
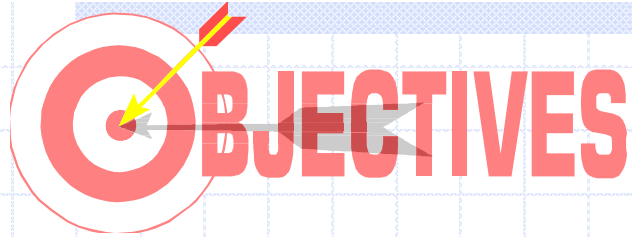


**CHAPTER 3**  
**ACQUISITION AND TRANSFER  
OF REAL PROPERTY**

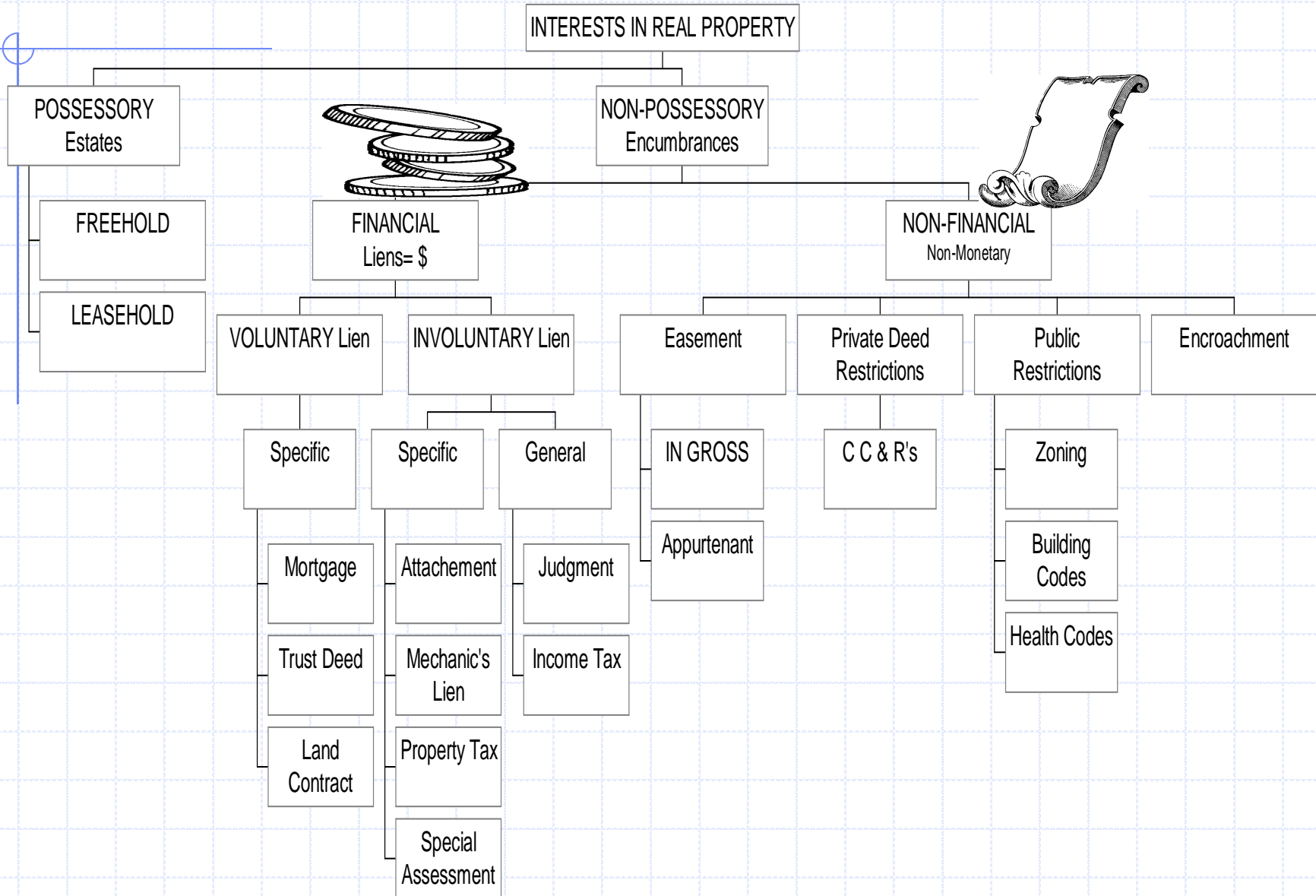




## STUDENT LEARNING OUTCOMES (SLOs):

1. List the methods used to acquire or transfer real property.
2. Explain how title to real property may be transferred upon death.
3. State how property may be acquired or transferred by becoming attached to or detached from real property.
4. Describe how title to real property may be acquired by occupancy.
5. Specify the requirements of a valid deed.
6. Identify the characteristics of deeds.

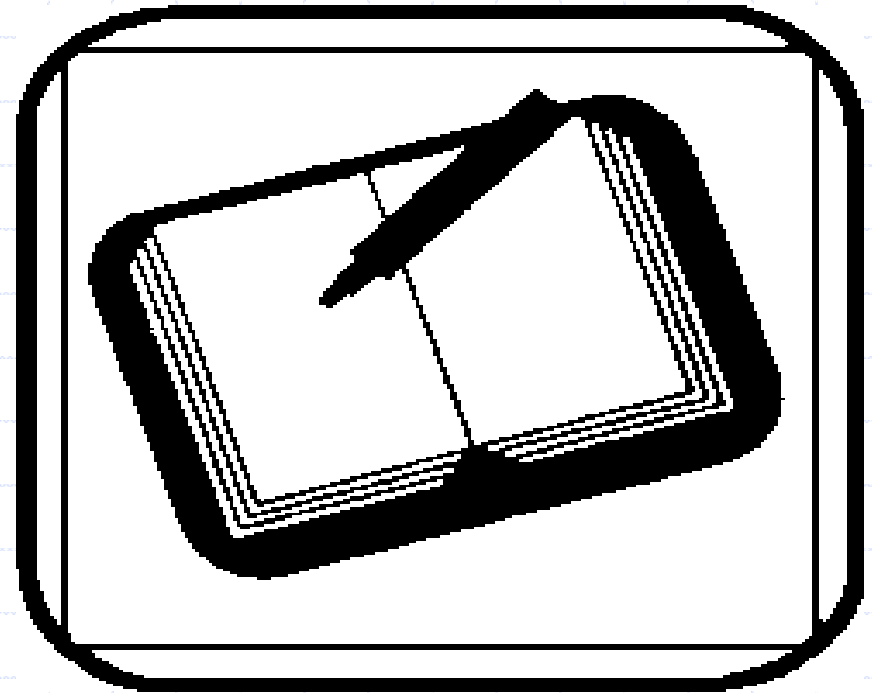
# Property Interests



# I. METHODS OF ACQUIRING AND/OR TRANSFERRING TITLE TO REAL PROPERTY

A. California Civil Code: 5 methods:

1. By will . . . Testate
2. By succession . . . In testate
3. By accession
4. By occupancy
5. By transfer



## B. Type of Wills

### 1. Formal = witnessed

a. Testator = the person making the will

b. Executor(male)/executrix(female)=  
carries out the will

c. Two (2) witnesses required

d. Codicil = later alterations to the original will



# WILLS

2. **Holographic will** = handwritten, dated, signed  
(Witness NOT required)

Pg 3-1

3. **California Statutory Will** (form, administrator, 2 witnesses)

4. Nuncupative = Oral will only used for personal property of up to \$1,000

Pg 3-2

# Sample of a WILL

## ◆ Formal Will – Must be typed

I, being of sound mind, grant my CD's,  
my car, and my property to my real estate  
instructor.

Dated 1/1/2000 By *Jack Pratt*

◆ Witness#1: *Joe Snow* Witness#2: *John Doe*

## Holographic will – Must be *handwritten*

*I, Bill Jargon, would like my stuff to go to . .*

*By bill Jargon 1/1/2000*

# Title by Succession

- ◆ Legator = Personal Property = Bequeath = Legatee
- ◆ Devisor = Real Property = Devise = Devisee
- 5. **Testate** = Decedent died with a will
- 6. **Intestate** = Decedent died with NO will
- ◆ In testate\_Succession = Transfer of property by law
- ◆ Law of Succession = Court distribution of decedent's property

## 7. Probate Court California is under Superior Court

- a. Court approves the **last will and testament**
- b. Court approves executor/**administrator (administratrix)** and broker
- c. Court supervises and approves all payments and obligation of decedent
- d. Probate court approves the sales of the assets/estates:
  - 1) A broker may be granted a 90 day exclusive right to sell listing
  - 2) Sale is subject to court **confirmation**
  - 3) When the offer is at least 90% of the appraised value, the court may be petitioned to confirm
  - 4) Overbids = **10**% of 1st \$10,000+5% above \$10,000

## 7. Probate Court California is under Superior Court (continue)

- e. When there are no heirs, the property transfers to the state by **escheat**
- f. Real property transferred by a will is called a **devise**. Donor is the **devisor** and recipient is **devisee**.
- g. Personal property is a bequest or a **legacy**. Donor is the **legator** and recipient is **legatee**.

# Who Determines

- ◆ WILL = YOU Say = Testate Decedent =  
Your heirs or others
- ◆ NO WILL = COURT says = in testate  
succession = Legal heirs
- ◆ NO WILL/NO HEIRS = esCHEAT = State of  
California

# IN TESTATE SUCCESSION



## SEPARATE PROPERTY

Surviving Spouse

**Half (1/2)**

Spouse

No Children

**Half (1/2)**

Surviving Parents

(siblings, children of siblings, spouse)

Surviving Spouse

**Half (1/2) Spouse**

One Child

**Half (1/2) Child**

Surviving spouse

**One Third (1/3) Spouse**

Two or More Children

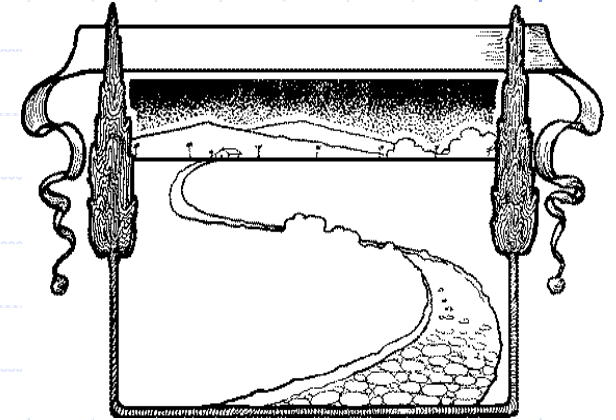
**(Two Third) 2/3 Children**

## COMMUNITY PROPERTY

All to Surviving Spouse – Children get nothing

## E. Title by ACCESSION

ACC = ATT ached



### 1. By WATER Action

a. **Accretion** – Gradual addition

b. **Alluvion** or **Alluvium** Deposit  
– The OIL itself

c. **Avulsion** – Sudden tearing away

### 2. By addition of a **FIXTURE**

3. **Reliction** – Uncovered land by receding water

## F. Title by Occupancy



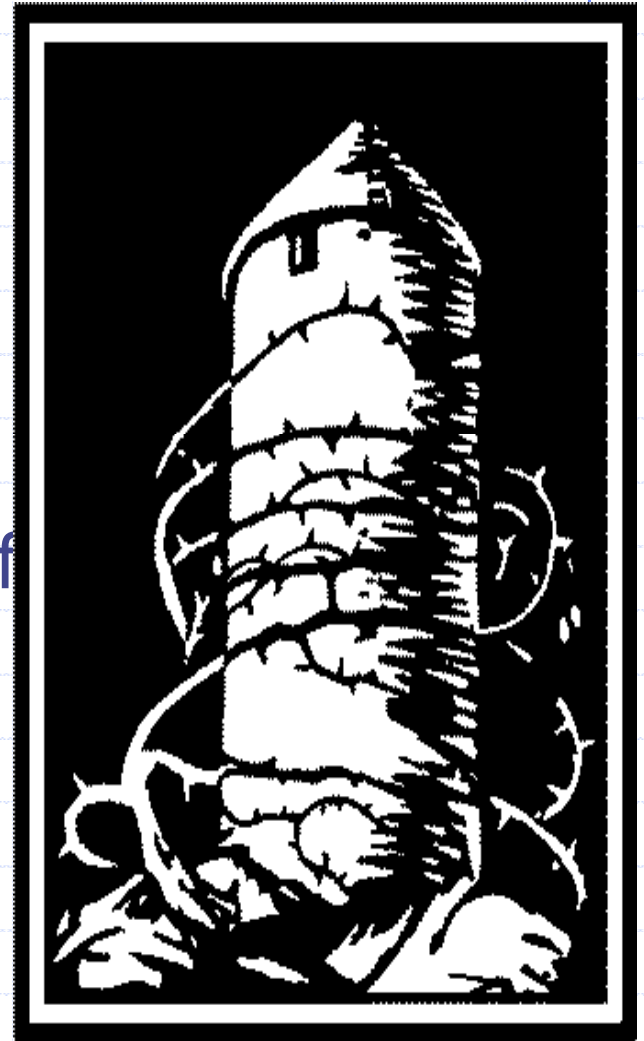
### 1. Abandonment

### Adverse Possession

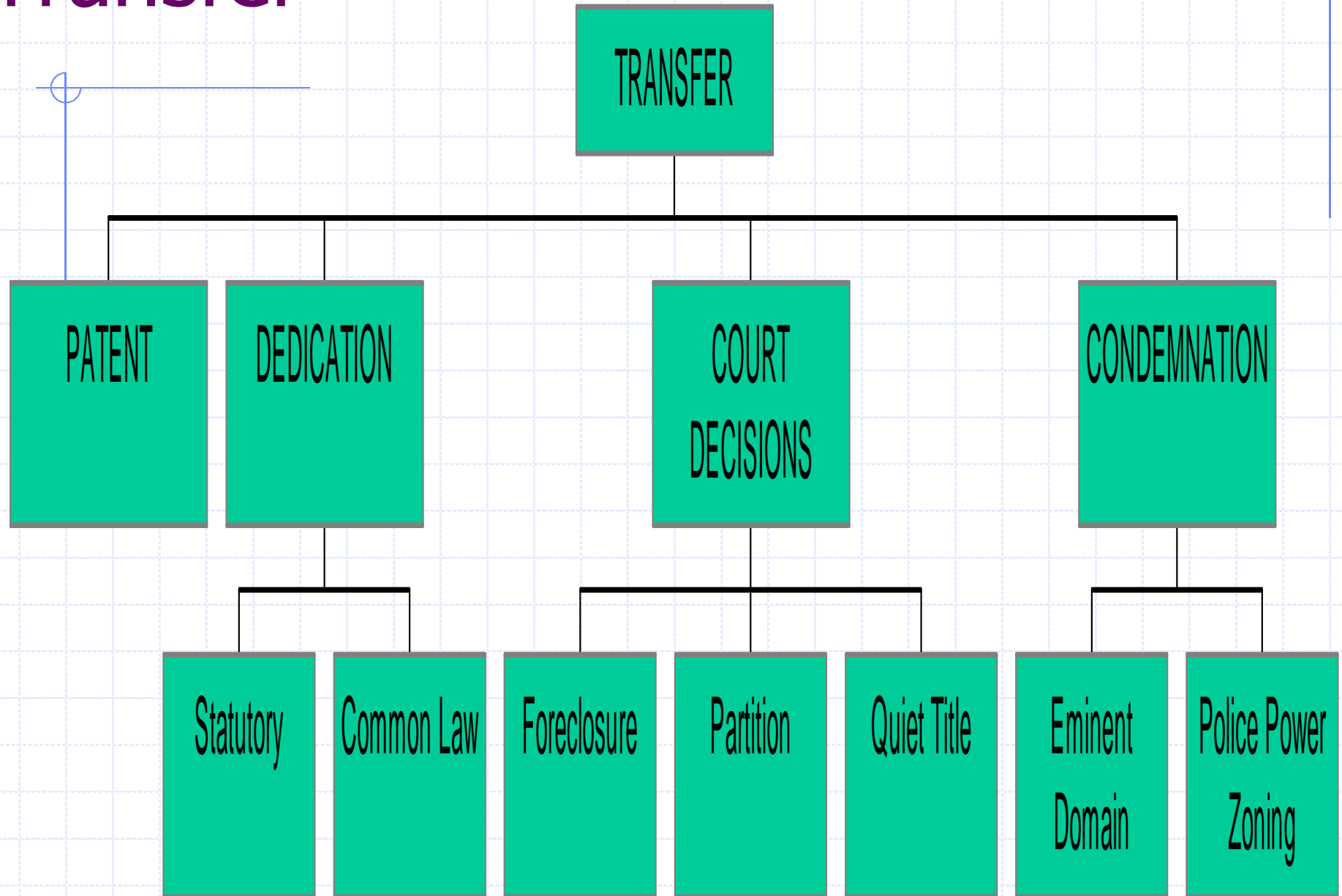
- One person gains ownership of another's real property by occupying the parcel of land

## 2. Adverse Possession

- a. Claim of Right or Color of **Title**
- b. Actual, **Open and Notorious**
- c. **Hostile** (without permission of owner)
- d. Continuous use (**five** (5) years, uninterrupted)
- e. Property Taxes paid for **five** (5) years



# Transfer



# G. Title by Transfer

1. California law provides for transfer title by:

- ◆ Private grant
- ◆ Public grant
- ◆ Gift
- ◆ Deed

Pg 3-3



A deed moves title from the (current) owner **grantor** to another person (the new owner) **grantee**.

Pg 3-4

# ESTATE IN

I grant to Cal Poly my land for use as a University so long as Arabian horses and agriculture are part of the program, or else the land reverts to my estate.

*Mr. Kellog*

**REVERSION**

I grant 123 Elm Street to my mother for her life, and after her death, to my only son and his heirs.

*Mrs. Smith*

**REMAINDER**

# 4.

# Valid DEED

- a. In writing
- b. Describe and identified
- c. Property described
- d. Competent GrantOR
- e. **Granting clause**
- f. GrantOR signature

- 5. GrantEE accepts  
(Convey)ance Words
- 6. **Acknowledged** by  
GrantOR before a  
**notary public**
- 7. Recordation (presumes  
delivery)

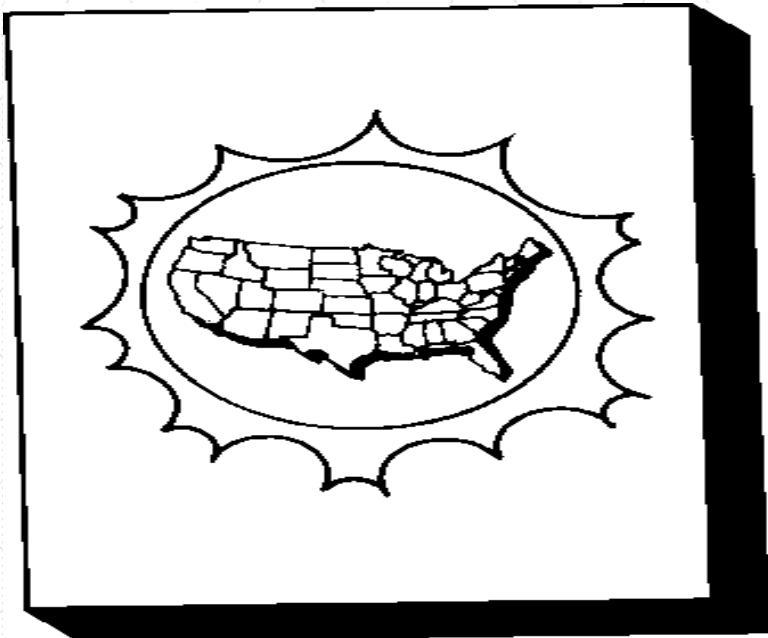
## II. RECORDATION

1. Constructive notice = public recordation

2. The ORDER is by the TIME and DATE of Recordation of the Document establishes priority

3. The first to record is the first in right

- Knowledge of vested interest
- Party didn't record, but took possession



1st

2nd

3rd

Pg 3-4

4.

# Acknowledged/Acknowledgment

- ◆ County Recorder won't record document unless it is notarized
- ◆ Notary Public acknowledges the signature; verifies that the party signed in the notary's presence and the person is known to the notary
- ◆ Grantor acknowledges the content of the document and that the form is complete, accurate and ready for recordation

# III. DEEDS

1. **GRANT DEED**
2. Contains **two** implied warranties that property not already conveyed and free of undisclosed encumbrances; After-acquired title
3. **QUITCLAIM DEED** – (NOT QUICKclaim) - No warranties, Used to a remove cloud on title
4. **WARRANTY DEED**–Express warranties made, rarely used in California because it is replaced by title insurance and grant deed  
Pg 3-4
5. **GIFT DEED** – The Consideration is the love and affection  
Pg 3-5
6. TAX DEED – Conveys tax sales property  
SHERIFF’S DEED – Conveys court foreclosure property  
TRUST DEED – Conveys trustee bare, legal title  
TRUSTEE DEED – Conveys title to buyer at trustee sale  
RECONVEYANCE DEED – Transfers back to the trustOR the bare, legal title to remove the security interest for a debt

## B. Transfer by Operation of Law

1. **Partition** action
2. **Quiet title** action
3. **Foreclosure** action
4. **Bankruptcy** (federal court)
5. **Eminent domain**
  - property owner must be reimbursed
  - property must be used for public use
  - Government acquires title

