

SLIDE 16 – Transfer by Voluntary Alienation

So now understanding the basic concept of title and what it means to own property and the bundle of rights that comes along with that ownership, we can begin to look at how and sometimes more importantly “why” property titles are transferred.

The first mechanism of transfers we’ll look at is by voluntary alienation.

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**Transfer by Voluntary Alienation**

Voluntary alienation means the owner of the property, the grantor, made the decision of his own accord to transfer his property to another.

The owner was in no fashion legally coerced to transfer the property title.

There are two methods by which real property can be voluntarily transferred:

1. By deed
2. By will

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**Transfer by deed**

In cases where an owner sells a piece of property to another party or decides to gift it to another, transfer is executed by deed.

The deed is the written instrument that conveys title to real property.

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**Transfer by will**

In cases where a property owner has died and ownership transfers through the action of a will:

The parties to the will are:

- Deceased person who made the will:
  - male: testator
  - female: testatrix
- Person receiving the property:
  - devisee: real property
  - beneficiary: personal property

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### **Transfer by will**

Property that has been conveyed by action of a will:

- Devise if real property
- Bequest if personal property

If someone dies with a will in place they are said to be **Testate**.

A person dying without a will is **Intestate**.

## SLIDE 21 – Transfer by Involuntary Alienation

Voluntary alienation is easily defined. The property owner wants to sell or give away his property by deed, or by will in the event of his death -- pretty simple.

Matters of involuntary alienation of a bit more complex. In this section we'll look at a few circumstances that can bring about involuntary alienation.

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### **Involuntary alienation**

The transfer of real estate by law and without the owner's consent is involuntary alienation.

Four ways property can transfer by involuntary alienation:

- Transfer by descent
- Escheat
- Eminent domain
- Adverse possession

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### **Involuntary alienation – Transfer by descent**

If someone dies without a will in place are said to be “**Intestate**”.

In this circumstance the State of Florida will intervene and determine who are the heirs and the line of property distribution.

Once the determination is made, the state will ensure legal title is passed to the rightful heirs.

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### **Involuntary alienation – Escheat**

If a landowner dies without a will (*intestate*), and without legal heirs, then the property would revert to the state. F.S. 716

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### **Involuntary alienation – Eminent Domain F.S. 73**

The State of Florida government, as well as other public service entities, such as railroad, utility, sanitation and others, have the authority under the rule of law to take ownership of real property for valid and necessary public use.

The owner will be offered a fair compensation for the property.

The government can take the property under the legal process of condemnation.

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### **Involuntary alienation – Adverse possession F.S. 95**

Adverse possession is a means of gaining legal title to property by continuous possession and satisfies these conditions:

- Open – easily seen by others
- Notorious – known by others
- Continuous – 7 years in Florida
- Adverse – to the owner's possession
- Hostile – without the owner's consent
- Taxes must be paid

Say for example, your neighbor bought the property next to you and builds a fence based on an incorrect property description.

The fence -- both "open" and "notorious" -- is one foot into your property line, but you don't realize this until 8 years later.

At this point, if your neighbor can prove in court all these conditions have been met, it's very likely your neighbor will become the rightful owner of that extra one-foot strip of land that at one time belonged to you.