

Title Issues in Poverty Law

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About Legal Counsel for the Elderly

Founded in 1975, LCE is the leading provider of free legal services and advocacy for vulnerable District seniors. LCE's mission is to improve the quality of life for older District residents, and its primary goals are to serve and empower thousands of low-income District seniors each year in those areas of law involving basic human needs: income, housing, long-term care, personal autonomy, and consumer protection. For more than two decades, LCE attorneys have defended District homeowners in cases involving home ownership, financial fraud and abuse, and related consumer and tort matters.

About Amy Mix

Amy Mix is the Supervising Attorney for the Consumer Fraud and Financial Abuse Unit at Legal Counsel for the Elderly (LCE), the primary provider of free legal services and advocacy for older people in the District of Columbia. With the twin goals of protecting clients' homes and their sources of income, LCE's consumer unit represents homeowners facing mortgage and tax foreclosure and victims of equity-stripping schemes and other real property fraud, as well as litigating financial exploitation cases and defending debt collection lawsuits.

Amy played an important role in the formation of the DC Superior Court foreclosure mediation program, helping to ensure that homeowners have access to meaningful, early mediation. LCE's work on protecting homeowners facing tax foreclosure was highlighted in a 2013 Washington Post series on tax sales in the District, with LCE playing an integral role in amending the real property tax foreclosure procedures in the District. In 2012, Amy received the *Manna American Dream Award* for her significant contributions to the field of affordable housing for low-income homeowners in Washington, D.C.

Amy is a regular presenter at D.C. Bar Continuing Legal Education programs, D.C. Superior Court judicial trainings, and at local and national conferences. Before joining LCE in 2003, Amy was an Equal Justice Works (formerly NAPIL) fellow at the National Consumer Law Center (NCLC). Amy is a graduate of the University of Texas at Austin and the University of Houston Law Center. Amy can be reached at (202)434-2171 or amix@aarp.org.

Key Lessons

At the end of this presentation, you will be able to:

- Describe the different types of ownership interests.
- Explain the basics of how title transfers after an owner dies.
- Issue-spot potential concerns about title with respect benefits eligibility, foreclosure, and real property taxes.

Real property law is very state-specific. This presentation contains general information, but please be sure to check your local rules and laws!

What is “title”?

Generally, “title” will tell us who has the right to:

- occupy or possess
- encumber
- transfer



How do we know who has title?

Deed: a **written document** which conveys title to real property, **from grantor to grantee**. The Deed should include a **description** of the real property conveyed and often must be witnessed and/or notarized. Deeds are **usually recorded** among the land records, putting the world on notice of the grantee's claim of ownership. The Deed should also include **how the property is titled** if there are two or more grantees. It may also include the amount of **consideration** paid for the transfer of interest, but it's not uncommon for only a nominal amount to be stated.

Sample Deed

QUITCLAIM DEED

THIS QUIT CLAIM DEED (this "Deed"), is made and entered into this 21st day of November, 1985 by and between **Ned Flanders ("Grantor")**, part of the first part, and **Homer Simpson and Marge Simpson ("Grantees")**, party of the second part as **tenants by the entirety**.

WITNESSETH:

That for in good and valuable consideration, receipt of which is hereby acknowledged, Grantor does hereby grant, sell, convey, transfer and confirm, this Quit Claim Deed, unto Grantee, its successors and assigns, fee simple absolute title to all of those parcels of land situated, lying and being in the District of Columbia, being more particularly described on Exhibit A attached hereto and incorporated herein by reference.

TOGETHER WITH all improvements thereupon and all and singular the tenements, hereditaments, rights-of-way, easements, privileges, and appurtenances to the same belonging or in anywise appertaining; and

TOGETHER WITH all right, title and interest of Grantor in and to the land lying in and above the bed of any public street, alley, road or avenue, opened or closed, within, in front of, abutting or adjoining the above described real property.

TO HAVE AND TO HOLD the said described land and premises unto and to the use of Grantee, its successors and assigns forever, with Grantor's covenant that it

Deed Highlights

Grantor: conveying the interest (“seller” side)

Grantee: receiving the interest (“buyer” side)

Ownership Interest: how the property is held by the grantee

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Types of Deeds

- **Quitclaim Deed**
 - Probably not a traditional sale scenario
 - More commonly (legitimately) used between family members, divorce, probate
 - No guarantees of any kind
- **Warranty Deed**
 - Often used in traditional sale scenario
 - Includes guarantees that grantor owns the property and can transfer clear title

Common Types of Ownership Interest

tenants by the entirety

sole ownership

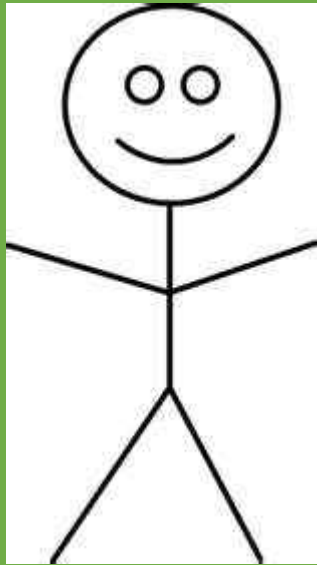
joint tenants

life estate

tenants in common

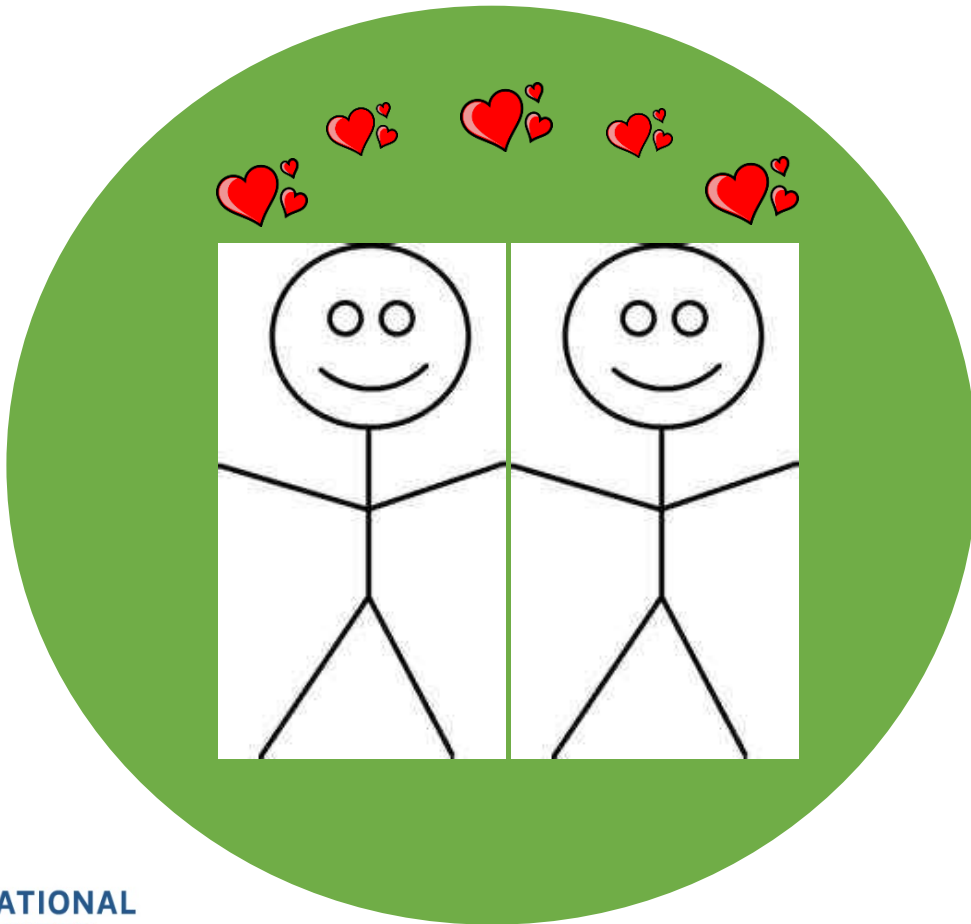
(Not an exhaustive list!)

Sole Ownership



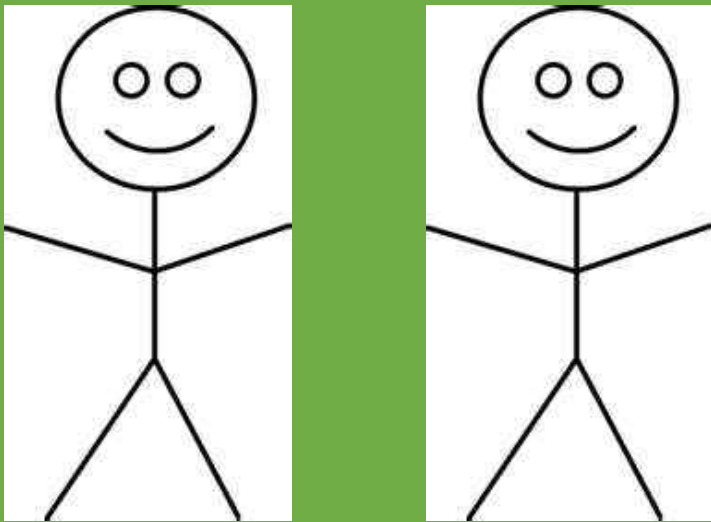
- One owner
- Ownership must transfer through probate (or Transfer on Death Deed)

Tenants by the Entirety



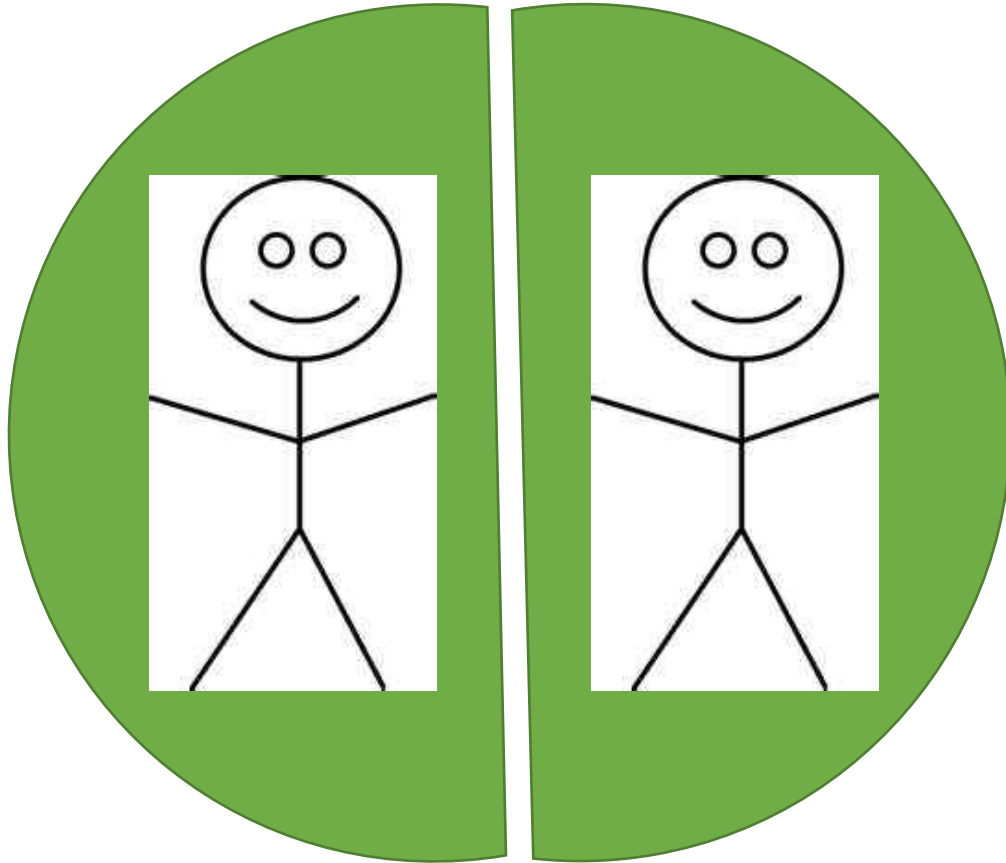
- Married couple
- Any transfer in interest must be by both owners
- Cannot be severed by one owner
- Title automatically vests in surviving owner

Joint Tenants



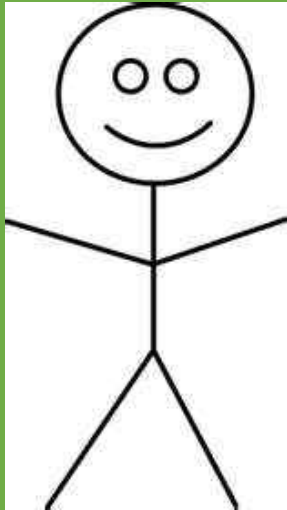
- Two or more individuals
- Full ownership, together
- **May be severed by one owner**
- “With Rights of Survivorship” may be presumption; if so, then title automatically vests in surviving joint tenant

Tenants in Common



- Two or more individuals, each:
 - holds an identifiable part
 - can occupy / possess
 - can transfer an interest without consent of the other
- Title to each distinct part transfers through that owner's estate, i.e. probate or Transfer on Death Deed

Life Estate



- Form of joint ownership
- “Life Tenant” has right to occupy and possess during lifetime
- May have rights to transfer or encumber during lifetime
- Title vests in “Remainderman” when Life Tenant dies

Looking for ownership hints.....

- Public Land Records: available online in many jurisdictions (e.g. Recorder of Deeds)
- Taxing Authority: may also be available online (but always look for the deed!)
- Clients – settlement documents (loans, deeds, etc) are often kept in original folders “in a safe place”

Other Helpful Information

- Public Land Records: deed of trust/mortgage, foreclosure notices, other liens.
- Court Records: probate filings, foreclosure suits, other civil/criminal actions (important documents are often attached as exhibits).
- Taxing Authority: real property tax status, deductions/exemptions, assessed value.

Errors in Deeds

- Deed not recorded: Although Deeds may not be effective against third party interests, Deeds are often effective between the parties whether or not they are recorded.
- Deed misidentifies property or fails to state the type of property interest: Courts may look to context clues to determine what property is being conveyed and how it's held by the Grantees.

Less Common Doctrines to Keep in Mind

- After-Acquired Title: Grantor attempts to convey more interest than they have, but they later acquire the rest
 - may be a conveyance of the later acquired interest
 - rare, but comes up in fraud cases or where mortgages have been bought and sold
- Adverse Possession: “squatter’s rights” – may be able to claim a property right after possession of someone else’s land

Title Questions Come Up In...

- Probate
- Benefits Eligibility
 - Medicaid/SSI
 - Real Property Tax Help
 - Home Improvement Grants
- Foreclosure
- Fraud / Exploitation

Probate Primer

- State-specific procedures
- Personal Representative (PR) / Executor appointed
- Property transfers through will or in accordance with intestacy laws
- Depending on the jurisdiction, there may have to be a PR appointed before any action can be taken re the property.
 - E.g. in DC, title to the property vests in the PR, so the house is in limbo until there's a PR

Why does title matter in probate?

- It may be possible to avoid probate depending on how property is titled.
- Tenants by the Entirety (married couple)
- Joint Tenants With Rights of Survivorship
- Life Estate
- Transfer on Death Deed

A common call to our Hotline...

“I’m going into the hospital soon for a procedure, and I’d like to add my son’s name to my deed so he can handle my affairs while I’m there. And if anything happens to me, this way he’ll get my house without having all the expense of probate.”



Risks of Adding Someone to Title

- You could lose your home: If the other owner ends up with a tax lien or problems with debt collectors, the other owner's creditors may come after your property.
- You could lose your tax exemptions.
- You would lose complete control over whose name is on the deed.
- You may not be able to refinance.

Solution: Transfer on Death Deed

- Names a beneficiary who will take title after owner dies, without the need for probate.
- TODD is generally:
 - Revocable during lifetime
 - Subject to liens and other claims (e.g. Medicaid, mortgage)
- State-specific
- **Best practice** may be to also execute a will naming the same beneficiary (but certainly to check that there's no conflicting will!).

Solution: Power of Attorney

- Check your state's POA requirements
- May be special language required for attorney-in-fact to have power to transfer interest in real estate (e.g. to sign a deed or mortgage documents)
- Generally documents will reflect that a POA was used at signing, and the POA will probably be recorded along with the deed or mortgage documents

When Title Matters in Benefits Cases

Case Example:

- Mr. Kincaid is applying for Medicaid and SSI.
- He lives in a house that belonged to his parents.
- Mr. Kincaid's father died in 1985, and his mother died in 1992.

Q 1: Will title affect Mr. Kincaid's benefits?

Title search: We see that Mr. Kincaid's parents purchased the house as tenants by the entirety in 1946, but we don't find any other deeds since then.

A: The house is property of the estate and probably won't count against Mr. Kincaid for Medicaid coverage, but his SSI may be affected if he's not paying rent.

Q 2: What if Mr. Kincaid is an heir?

His mother's will gives the house to Mr. Kincaid, and the Personal Representative transfers the house to Mr. Kincaid's name.

A: As long as Mr. Kincaid is living in the house, and it's in his name, the property probably will not affect his benefits.

Q 3: What about a second house?

His mother's Will includes another house owned in another state. Title to that house goes to (a) Mr. Kincaid and (b) Mr. Kincaid's 19 year old niece, as tenants in common. The Will says the house cannot be sold until the niece is 25 years old.

A: Although he is on title, the second house probably does not count as an asset because it cannot be liquidated. *See* 20 C.F.R. § 416.1201(a).

Real Property Taxes

- Benefits are state-specific
- Look for tax benefits like homestead deductions or senior/disabled credits
- Generally must be owner-occupied property to qualify
- Watch out for tax foreclosures

When Title Comes Up in Foreclosure

- Rights of Heirs
- Reverse Mortgage
- Solutions May Be Available only for Owner-Occupants

Heirs with Title Interest May Have Rights

An heir who acquires an interest in title to the property may have rights to:

- Communicate with lender about the mortgage
- Obtain information and documents
- Assume the mortgage
- Modify the loan

Reverse Mortgages

- Reverse Mortgage Basics:
 - 62+ years old
 - Owner-occupied
 - Borrower must pay taxes and insurance
- Special Protections for Surviving, Non-Borrowing Spouse, but generally depends on ability to get on title
- Heirs with title interest may have options for satisfying the outstanding loan when borrower dies

Foreclosure Solutions

Some foreclosure avoidance options are only available to clients on title:

- Sell the house
- Refinance
- Assuming the mortgage after death of the borrower or a divorce

Title Scams and Exploitation

- Homeowners on fixed income who are “house rich but cash poor” are at increased risk
- House may be only asset of value
- Isolation, diminished capacity, lack of financial sophistication or computer know-how may put seniors at increased risk

Case Study

- Ms. Peterson calls your office because she sees her house listed in a foreclosure auction advertisement.
- Ms. Peterson doesn't have a mortgage on the house.
- Last year, company offered to help Ms. Peterson with a small loan for her taxes. Ms. Peterson was supposed to repay the money when she got back on her feet.
- Looking through her paperwork, you see a lease. There's a Deed and Mortgage recorded among the land records in the name of Richard Dawson. It's not a name Ms. Peterson recognizes.

What's going on?

Classic “foreclosure rescue scam”:

- Distressed homeowner
- “Help” getting back on feet
- Property with equity
- Vague / confusing terms
- Lease-back
- False notarization

Case Study

- Ms. Jimenez is 83-years old and lives in a house that's been in her family for generations. Her grandparents bought the house in 1948.
- Ms. Jimenez has come to your office because her roof is leaking and she wants to apply for a city grant for repairs. She's also having trouble keeping up with her property taxes.

Case Study - Jimenez

- You learn that the city grants are only available for homeowners.
- There are tax credits Ms. Jimenez may qualify for if she is the owner-occupant.
- Ms. Jimenez is one of five grandchildren.

What Questions Should We Ask?

- What housing expenses does Ms. Jimenez pay?
- Does Ms. Jimenez receive any needs-based benefits?
- How did her grandparents hold title?
- Was last-surviving grandparent's estate probated?
- Who are/were grandparents' heirs?
- Are they alive and/or were estates probated?
- What sort of relationship does Ms. Jimenez have with her siblings and cousins?

Opening Pandora's Box.....

- Putting Ms. Jimenez on title may require probate of multiple estates
- Change in status may affect public benefits eligibility
- If Ms. Jimenez ends up being just one of multiple heirs, she could lose her housing.

Q & A

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