby ownership of real property reverts to the state due to lack of heirs or want of legal ownership. The probate courts do all in their power to locate possible heirs. After escheat proceedings are instituted, the title is held in trust by the state for a set time. If at the end of that time no heirs have been located, title to the property transfers to the state. Every year millions of dollars worth of property escheats to the state of California because of the lack of heirs.

Eminent domain is the power of the state to take land from private ownership by due process of law. Use of eminent domain is often referred to as condemnation pro-
ceedings. These proceedings may be instituted by all levels of government and by public utilities or railroads. Two conditions are legally required to use the power of eminent domain:

1. The property must be taken for a public use.
2. The owner must be paid just compensation. Most courts have ruled that the “fair market value” based on an appraisal is the proper method for determining just compensation.

2.3 INSTRUMENTS USED IN THE TRANSFER OF REAL PROPERTY

Under English common law, a written document was not needed to transfer title to real property. Rather, a twig, a stone, or a handful of dirt passing from one owner to the next owner in the presence of witnesses was symbolic of the transfer of property. Other methods of transfer were simply a statement made before witnesses in sight of the land, followed by entry upon the land by the new owner. Today under California law, the transfer of ownership of real property may be done by a single written instrument known as a deed.

A deed is a written document by which (when properly executed, delivered, and accepted) title to real property is transferred from one person, called a grantor, to another person, called a grantee. The grantor is the person who gives title, and the grantee is the person who receives title. In a real estate sale, the grantor is the seller and the grantee is the buyer. Throughout this book, you will find words to designate the parties in an agreement that end in the letters or and ee, such as:

- Trustor and trustee
- Lessor and lessee
- Vendor and vendee
- Optionor and optionee

To understand these terms, remember this rule:

The or ending denotes the giver, and the ee ending indicates the receiver.
EXAMPLE. A lessor (owner or landlord) gives a lease to the lessee (tenant).

Essentials of a Valid Deed

To be valid, a deed must contain certain essential elements:

1. **Deed must be in writing.** Legal instruments required to be in writing come under the *Statute of Frauds*. According to this statute, when the title to real property is to be voluntarily conveyed, it must be accomplished by an instrument in writing, usually a deed.

2. **Parties must be correctly described and identified.** For a deed to be valid, the parties must be properly described. This means that the grantor (seller) and the grantee (buyer) must be certain and absolute.

EXAMPLE. A deed from A to B or C is not absolute. The word *or* creates the problem. A deed from A to B and C is absolute. The word *and* makes it certain.

Since so many individuals have like or similar names, the parties to a deed must be identified as clearly as possible to avoid any later confusion as to true identity.

If possible, the full legal name should be used and the legal status of the individual should be shown. Remember, the full name includes middle name or initial, if any, and the legal status refers to the relationship between parties, such as husband and wife.
GRANT DEED

APN No.  Title No.  Escrow No.

THE UNDERSIGNED GRANTOR(s) DECLARE(s)

DOCUMENTARY TRANSFER TAX is $  CITY TAX $

☐ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale,
☐ Unincorporated area:  ☐ City of

, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

hereby GRANT(s) to

the following described real property in the

County of , State of California:

Dated:

________________________________________

{/} ss.

State of California
County of ______________________________________

On__________________________ before me, ____________________________________________ (here insert name) Notary Public,

personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me all 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.

WITNESS my hand and official seal.

Signature __________________________________________

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3. **Grantor must be competent to convey and capable of receiving title.** Everyone is competent to convey except:
   
a. **Minors:** persons under the age of 18 years, unless the minor is classified as emancipated, in which case a minor can legally contract for real estate. An emancipated minor is normally a person under 18 years who is married or in the armed services.
   
b. **Incompetents:** persons of unsound mind, judicially declared incompetent.
   
c. **Convicts:** persons imprisoned for life or under a death penalty.

**Question:** Can an infant take title to real property?

**Answer:** Yes, an infant can receive title by gift or inheritance but cannot convey title without a guardian or other court approval.

**Question:** Can a person take title under an assumed name?

**Answer:** Yes, but upon resale, he or she may have difficulty proving identity for a notary public.

4. **Description of the property must be clear.** The property in the deed must be correctly described. This means any description that clearly identifies the property so it can be located with certainty meets the test of the law. In most cases, the legal description is either a lot, block, and tract; a metes and bounds; or a U.S. Government survey description.

5. **There must be a granting clause.** A granting clause means the deed must contain words indicating the intention of the owner to convey the property. The exact words are not specified; however, the words *I hereby grant, I hereby convey,* or *I hereby transfer* satisfy the requirements of a granting clause.

6. **Deed must contain the signature of the grantor.** To be valid, a deed must be signed by all grantors named in the deed. If there is more than one owner, all owners must sign. For instance, both husband and wife must sign a deed to convey community property.
Under certain guidelines, state law allows a grantor’s name to be signed by an “attorney in fact,” a person acting under a valid power of attorney.

California permits a person who is unable to sign his or her name to sign by mark as long as two witnesses are present. One of the witnesses then signs the deed according to the manner prescribed by law.

A deed is not effective unless it is delivered to and accepted by the grantee. This does not mean a mere turning over of the physical possession of the document. The grantor must have a clear and honest intention to pass title immediately, before there is a legal delivery.

1. **Evidence of delivery.** The best evidence is actually handing the deed to the grantee. However, manual delivery is not necessary, as a deed may be delivered to a third party for the benefit of the grantee—for example, depositing the deed in escrow. Again, manual delivery does not in itself constitute delivery; the proof lies in the intent of the grantor to pass title. Recording of the deed, if and when it happens, presumes valid delivery.

2. **Time of delivery.** To be effective, a deed must be delivered to the grantee during the grantor’s lifetime. It cannot be used to take the place of a will.

   A deed that is delivered to a grantee with the condition that it is not to take effect until the death of the grantor is not valid since the intent to pass title would not occur during the lifetime of the grantor.

3. **Date of delivery.** A deed is presumed to be delivered as of its date of writing or execution. If no date exists on the deed, the legal date is presumed to be the date of delivery. The lack of a date on the deed does not invalidate the deed.

4. **Conditional delivery.** Delivery of a deed must be absolute. It cannot be delivered to a grantee subject to conditions. For example, in an attempt to avoid the cost of probate, A gives a deed to B, telling B she is not to record the deed until A dies. This is a conditional delivery and is not a valid deed or transfer.
Acceptance  
The deed must be accepted by the grantee, and this acceptance must be voluntary and unconditional. Acceptance is usually accomplished by words, acts, or conduct on the grantee's part that lead to the presumption of voluntary acceptance. An example of acceptance is the recording of the deed by the grantee.

Acknowledgement  
A deed is a real estate document that need not be recorded to be valid. However, if the grantee wishes to record the deed, it must first be acknowledged.

An acknowledgement is a formal declaration before a duly authorized officer (usually a notary public) by the person who signed a document, stating that the signature is voluntarily given and that he or she is the person whose signature appears on the document.

Nonessentials in a Deed  
Many of the items listed previously are essential for a deed to be valid. Some items that are not legally required but are commonly found in a deed.

Legally, a deed does not need to contain but commonly has (1) an acknowledgement, (2) a date, and (3) a recording number issued by the county.

However, it must be remembered that a deed is void or invalid if the:

1. Grantor is incompetent.
2. Deed is signed in blank.
3. Deed is not delivered.
4. Deed is a forgery.
5. Grantee does not exist (fictitious or deceased).
6. Deed is altered in escrow.

Grant Deed  
In California, the grant deed is the most commonly used instrument for transferring title to real estate. A grant deed carries two implied warranties—meaning that although the warranties are not written in the deed, the law says they apply. An example of a grant deed is shown in Figure 2.14.

The implied warranties in a grant deed are:
1. That the grantor has not already conveyed title to any other person.

2. That the estate being conveyed is free from encumbrances made by the grantor or any other person claiming under the grantor, other than those disclosed to the grantee.

Notice that these implied warranties do not state that the grantor is the owner or that the property is not encumbered. Rather, they state that the grantor has not deeded to others and that the property is free of encumbrances made by the grantor. This is why a potential buyer should insist that a policy of title insurance be issued as a condition of the purchase.

In addition to transferring legal ownership, a grant deed can be used to create easements and land use restrictions. A grant deed also conveys any after acquired title. After acquired title means that after the grantor deeds the property to the grantee, if the grantor should later acquire an additional interest in the property, that interest automatically passes to the grantee.

### Quitclaim Deed

A quitclaim deed provides the grantee with the least protection of any deed. A quitclaim deed carries no implied warranties and no after acquired title provisions. Under a quitclaim deed, the grantor merely relinquishes any right or claim he or she has in the property. If the grantor has absolute ownership, that is what is conveyed. If the grantor has no claim or ownership right, this type of deed transfers what the grantor has—nothing! In other words, a quitclaim deed merely says, “Whatever interest I have in the property is yours; it may be something or it may be nothing.”

The quitclaim deed is usually used to remove certain items from the public record, such as the removal of an easement or a recorded restriction. It is not normally used in a buy-and-sell transaction.
1. Ms. Jones was killed in an automobile accident. When the courts were called upon to distribute her property, they found she had died intestate. This means that she died:
   a. leaving no property.
   b. leaving no heirs.
   c. in debt.
   d. without a will.

2. If a married man with two children died without leaving a will, separate property purchased by him before he married and maintained as
separate property during the marriage would be distributed as follows:
   a. one-half to the children
   b. one-half to the widow
   c. all to the widow
   d. one-third to the widow and two-thirds to the children

3. How many acres are there in a parcel of property that includes the following: the NW ¼ of the SW ¼, the E ½ of the NW ¼, and the NE ¼ of the SW ¼ of Section 5?
   a. 320 acres
   b. 160 acres
   c. 40 acres
   d. 80 acres

4. The state urgently needs a piece of property to complete a project for public use. The owner did not wish to sell. Which method could be used to acquire the property?
   a. dedication
   b. escheat
   c. police power
   d. eminent domain

5. The term escheat is a legal term meaning:
   a. a fraud has been committed.
   b. an agent’s license has been revoked.
   c. property with a mortgage can be conveyed.
   d. title has reverted to the state.

6. The water flowing down a river gradually builds up the land along the bank by leaving deposits of soil; this action is called:
   a. accretion.
   b. reliction.
   c. avulsion.
   d. erosion.

7. All of the following statements concerning wills are correct, except:
   a. a statutory will uses a form approved by the state.
   b. a holographic will can be signed by an X if it is witnessed.
   c. an administratrix is appointed by a probate court.
   d. a person who receives real property by will is known as a devisee.

8. Deeds are used to transfer property. Which deed contains no implied or expressed warranties?
   a. warranty deed
   b. grant deed
   c. quitclaim deed
   d. interspousal grant deed

9. The executrix of an estate is:
   a. selected by the heirs.
   b. appointed by the superior court.
   c. named in the testator’s will.
   d. named by the decedent’s attorney.
10. To be valid, a deed must:
   a. contain a proper description of the property.
   b. be signed by a competent grantee.
   c. be recorded.
   d. be dated.

11. “Beginning on a point on the North line of Bard Avenue distant 218.00 feet East from the Northeast corner of Bard Avenue and Elm Street . . .”
   This legal description is:
   a. metes and bounds.
   b. lot, block, and tract.
   d. townships and sections.

12. Which of the following is not a base and meridian found in California?
   a. Humboldt
   b. Mt. Diablo
   c. Mt. Shasta
   d. San Bernardino

13. Which measurement is incorrect?
   a. acre = 43,800 square feet
   b. mile = 5,280 feet
   c. one square acre = 208.71 ft × 208.71 ft
   d. township = 6 miles square

14. Hostile, open, and notorious use of another person’s land for five years is required for title by:
   a. will.
   b. succession.
   c. accession.
   d. adverse possession.

15. An instrument by which the government grants title to a person is a(n):
   a. homestead.
   b. partition action.
   c. patent.
   d. escheat.

16. Recording of a deed gives:
   a. actual notice.
   b. constructive notice.
   c. physical notice.
   d. vested notice.

17. A deeds to B, who does not record the deed or take physical possession of the property. A then deeds to C, who had no notice of the prior deed to B. C records the deed. In a dispute over title between B and C, which rule would be important?
   a. All deeds must be recorded to be valid.
   b. He or she who records first is the first in right.
   c. All deeds must be acknowledged to be valid.
   d. The date of the deed determines who is first.

18. Which statement regarding deeds is false?
   a. A minor who is not emancipated can receive title but cannot convey title without court action.
b. Incompetent persons cannot convey title without court action.
c. A person cannot take legal title under an assumed name.
d. A valid deed need not be recorded.

19. An after acquired title provision occurs in a:
   a. grant deed.
   b. quitclaim deed.
   c. sheriff’s deed.
   d. tax deed.

20. Who signs a deed?
   a. lessor
   b. mortgagor
   c. grantee
   d. grantor
Part II: Estates and Methods of Holding Title

Chapter Preview, Part II

Part II discusses freehold and less-than-freehold estates. In addition, various methods of holding title (including joint tenancy, tenancy in common, community property living trust, and tenancy in partnership) are presented, stressing the characteristics, advantages, and disadvantages of each. At the conclusion of Part II, you will be able to:

1. Explain the difference between freehold and less-than-freehold estates.

2. Describe the key differences in taking title to property as joint tenants as opposed to tenants in common.

3. Explain the difference between community property and separate property.

4. Discuss the concepts of cohabitation, equity sharing, and living trusts.
An estate is defined as the degree, quantity, nature, and extent of interest a person has in property. If the estate is in real property, you have a real estate interest. Real property estates fall into two major classifications: freehold estates and less-than-freehold estates.

Freehold Estates

A freehold estate refers to one’s interest as an owner of real property. Freehold estates can be subdivided into fee estates and life estates. (See Figure 2.15.)

1. Fee estates or fee simple estates can be divided into:
   a. Fee simple absolute, which the owner holds without any qualifications or limitations, such as private deed restrictions. All government ordinances and limitations still apply. This is the highest form of interest an individual can have in land.
   b. Fee simple qualified (defeasible), which the owner holds subject to special conditions, limitations, or private deed restrictions that limit the use of the property.

Example. A parcel of land may carry a restriction that prohibits the sale of alcoholic beverages on the premises. If the owner fails to adhere to the restriction, the owner may be liable in a lawsuit for damages or in extreme cases,
the title may revert back to the grantor or creator of the restriction.

2. *Life estates* are created by deed or will for the life of one or more designated human beings. The life tenant has all the rights of possession, or income, during the life of the designated person(s). However, the holder of a life estate cannot deed or lease a property beyond the life of the designated person. If the person granting the life estate designates that the title is to go to some other person upon the death of the life estate holder, the person so designated is said to have an *estate in remainder*.

**EXAMPLE.** In Figure 2.16, A deeds a life estate to B for the life of B. When B dies, the property passes to C. B holds the life estate; C holds the estate in remainder.

If the property is to be returned to the person who gave the life estate or to the heirs, that person is said to have an *estate in reversion*.

![Figure 2.16](attachment:image1.png)

![Figure 2.17](attachment:image2.png)
EXAMPLE. In Figure 2.17, A deeds a life estate to B for B’s life, with the provision that when B dies, the title reverts back to A. B holds a life estate; A holds the estate in reversion.

Another possibility is a grant reserving a life estate. Among life estates, this is probably the most common situation.

EXAMPLE. In Figure 2.18, A deeds title to B, but A reserves or keeps a life estate for the rest of A’s life. Upon death of A, possession and use passes to B.

As previously mentioned, a holder of a life estate cannot deed or lease property beyond the length of the life of the designated person. For example, assume that A holds title for life and upon A’s death, title is to pass to B, the remainder person. If during A’s life, A leases the property to C, upon A’s death, the lease is canceled and B, the remainder person, receives title free of the lease. If C wishes to continue to lease the property, C needs to negotiate a new lease with B.

Finally, freehold estates, both fee simple and certain parts of life estates, are considered durable and capable of being transferred by inheritance upon death. Therefore, freehold estates are sometimes called estates of inheritance.

**Less-than-Freehold Estates**

Less-than-freehold estates are interests held by tenants who rent or lease property. Tenants are also called lessees or leaseholders, and are discussed in detail in Chapter 11.
When people acquire ownership of real property, they must decide how to hold title. Title may be held separately in one person’s name alone or concurrently with other people.

Ownership in Severalty

When a person acquires real property and holds title solely in his or her own name, it is technically known as *ownership in severalty*. In other words, he or she alone enjoys the ownership benefits, including the complete bundle of rights, and “severs” his or her relationship with others.

A person can hold title in severalty in one of the following ways, depending on the owner’s legal status:

- A single man
- A married man
- A single woman
- A married woman
- An unmarried man
- A widower
- An unmarried woman
- A widow

A person who wishes to indicate separate property ownership can add the words *sole and separate property* to any of the choices listed. A corporation can hold title in severalty, such as “Acme Company, a California Corporation.”

Concurrent Ownership

Concurrent ownership is when two or more people hold title together. There are numerous types of concurrent ownership, but the most important are joint tenancy, tenancy in common, community property, and tenancy in partnership.

**JOINT TENANCY**

Joint tenancy exists when two or more persons are joint and equal owners of the same undivided interest in real property. In order to create and maintain a valid joint tenancy, four unities must exist:

1. *Unity of time.* This means that the owners must have acquired their interest at the same time.
2. **Unity of title.** This means that all owners must come into title on the same document. Consider this example: A and B are joint tenants. B sells her interest to C. A and C are tenants in common because they each took title on a different document at a different time.

3. **Unity of interest.** This means that all owners must have equal shares or interest in the property. For example, if there are two owners, each must have a one-half interest; with four owners, each must have a one-quarter interest; with eight owners, each must have a one-eighth interest; and so on.

4. **Unity of possession.** This means that all owners must have equal rights of possession. No one owner can be prevented from using the property by the other owner(s).

If any of these unities are missing, the joint tenancy is invalid and the rules of tenancy in common apply.

**IMPORTANT CHARACTERISTICS**

The most important characteristic of joint tenancy is the right of survivorship. This means that if one tenant dies, the surviving joint tenant(s) acquires the deceased’s interest without a court action.

**EXAMPLE**

1. A and B take title to property as joint tenants. B dies; A becomes the sole owner because of the right of survivorship.

2. A, B, and C take title to a property as joint tenants. C dies and her interest automatically passes to the survivors, A and B. A and B are still joint tenants between each other, each owning a one-half interest in the property.

**OTHER CHARACTERISTICS OF JOINT TENANCY**

In addition to the four unities (time, title, interest, and possession) and the right of survivorship, joint tenancy has these important characteristics:

1. You cannot will your interest in joint tenancy property.
2. Interest in the property is undivided. In other words, each owner can use every square foot, and he or she cannot say, “This is my half and this is yours.”

3. No probate procedure is required to distribute the interest upon the death of one of the owners. The interest goes to the surviving co-owners. However, some paperwork is required to shift the remaining interest to the surviving joint tenant. But this paperwork is minor in comparison to a complete probate.

4. A joint tenant may sell or convey his or her interest without approval of the other tenant(s). This action may break the joint tenancy and create a tenancy in common.

What If?
To test your understanding, answer the following questions.

1. A and B are joint tenants. If B dies, who gets what?
2. A and B are joint tenants. If B sells to C, what is the relationship between A and C?
3. A and B are tenants in common. If B dies, who gets what?
4. A and B and C are joint tenants. C sells his interest to D. What is the relationship between A and B and D?

Answers

1. B’s interest passes to A, who now holds title in severalty.
2. A and C are tenants in common.
3. A and the heirs of B are tenants in common.
4. A and B are joint tenants to each other and tenant

EXAMPLE. A and B are joint tenants. B sells her interest to C. A and C are now tenants in common. Why? Because B’s selling to C violated the unities of time and title.
5. A corporation is not allowed to hold title as a joint tenant because, in theory, a corporation never “dies.”

6. A surviving tenant acquires the interest of the deceased joint tenant and is free from the debts created individually by the deceased joint tenant.

**Tenancy in Common**

When two or more persons are owners of an undivided interest in property, they can hold title as *tenants in common*. Tenancy in common has these characteristics:

1. There is no right of survivorship, meaning that upon the death of a tenant in common, his or her interest passes to the heirs, not the surviving cotenants. This requires a probate proceeding.

2. Each owner may hold an unequal interest; that is, he or she may own unequal shares.

**Example.** A, B, C, and D hold title as tenants in common. These owners might share their interest as follows:

- A might own one-quarter interest.
- B might own one-eighth interest.
- C might own one-eighth interest.
- D might own one-half interest.

Contrast this with joint tenancy, which requires all owners to have equal shares or interest.

3. Each owner has equal rights of possession and must pay his or her share of the expenses, such as property taxes.

4. Each owner may will his or her interest to his or her heirs, and upon death, the heirs take their place along with the other owners as tenants in common.

5. Each cotenant may sell, convey, or encumber his or her interest without the consent of the co-tenants.

**Example.** A and B are tenants in common. A dies and his interest passes to his heir, X. X and B become tenants in common.

**OR**
A, B, and C are tenants in common. If C sells her interest to D, then A, B, and D become tenants in common.

Tenancy in partnership exists when two or more persons, as partners, pool their interests, assets, and efforts in a business venture, with each to share in the profits or the losses. This type of business organization includes general partnerships and limited partnerships, and many rules and regulations are involved. The following discussion outlines only the real estate aspects of partnerships, not the legal or accounting aspects. Tenancy in partnership has the following real estate characteristics:

1. Each partner has an equal right with other partners to possession of specific partnership property for partnership purposes. This means a partner only has the right to use the property for business, not for personal purposes, unless the other partners agree to the personal use.

2. A partner's right in the partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

3. A partner's right in the partnership property is not subject to attachment or execution, except on a claim against the partnership.

4. There is a form of survivorship when one partner dies.

**EXAMPLE.** A and B own property as partners. A dies; B receives title in trust until the disposition of the property. In other words, the title rests in the survivor only long enough to carry on the business for the sole purpose of winding up the partnership affairs.

**Limited Partnership**

Sometimes title to real estate is held by a limited partnership. Under a limited partnership, one or more general partners have unlimited liability and usually a series of limited partners have limited liability. Limited liability means that if all legal requirements have been met, the limited partners can lose only their investment and cannot be held liable for partnership debts. Most real estate syndicates hold title as a limited partnership.
SPECIAL INTEREST TOPICS

Cohabitation and Property Rights

In 1976, in the famous Marvin vs. Marvin case involving the late actor Lee Marvin, California courts held that unmarried persons who cohabitate may create property rights and obligations by oral agreement. The bottom line is that unmarried people who cohabitate might need to discuss this situation with an attorney. They may find it advisable to reduce to contract form an agreement on how to handle previously owned property and property accumulated during cohabitation, in the event they separate at a later date.

Equity Sharing

Equity sharing is when an owner-occupant and a nonresident owner-investor pool their money to buy a home. The down payment is split according to an agreed percentage, and both parties are on the deed and mortgage. The owner-occupant pays rent to the nonresident owner-investor for a portion of the home owned by the investor. The nonresident owner-investor then uses the rent money to join with the owner-occupant to pay the monthly mortgage payments. The equity share contract spells out who is responsible for taxes, insurance, and upkeep. Some day in the future, the home is either refinanced or sold, and the parties split the net proceeds according to a prearranged percentage.

As the value of estates increase, the tendency is for people to look for ways to minimize the cost of probate. One trend has been to place all real estate and other valuable property into a living trust. The owner transfers the property to the trust and frequently names himself or herself as trustee with the right to change the terms and scope of the trust as he or she sees fit. While in the trust, he or she enjoys all the privileges of ownership. Upon death, title passes to the named beneficiaries without the time and delay of a probate. A living trust does not eliminate estate taxes, but rather eliminates the cost of probate. A person should contact an attorney before entering into a living trust to discuss the pros and cons. Equity share arrangements are complicated and should not be undertaken without advice from legal and tax experts.
Freehold estates consist of fee estates and life estates, representing the rights of an owner of real property. Fee estates are either fee simple absolute with no private restrictions or fee simple qualified with some private limitations and restrictions. Life estates are granted for the life of one or more persons and may be a remainder, reversion, or reservation type.

Ownership in severalty is when title is held in sole ownership. Concurrent ownership is when title is held by two or more persons. Common examples of concurrent ownership are joint tenancy, tenancy in common, tenancy in partnership, and community property.

In California, property acquired by a husband and wife during marriage is considered to be community property. Property acquired by either spouse before marriage or by inheritance or gift during marriage is treated as separate property unless it is commingled with the community property. An increasing number of people are choosing to hold title as a living trust. Methods of holding title have important estate and income tax consequences that should be discussed with a qualified attorney before a selection is made.

### TABLE 2.1 The Basics of Co-Ownership

<table>
<thead>
<tr>
<th>Who Can Hold Title?</th>
<th>Tenancy in Common</th>
<th>Joint Tenancy</th>
<th>Community Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership Interest</td>
<td>Can be any percent, equal or not</td>
<td>All shares must be equal</td>
<td>No probate, right of survivorship, no will allowed</td>
</tr>
<tr>
<td>Upon Death</td>
<td>Probate usually required</td>
<td>Convey interest without others’ permission</td>
<td>Convey interest without others’ permission</td>
</tr>
<tr>
<td>Disposition of Title</td>
<td>Convey interest without others’ permission</td>
<td>Convey interest without others’ permission</td>
<td>Need both signatures to convey title</td>
</tr>
</tbody>
</table>

### IMPORTANT TERMS AND CONCEPTS

- Community property
- Estate in remainder
- Estate in reversion
- Fee estate
- Less-than-freehold estate
- Life estate
- Living Trust
- Ownership in severalty
PRACTICAL APPLICATION

1. Chan owns real property and deeds a life estate to Washington. Upon Washington’s death, title is to pass to Adams. While holding a life estate, Washington leases the property for five years to Santos. Two years later Adams dies; one year later Chan and Washington both die. Upon Washington’s death, who is entitled to possession of the property?

2. Nuygen and Harris purchased 20 acres as joint tenants. Harris then sold one-half of her undivided interest to Battino. Shortly thereafter, Harris died. What is the legal relationship between Nuygen and Battino, and what percentage interest is owned by each?

3. Bill and Sara Belinski, husband and wife, purchased a home in California as community property. Later Sara’s parents died and left her a five-unit apartment in Los Angeles. The apartments are professionally managed, and all rental proceeds are placed in a separate account under Sara’s name alone. Sara uses the rental proceeds to pay tuition for the children, who are still in college. The Belinskis are now in the process of a divorce. What are the community property issues?

REVIEWING YOUR UNDERSTANDING
1. Which of the following statements is false?
   a. The right of survivorship is present in a tenancy in common.
   b. A life estate tenant is responsible for payment of the property tax.
   c. A leasehold estate is a less-than-freehold estate.
   d. Unity of possession is present in joint tenancy and tenancy in common ownerships.

2. Which of the following terms do not belong together?
   a. joint tenancy–probate hearing
   b. tenancy in common–equal interest
   c. tenancy in common–severalty estate
   d. all of the above

3. Which of the following is considered to be a less-than-freehold estate?
   a. fee simple absolute
   b. life estate
   c. leasehold estate
   d. fee simple defeasible

4. The single most important characteristic of joint tenancy is:
   a. equal rights of use.
   b. equal interest.
   c. right of survivorship.
   d. right to encumber.

5. It is impossible for a corporation to legally hold title as a:
   a. trustee.
   b. joint tenant.
   c. tenant in common.
   d. California corporation.

6. Which of the following is not one of the four unities of joint tenancy?
   a. time
   b. interest
   c. security
   d. title

7. A deeds a life estate to B; upon B’s death, title is to pass to C. This is an example of a:
   a. perpetual estate.
   b. less-than-freehold estate.
   c. remainder estate.
   d. fee simple estate.

8. The term *fee simple defeasible* is best described in which statement?
   a. Owner holds a title without limitations.
   b. Owner holds a less-than-freehold estate.
   c. Owner holds title subject to deed restrictions.
   d. Owner holds an estate in remainder.

9. Smith and Dang are joint tenants; Dang sells his half of the property to Brown. Brown will take title with Smith as:
   a. joint tenants.
   b. tenants in common.
c. ownership in severalty.

d. separate property.

10. Community property is defined as property acquired by a husband and wife:
   a. before marriage.
   b. after marriage.
   c. by either party by gift or inheritance.
   d. before or after marriage.

11. Real estate syndicates usually hold title to property as:
   a. general partnership.
   b. limited partnership.
   c. tenants in common.
   d. tenancy in partnership.

12. Freehold estates are sometimes called estates of:
   a. inheritance.
   b. will.
   c. accession.
   d. years.

13. Ownership in severalty refers to holding title as:
   a. joint tenants.
   b. an individual.
   c. co-ownership.
   d. partners.

14. Garcia owned a life estate in a property. Garcia leased the property to Williams for five years. Two years later Garcia died. The lease is:
   a. valid and in force for the rest of the term.
   b. valid for a two-year period after the death of Garcia.
   c. invalid from the beginning; a life estate owner cannot sign a lease.
   d. canceled and invalid upon Garcia’s death.

15. A, B, and C are joint tenants, and they hold title to the NW ¼ of Section 24 in some township. C deeds her interest to D.
   a. D is a joint tenant with A and B.
   b. D acquired approximately 53.33 acres.
   c. D owns a one-third interest in 160 acres.
   d. A, B, and D are all tenants in common with each other.

16. In California, without any evidence to the contrary, a husband and wife are presumed to hold title as:
   a. tenants in common.
   b. joint tenants.
   c. community property.
   d. tenancy in partnership.

17. To be valid, all owners must have equal shares, except for:
   a. community property.
   b. joint tenancy.
   c. tenants in common.
   d. All of the above must have equal shares.
Community property ownership is another form of ownership held by more than one person, but in this case, the property can be held only by a husband and wife. Community property is defined as all property acquired during a valid marriage. California is a community property state; therefore, all California property acquired by a husband and wife during marriage is presumed to be community property. However, there are a few exceptions.

1. All property owned by husband or wife before marriage can remain separate property after marriage as long as the property is not commingled with community property, causing it to lose its separate property identity.

2. All property acquired by gift or inheritance by either spouse during marriage remains separate property as long as it is not commingled with community property.

3. All income and profits from separate property as well as any property acquired from the proceeds of separate property remain separate property as long as said income and profits are not commingled with community property.

In effect, a husband and wife are general partners, each owning one-half of the community property. Each spouse has equal management and control of the community property. Neither spouse may convey or encumber real estate held as community property unless the other spouse also signs the contracts or documents involved.

Each spouse has the right to dispose of his or her half of the community property by will to whomever they wish. But if either spouse dies intestate, the surviving spouse receives all the property; the children, if any, get nothing.
Effective for deeds or documents recorded after July 2, 2001, a husband and wife may hold title as “community property with right of survivorship.” This means upon the death of one spouse, the surviving spouse receives title without a special spousal probate. In short, married couples now have a choice. They may (1) hold title as regular community property and keep the right to will their separate interest or (2) hold title with the right of survivorship and automatically guarantee that upon death of one spouse, the property will go to the surviving spouse without any probate. In addition, there are some taxes differences between the two choices. If a married couple acquired title as a community property prior to July 2, 2001, and wish to switch, they need to discuss with their tax and legal experts the pros and cons of re-deeding to take advantage of this more recent choice (Civil Code Sec.682.1).

Community property does not need to be probated if the deceased spouse leaves his or her interest to the surviving spouse. But if the deceased spouse’s interest is left to someone other than the surviving spouse, the estate must be probated.

The answer is complicated and should be discussed with a tax attorney. Some of the main issues to compare are income tax basis upon death, estate taxes, and probate procedures (if any). Also, the trend toward deeding title into a “living trust” may need to be discussed with a tax attorney. Real estate licensees and escrow officers are neither qualified nor allowed to give buyers and existing owners advice on how to hold title. (See Table 2.1.)
18. For a married person, which of the following is most likely to be separate property? Real estate recently acquired by:
   a. gift.
   b. severalty.
   c. purchase.
   d. foreclosure.

19. Which real estate owner is usually considered to be liable only for the amount of invested capital, not the owner’s personal assets?
   a. tenant in common
   b. general partner
   c. joint tenant
   d. limited partner

20. Regarding the best method for buyers to hold title:
   a. real estate agents should tell buyers the best way.
   b. buyers should seek advice from their attorneys.
   c. joint tenantcy is always the best method.
   d. for married couples in California, community property is the only method allowed.
**Sheriff’s Deed**

The court may order an owner’s property sold after a lawsuit and the rendering of a money judgment against the owner. The successful bidder at this type of sale receives a sheriff’s deed, which contains no warranties. In some courts, this sale is conducted by a commissioner instead of the sheriff, and the deed issued is called a *commissioner’s deed*.

**Gift Deed**

A person who wishes to give real estate to another may convey title by using a gift deed. The legal consideration given in a gift deed is usually “love and affection.” A gift deed is valid unless it is being used to defraud creditors, in which case the creditors may institute legal action to void the deed.

**Tax Deed**

A tax deed is issued by the tax collector after the sale of land that previously reverted to the state because of nonpayment of property taxes. The tax sale procedure is presented in Chapter 13.

**Warranty Deed**

A warranty deed is seldom used in California. Under a warranty deed, the grantor is legally responsible to the grantee for the condition of the title. Sellers in California are reluctant to assume this liability and rarely sign warranty deeds. Instead, sellers sign grant deeds and leave the legal responsibility for the condition of the title to title insurance companies.

**Trust Deed (or Deed of Trust)**

A trust deed conveys “bare legal title” (but no right of use or possession) to a third party called a *trustee*. This deed differs from others in that title is held by the trustee merely as security for a loan (lien) until such time as the loan is paid off or until the borrower defaults on his or her payments. Trust deeds are financing instruments, and they are explained in Chapter 7.
### Deed of Reconveyance

This deed is executed by the trustee to the borrower (trustor). When a beneficiary (the lender) notifies the trustee that the trustor has repaid a loan, the trustee reconveys the title back to the trustor using a deed of reconveyance. This instrument is also involved with the financing of real estate and is discussed in Chapter 7.

### Trustee’s Deed

This deed conveys title to a successful bidder at a trustee’s sale (foreclosure). A trustee’s deed contains no warranties. A trustee’s deed and the foreclosure process are discussed in Chapter 7.

### 2.4 THE RECORDING SYSTEM

The recording of a deed and many other title instruments, although not required by law, protects the new owner’s rights. Under the Spanish and Mexican governments, there were no recording laws in California. Shortly after California became a state, the legislature adopted a recording system by which evidence of title or interest in real property could be collected and held for public view at a convenient and safe place. This safe public place is the county recorder’s office.

To be accepted for recording by a county recorder, the deed must have:

1. An acknowledgement (be notarized).
2. Name and address to which future tax statements can be mailed.
3. Basis for computing the transfer tax.
4. Names of all parties involved in the transaction.
5. An adequate legal description.
6. Payment of a recording fee.

Once a document is recorded, it is said that the world has *constructive notice* of the contents of the document.

The recording system also shows sequential transfers of property from the original owner to the present owner. This successive list of owners is called a *chain of title*. 
Recorded documents are filed in books called grantor-grantee indexes. Most counties have reduced their title records to microfilm or microfiche for easy handling and storage. These title records are frequently transferred by title companies to computers, making it easier for the title company to research a property.

There is a general rule that says "The First to Record Is the First in Right."

**EXAMPLE.** A deeds to B, who does not record. If A then deeds to C, who does record, under the general rule, C would probably get the property because C recorded first.

*However, there are two exceptions to this rule:*

1. If the party who recorded first has knowledge of a prior unrecorded interest, the recording of a deed will not defeat the unrecorded deed.
2. If the first party failed to record but took possession of the property, the possession by an unrecorded owner can defeat a later recorded deed.

**EXAMPLE.** A deeds to B, who does not record, but B takes physical possession of the property. A then deeds to C, who does not make a physical inspection of the property. C then records the deed. Who will probably win? Answer: B, because physical possession gives actual notice to all parties, including C, that B has a prior interest in the property.

*Moral:* Always physically inspect a property before you purchase. Do not rely on the public records only!

**CHAPTER SUMMARY, PART I**

There are three major types of land descriptions: lot, block, and tract; metes and bounds; and the U.S. Government survey system.

Five ways of acquiring title to property are by will, succession, accession, occupancy, and transfer.
To be valid, a deed must contain certain essential elements and the deed must have proper delivery and acceptance.

Major types of deeds are grant deed, quitclaim deed, warranty deed, sheriff’s deed, and gift deed. The most common is the grant deed, and it contains two implied warranties.

California has adopted a recording system designed to protect the rights of property owners and lien holders.

**IMPORTANT TERMS AND CONCEPTS**

Accession  Holographic will
Accretion  Intestate
Administrator(-trix)  Lot, block, and tract
Adverse possession  Metes and bounds
Alluvion  Probate
Avulsion  Quitclaim deed
Codicil  Statutory will
Eminent domain  Succession
Escheat  Testator(trix)
Executor(trix)  U.S. Government survey system
Grant deed  Warranty deed
Grantee  Witnessed will
Grantor