

have refused their aid to a vendor, where they have considered his title good, though disputable, are cases of real and serious difficulty."

## 3.2 ACQUISITION AND TRANSFER OF REAL PROPERTY

**1. Conveyances** A conveyance is the act of transferring legal title to real estate from one person to another. In Pa equitable title is conveyed by signing an agreement of sale or other contract binding a party to sell real estate such as an installment sale agreement. The legal title is conveyed by a deed with warranties. A quit claim does not create a conveyance because it is only a release of the interest, if any, held by the grantor.

**2. Encumbrances** An encumbrance is something that creates an impediment or burden on the title to real estate. Financial encumbrances are known as liens. They arise from mortgages, judgments, taxes and municipal services. Non-financial encumbrances are typically easements, deed restrictions, covenants under tax preference laws, and condominium or homeowner's declarations. These same restrictions can be divided into those restriction effecting title and those affecting use of the property.

**3. Adverse possession** Adverse possession is a manner of obtaining title to property when certain conditions exist.

**a. Actual Possession.** Actual possession requires dominion over the property; actual possession is not the equivalent of occupancy. Actual possession requires acts signifying permanent occupation of land, which are performed continuously throughout the statutory period. A claim of ownership must be evidenced by conduct sufficient to put a reasonable person on notice that the claimant is claiming the land as his own. Sporadic, temporary, or repeated acts do not constitute actual possession, regardless of how often such acts are repeated. To establish adverse possession of undeveloped woodlands, the claimant must either erect a residence or enclose and cultivate the property.

**b. Distinct and Exclusive Possession** "Distinct and exclusive" is met by possession that would characterize an owner's use. The exclusivity element is not destroyed merely because others passed, unobserved, over the property. It was sufficient that the claimant's possession was to the general exclusion of others and that he remonstrated with persons who, without permission, attempted to use the land. The actions of the claimant must give notice of a denial of the record owners' asserted right to ownership.

**c. Visible and Notorious** "Visible and notorious" requires conduct sufficient to place a reasonable person on notice that his land is being held by the claimant as his own. "An adverse possessor must intend to hold the land for himself, and that intention must be made manifest by his acts... He must keep his flag flying and present a hostile front to all adverse pretensions."

### ADVERSE POSSESSION

- Actual
- Distinct
- Visible and Notorious
- Hostile
- Continuous/Uninterrupted 21 years

**d. Hostile** Adverse possession does not require "hostility" in the sense of ill will. Rather, hostility implies an assertion of ownership rights adverse to the true owner and all others. When all of the other elements of adverse possession are met, hostility is implied, regardless of the claimant's actual state of mind.

**e. Continuous and Uninterrupted for 21 years.** 42 Pa. C.S. § 5530(a)(1)). The law does not require that the claimant remain continuously on the land and perform acts of ownership from day to day. A temporary break or interruption, not of unreasonable duration, does not destroy continuity. In order to break continuity, there must be abandonment, or possession taken by one who is disconnected with the prior holder. Adverse possession begins to run from the time the true owner first has a cause of action in ejectment.

**4 Condemnation** Condemnation is a process which is used by the government to exercise the power of Eminent Domain. Eminent Domain is the name given to a power conferred upon governmental units to forcibly acquire private property. The power is exercised by Condemnation. In condemnation the governmental unit files a notice of taking. Immediately upon filing the property is deeded taken and title transferred. The property owner may file Preliminary Objections which make legal challenges to the right to take the property. The condemning governmental body will make an offer of compensation which the property may accept or reject. If rejected, the money will be paid and the decision on whether or not additional money must be paid will be made by a board of view. A board of view is a panel of three or more citizens given the power to view the property, hear evidence and decide on the value. The right to exercise the power of condemnation also is vested into public utilities, railroads and pipeline companies.

**5 Riparian Rights** The right of the owners of land, which abuts water courses, to the use of the water, to ownership of the land under the water, and to ownership of alluvion and depletion of lands caused by erosion.

Riparian rights are dependent on the nature of the water on which such property fronts or which passes through such property. Different rules apply to water that is navigable from that which is not navigable.

a. **Navigable Waters.** All deeds which transfer title to lands bounded by navigable water convey only to the low water mark, subject to certain rights of the public in the stream between the ordinary high and low water mark. All land beyond or below the low water mark belongs to the state government in the case of the 13 original states.

b. **Non-Navigable Waters** "It is no doubt the settled law of this state that a grant of land bordering on a non-navigable or private stream extends... [to the center of the water]. The conveyance...gives him the ownership of the soil to the middle of the current."<sup>9</sup>

<sup>9</sup> *Smoulter v. Boyd*, 209 Pa. 146, 58 A.144 (1904)



**6 Escheats** Escheat laws are the first step in the Unclaimed Property system. If a business holds property of another for a period in excess of five years, it must be transferred to the Treasury Department. Reports are due on April 15<sup>th</sup> of each year. The Treasury Department maintains custody of unclaimed property until it is claimed by the rightful owner. There is no time limit to claim property. After a person can prove ownership, the property will be returned to without charge.

**7 Involuntary transfer** Real estate can be transferred from the owner to another involuntarily in several ways. The most common is by sheriff's sale. This occurs when a mortgage or judgment lien holder exposes the property to sale to recover their money. Tax sales, including upset sales and judicial sales under the Real Estate Tax Sale Act and sales under the Municipal Claim Tax Sale Law are a second group of involuntary transfers. They also occur by condemnation, pursuant to the Private Road Act and

**8 Abandonment** Real Estate cannot be abandoned. Certain rights may, however, be abandoned. Easements, restrictions, and rights to paper streets may be abandoned but only by acts evidencing an intent to abandon.

**9 Judicial sales** A judicial sale of property is another name for a sheriff's sale which divests other liens in a manner set forth by statute. It compares with an upset sale in which nothing is divested.

**10 Decedents' estates**

**10.1 Intestate** In Pennsylvania, persons dying without a will have a plan written for them by the legislature<sup>10</sup>.

**10.1.1 Share of Surviving Spouse**

- If no issue and no parents, spouse gets everything.
- If no issue but a parent, the spouse get \$30,000 plus ½ of the balance.
- If issue, all of whom are issue of the surviving spouse, the spouse get \$30,000 plus ½ of the balance.
- If there are surviving issue of the decedent, one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

**10.1.2** The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall pass in the following order:

- Issue.--To the issue of the decedent.
- Parents.--If no issue survives the decedent, then to the parents or parent of the decedent.
- Brothers, sisters, or their issue.--If no parent survives the decedent, then to the issue of each of the decedent's parents.
- Grandparents – divided equally between maternal and fraternal or children of each.
- Aunts and Uncles
- The Commonwealth

**10.2 Testate** Dying testate means you have a valid will. Property can pass by a will in one of two ways. A specific devise is a provision in a will by which the decedent specifically leaves identified real estate to a specific person. (A devise deals with real estate, a bequest deals with personal property). At the moment of death, title transfers to the named beneficiary (the Devisee), subject to liens for death taxes and the rights of the personal representative, if the property is needed to administer the estate (pay the bills).

**11 Trusts** A trust is an arrangement set up by a person to hold property for the benefit of a person including the person setting up the trust. In a trust, the trustee(s) holds the property for the benefit of the beneficiaries. Trusts are revocable and irrevocable. In addition, testamentary trusts can be created by wills

**12 Types of joint ownership**

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<sup>10</sup> See 40 P.S. 2101 et seq

**12.1 Tenants in common** A tenancy in common is a shared ownership of property where each owner owns a share in the property. The shares can be unequal in size. Additionally, on death, the shares pass by will or intestacy.

**12.2 Joint tenancy** A joint tenancy is a shared ownership of property where each owner has an undivided interest in the property. The shares must be equal. On death, the shares pass to surviving owner(s). A joint tenancy has four unities: 1) Unity of time. (the interests of the tenants must be acquired at the same time.); 2) Unity of Title. (the interests must come from the same deed); 3) Unity of Interest (equal interest by % and type of ownership); and 4) Unity of Possession (all tenants have the right to possess the property) This tenancy may be severed by conveyance or execution against the interest of less than all tenants.

**12.3 Tenants by the entirety** An ownership of the property by the marital unit. The property is acquired while the parties are married. This tenancy has all four of the unities of a joint tenancy plus marriage. This tenancy is severed by divorce.

**13 Acknowledgments** This is a formal declaration, before a public official, that a person has signed a document for a particular purpose.

**14. Legal capacity of parties** Legal capacity means the ability of persons (natural and legal) to make binding agreements. It addresses issues such as soundness of mind, age, compliance with corporate by-laws and similar limits on the ability of persons to contract.

**14.1 Individuals** The capacity of individuals is measured in such terms as age and mental capacity. Generally, while a person who has not attained the age of majority has the legal capacity to enter into a contract, that same person may renounce the contract upon attaining majority. Mental capacity is a different issue. Lack of capacity is a defense to contract claims. A person may lack the capacity to enter into a contract, even though a Court has never declared the person to be incapacitated. Title to real estate of an incapacitated person remain in the person subject to the powers of the guardian of his or her estate. Title to real estate of a minor remain in the person subject to the powers of the guardian of his or her estate.

**14.2 Corporations** A corporation generally has the same capacity of a natural person. Corporate capacity is limited by: 1) state law, 2) provisions of the certificate of incorporation, 3) the By-Laws of the corporation, and decisions by either the Board of Directors or shareholders. Generally speaking, the sale of corporate real estate requires a corporate resolution which identifies the property and the person who may execute and deliver the deed.

**14.3 General partnerships** A general partnership is a business entity owned by two or more persons in which each partner is fully liable for all debts of the partnership. The capacity to act is generally limited by the state enabling legislation

## Types of Joint Ownership

1. Tenants in Common - shares pass by will. Ownership need not be equal.
2. Joint Tenants - shares automatically pass at death to other owners. Ownership must be equal
3. Tenants by the Entireties - a joint tenancy between two married people. Becomes a tenancy in common on divorce

and the partnership agreement. The partnership agreement may specify how many of the partners must sign a contract or deed.

**14.4 Limited partnerships** A Limited Partnership is similar to a general partnership except it has two classes of partners. General partners are the only partners with the authority to manage the business and the only partners with the capacity to bind the partnership to contracts. The General Partners are fully liable for all the debts of the partnership. Limited partners are only liable to the extent of their capital investment or that part of the capital they agreed to contribute which has not yet been contributed. The limited partnership agreement must be registered with the Secretary of the Commonwealth. Limited Partnership interests are securities and regulated as such.

**14.5 Fictitious names** A fictitious name is a manner in which a person, natural or legal, may do business under a name other than their own. Registration is required and in some situations advertisement in the papers. Generally speaking a fictitious name is not an entity with capacity to own real estate. This is because more than one person or group of persons may register the same fictitious name. There is no exclusivity. The Fictitious Name Act (54 Pa.C.S.A. 301 et. seq.) generally provides that an unregistered fictitious name does not have the capacity to sue. However, a party knows the identity of the person behind the fictitious name, he or she is estopped from denying the persons capacity.

**14.6 Trust agreements** There are numerous forms of trust agreement. Trusts created by a will are known as testamentary trusts. Other trusts can be created during the lifetime of the person creating the trust (usually called the settlor or grantor). These trust include trusts that cannot be changed (irrevocable trusts), and trusts subject to modification (revocable trusts). Trust can only act through a trustee or trustees. The capacity of a trustee to act is limited by the terms of the trust agreement and the PA Probate, Estates and Fiduciary Code (20 Pa.C.S.A. 101 et seq). A trustee is not liable for contracts properly entered into in the trustee's fiduciary capacity. A trustee is liable for torts committed in the course of administering the trust

**14.7 Limited Liability Company (LLC)** A Limited Liability Company is similar to a corporation. A limited liability company generally has the same capacity of a natural person. Capacity is limited by: 1) state law, 2) provisions of the certificate of organization, 3) the By-Laws, or management agreement, and decisions by either the Manager or the members. Generally speaking, the sale of Limited Liability Company real estate requires an authorization resolution which identifies the property and the person who may execute and deliver the deed.

1. ALL THAT CERTAIN lot or tract of ground, with buildings erected thereon, situate in Bucks County, Pennsylvania, bounded and described in accordance with a plan of Hundred Acres Woods, recorded in the office of the Recorder of Deeds on July 18, 1993 as Plan 1203, and shown thereon as Lot #123.
2. ALL THAT CERTAIN lot or tract of ground, with buildings erected thereon, situate in Chester County, Pennsylvania, and identified as UPI #49-1-18.1.
3. ALL THAT CERTAIN lot or tract of ground, with buildings erected thereon, situate in Erie County, Pennsylvania bounded and described in accordance with a plan of Baldwin Gardens, prepared by Smith Associates, Surveyors, dated March 27, 1947, and last revised October 22, 1947, and recorded in the office of the Recorder of Deeds as plan 19, bounded and described as follows:

*BEGINNING at a pk nail set on the north side of the right of way of 34<sup>th</sup> Street, at the common boundary of lots 48 and 49; thence by the said right of way of 34<sup>th</sup> Street, North 45 degrees West 75 feet to an iron pin set in line of lot 47; thence by lot 47, North 45 degrees East 200 feet to a concrete monument found in line of lot 77; thence by the same South 45 degrees East 75 feet to an iron pin in the line of lot 49; thence by the same South 45 degrees West 200 feet to the point and place of BEGINNING.*

### 3.3 LEGAL DESCRIPTIONS

1. **TYPES OF LEGAL DESCRIPTIONS.** In order for a deed to be valid, it must accurately describe the property being conveyed. This means the description of the property must be capable of being located and identified only by reference to the deed or other documents previously recorded in the county records. There are three basic ways to describe property in Pennsylvania:

#### 1.1. By Reference to a Recorded Subdivision Plan.

This is similar to Block and Lot descriptions used in other states. A proper description using this format requires:

- a) A reference to the County;
- b) A reference to a recorded (In the Office of the Recorder of Deeds or Commissioner of Records) plan by plan number that clearly identifies the property by metes and bounds;
- c) A reference to a lot number clearly identified on the recorded plan by metes and bounds.

#### 1.2. By Reference to a Uniform Parcel Identifier Number.

In 1988 the legislature created the Uniform Parcel Identifier Law to establish a uniform system to identify properties or tax parcels by a unique number. Once a UPI number has been assigned to a parcel for which there is a survey, subdivision plan or metes and bounds description of record, the property may thereafter be described by reference to the UPI number in deeds, mortgages and releases. If the description of the property is modified, a new survey describing the property by metes and bounds, or a subdivision plan describing the property by metes and bounds must be provided to the tax assessment office.

1.3. By Metes and Bounds. Metes and Bounds descriptions describe property by courses and distances. A course is a line, whether straight or curved which moves from one point to another in a direction that is described by reference to north, east, south or west, and usually described as follows: North 23 degrees, 15 minutes, 22 seconds West. Note this same line can also be described as South 23 degrees, 15 minutes, 22 seconds East. It simply depends on whether you are traveling from top to bottom, or bottom to top. A distance is often described in feet and tenths of feet, but historically other measures described below were used.

2. **Types of Measurements Used.** Surveyors have historically used numerous tools to measure distances. The most common in current use is the foot or 12 inches. In the past other

units of measurement were either based on the length of poles (the perch, or the rod) or the length of chains or elements thereof (chains, links)

**2.1 The Perch, Rod or Pole.** This ancient form of measure has been standardized as 5 ½ yards or 16 ½ feet.

**2.2 The Chain.** A chain measures 22 yards, or 66 feet, or 100 links (referring to the links in the chain), or 4 rods. There are 10 chains in a furlong, 80 chains in a statute mile. An acre is 10 square chains.

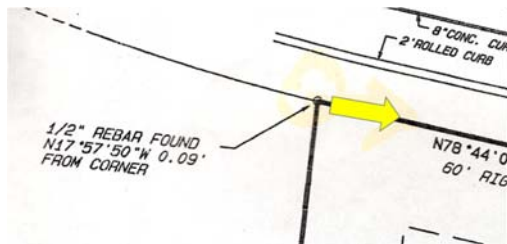


Photo credit Kris Bulman

**2.3 The Link.** A link, shown in the chain above, is 7.92 inches or 66/100 of a foot.

**3. Language of Legal Descriptions.** Legal description use a language of their own. There are words that seem unimportant, yet they are critical.

**3.1 Words.** Chief among those words is BEGINNING. This word is always best written in all capital letters. It refers to a distinct point or location on the property being described. On the other hand if one is describing an interior parcel and using a starting point off the property, say down the street at the intersection of two streets, the work beginning should never be associated with that point. Rather one uses the word "From" in this setting. When writing a description from a plan, it helps to mark your starting point and direction of travel (usually clockwise).



**3.2 Direction.** A second critical issue is direction of travel. Many surveys describe lines with only one description, even though the same line is used for adjoining lots. In fact any line can be