

Real Property: Methods of Acquisition

by Sophia



WHAT'S COVERED

In this lesson, you will learn about the various ways in which real property can be obtained. Specifically, this lesson will cover:

1. Acquiring Real Property

Real property is land, and certain things that are attached to it or associated with it. Real property includes undeveloped land, like a forest or a field, and it includes buildings, such as houses, condominiums, and office buildings.

Real property also includes things associated with the land, like **subsurface rights**. **Fixtures** are personal property that have become attached to the land, and they are transferred with the land. Fixtures in a house include things like the lights affixed to the ceiling, the furnace, and the bathtub.

Plants and trees that grow on the land are real property until they are severed from the land.

➞ **EXAMPLE** Farmers' crops are part of their real property until they are separated from the land, at which time they become personal property.

Real property may be acquired for ownership (the title may be obtained) in one of several ways:

- Purchase
- Inheritance
- Gift
- Adverse possession

Ownership rights are transferred by **title**. Ownership of real property means that the owner has the right to **possess** the property, as well as the right to exclude others, within the boundaries of the law.

If someone substantially interferes with your use and enjoyment of your real property, you may bring a claim in nuisance (a form of tort law).

➞ **EXAMPLE** If a neighbor decides to start burning tires on his property, the smell of the burning tires might substantially interfere with your use and enjoyment of your property, so you would have an actionable claim in nuisance.

Similarly, if you own real property, you might rightfully seek damages against those who enter your land without your consent or permission. This would be a trespass to land claim. Owners of real property may also

sell the real property, in whole or in part.



TERMS TO KNOW

Real Property

Real estate, as in land and buildings, and associated rights, such as mineral rights.

Subsurface Rights

A landowner's rights to underground substances, such as water, minerals, and the like. These are often sold to someone besides the landowner.

Fixtures

Items of personal property that can become a part of real property by being affixed to real estate. Examples are a furnace or sprinkler system.

Title

The means by which an owner of land is entitled to possession of his or her property.

Possession

In property law, custody and control over property.

2. Purchased Property

The most common way that real property is acquired is through purchase. Property law is a state law matter, and state laws vary regarding conveyance of property.

Typically, someone who is interested in acquiring real property will ask a third party, such as a real estate agent or a broker, to help locate a suitable property and to facilitate the terms of the deal. The buyer and seller will negotiate a contract, which will contain all essential terms of the sale, such as location of the real property, price, fixtures that will be excluded from sale, and the type of ownership interest that is being transferred.

Both parties will perform their promises under the contract (e.g., the buyer will pay the seller, and the seller will transfer the title via deed) to close the deal ("closing"), and then the deed will be recorded. A contract for any interest in property must be in writing to be valid against the defendant according to the **Statute of Frauds**.



TERM TO KNOW

Statute of Frauds

Legislation that requires certain types of contracts to be in writing such as a contract involving real estate, a contract in consideration of marriage, a contract that cannot be performed within one year, a contract to answer for the debt of another, a contract to make a will, or a contract involving the sale of goods for \$500 or more. There are certain exceptions to this requirement, such as when performance has been completed or where there has been promissory estoppel.

2a. Deeds

Different types of deeds convey different types of interests. **Quitclaim deed**, for instance, conveys whatever interests in title that the **grantor** has in the property to the party to whom the quitclaim is given. Of course, that means if the grantor has no interests in the real property, a conveyance by quitclaim will not grant any interests in the property.

➔ **EXAMPLE** If you grant a quitclaim deed to your friend for the Empire State Building, then that means that you have transferred your interests in title to that building to your friend. If you have no interests in the title to the Empire State Building to begin with, then on conveyance of the quitclaim deed, your friend will not have any interests in the building either. You cannot convey interests that you do not have.

On the other hand, many states allow a **warranty deed**, which conveys title and a warranty against defects in title as well as encumbrances. Buyers typically demand a warranty deed when they purchase property.

After title is transferred by the deed, the deed is typically **recorded**. Recording the deed is not necessary for ownership. However, recording a deed to property is important because it places others on notice that whoever has recorded the deed to the property owns the property.

Some states favor the rights of those who record the deed first (under a **race statute**), while other states favor the rights of those who acquired the interest first without notice of other claims to the property (under a **notice statute**). A race/notice system, which has a race/notice statute, is one in which priority is given to the first **bona fide purchaser** to record when there is a conflict in ownership claim. A bona fide purchaser is simply a purchaser who takes title in good faith, with no knowledge of competing claims to title.



TERMS TO KNOW

Grantor

The person who grants property in a deed.

Quitclaim Deed

A type of deed (which is the document of transfer) by which a grantor conveys all of his right, title, and interest in real property to another, if he has any. If the owner has no interest in the property, then the grantee receives title to nothing.

Warranty Deed

A deed in which the grantor warrants good title.

Recording

The act of filing a document of transfer, such as a deed or mortgage in a public registry.

Race Statute

A type of state recording statute that provides that a party who records an instrument of conveyance first has a better claim than a purchaser who has not recorded an instrument of conveyance despite the first grantee's notice of prior unrecorded instruments.

Notice Statute

A type of state recording statute that provides that an unrecorded instrument of conveyance is invalid against a subsequent bona fide purchaser (good faith purchaser), for value, who had no notice of the prior conveyance.

Bona Fide Purchaser

One who buys property for value without any notice of a claim by another.

3. Inherited and Gifted Property

Besides outright purchase, another common way in which real property may be obtained is through

inheritance. Real property may be bequeathed through a will or may transfer per state statutes when a decedent dies **intestate**.

Generally speaking, people have the right to dispose of their property as they wish when they die, providing that their will or other transfer instrument meets their state's requirements for validity. When someone dies intestate, state statutes will determine who among the decedent's relatives receives the property.

➞ **EXAMPLE** State statutes often specify that property will go to the spouse, and if there is no spouse, then to the children. If there are no children, then to the parents. If there are no living parents, then to the siblings, and so on. If no such person exists, the property may finally **escheat** to the state. Real property may also be acquired through a **gift**. Providing that the person who is giving the property actually intends to make the gift of title, delivers the deed to the recipient, and the gift is accepted, then the gift is valid.

If one of these elements is not met, for instance, if the deed is not delivered to the intended party (or to a third party to hold for the intended party), then the gift has not been successfully made, and the title will not be conveyed.



TERMS TO KNOW

Intestate

Without having made a will.

Escheat

Reversion of property to the state in the absence of a valid claim by any heir to inherit it.

Gift

A voluntary transfer of property that is given without consideration.

4. Adversely Possessed Property

A less common way to acquire real property is through the doctrine of **adverse possession**. Colloquially, this is often referred to as “squatter’s rights.”

At its heart, this method of acquiring property captures the deeply held belief that a land’s value is in its use for profit. If a land sits idle at the owner’s hands but someone else puts it to use, then the law may - just may - favor the user’s claim to the land over that of the actual owner.

Adverse possession is when someone who is not the owner of real property has claimed the real property for his own. To be successful under this doctrine, several elements must be met.

These include the following:

1. The possessor must be in actual possession.
2. The possession must be **open and notorious**, which means that it must be obvious to others (visible).
3. The possession must be **hostile**, which means that it is against the actual owner’s interests.
4. The possession must be **continuous**, which means that the possessor cannot have been evicted during the statutory length of time required to obtain title through possession.
5. The possession must be **exclusive**.

6. The state statutory length of time must be met, and this time varies from state to state. Some states, like Maine, require a twenty-year period, while other states, like Nevada, require only a five-year period.

Some states' adverse possession laws also require that the possessor pay property taxes on the property during the course of the adverse possession. If all of these elements are met, then the possessor can bring a claim to **quiet title**. If successful, the possessor becomes the owner, without any compensation being made to the former owner.

Adverse possession and claims for quiet title often occur around property lines, where one party has routinely used another's property because a fence has been misplaced. Other instances involve claims concerning land owned by people who do not visit it, such as land owned in a remote area.

Still other examples exist in cases of ouster, when **tenant in common** either **constructively** or actually evicts others with valid ownership interests. Remember that all elements of an adverse possession must occur for the entire statutory length of time for an action for quiet title to be successful.

➞ **EXAMPLE** If the owner checks on the property and finds someone there, the owner must interfere with those elements. The owner should evict the trespasser, and this can be accomplished by summoning the police. Doing so would break the continuity requirement.

CASE STUDY: *McLean and Stevens v. DK Trust and Kirlin*

A case in Boulder, Colorado prompted the Colorado legislature to substantially alter the state's adverse possession laws. In that case, a married couple, composed of a judge and an attorney, met the requirements for adverse possession and successfully brought an action for quiet title.

The adverse possessors here were clearly versed in the law. The actual owners of the property had purchased the land many years before to build a future retirement home.



TERMS TO KNOW

Adverse Possession

A way to acquire title to real property by possession for a statutory period of time requiring proof of hostile (non-permissive) use that is open, notorious, actual, continuous, and exclusive for a period of time that varies with state laws.

Open and Notorious

Regarding adverse possession of real property, the requirement that the adverse possession be obvious to the world and not hidden or secret.

Hostile

Regarding adverse possession, the requirement that the adverse possession be without the permission or consent of the legal owner.

Continuous

Regarding adverse possession, the requirement that the adverse possession be uninterrupted during the statutory period of time required to establish title by adverse possession.

Exclusive

Regarding adverse possession, the requirement that the adverse possession exclude the rightful

owner.

Quiet Title

A legal action filed by a property owner or person claiming ownership for the purpose of resolving any competing claims to the property.

Tenancy in Common

Ownership of real property by two or more persons together, each owning a distinct share.

Constructive

Construed as in the law; for example, one who claims to have no knowledge of something where it is known that reasonably he or she would know that fact, such knowledge is assigned to that person and is referred to as constructive knowledge.



SUMMARY

In this lesson, you learned that real property can include not only the actual land, but also certain things associated with the land, such as subsurface rights and fixtures. **Real property is acquired** by title transfer, which can occur through purchase, inheritance, gift, or adverse possession.

Purchased property involves a written contract between grantor and grantee and the conveyance of a quitclaim or warranty **deed**. **Inherited and gifted property**, on the other hand, involves the transfer of ownership without consideration. Finally, ownership may transfer with **adversely possessed property**, although this method is less common and comes with several requirements for qualification. If a possessor of real property meets these requirements, he or she may then bring a claim to quiet title.

Best of luck in your learning!

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