



# Protecting the Title of Your Real Property

By Jan Cummins  
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Every property owner knows that the deed showing that he or she owns the property in question is a very important document. And most of us have heard of a chain of title, especially in the context of its being broken, which most of us know is why so many title insurance companies exist and continue to thrive. We also know that we don't want the chain of title to be broken on our own property, because it can cause big and often very expensive problems, especially if we want to mortgage it or sell it. But you may not know how a chain of title can easily be broken, or even how to avoid inadvertently doing it yourself.

One way a chain of title can be broken is when a seller disposes of the same piece of property more than once, often when there is a well-meaning fractional transfer in the form of a gift to family members, where the transferring owners are keeping a portion of the property for themselves. Another way is when a property owner purposely engages in fraudulent repeat transfers for financial or other types of gain. A third way most often appears in multi-generational families where the property has been passed down through many deeds and where the legal owners or form of title were sometimes unclear or ambiguous. This kind of confusion can be amplified with time and change in language, law, and customs. That is the purpose of timely correction deeds, in which broad category are included affidavits of death or affidavits of change of trustee.

As the above examples show, it is very easy for a chain of title to be destroyed. If that happens, you may find that you don't own property that you believed you did, at least not without establishing your title in a court action. It is like a game of "telephone", where each transfer of information from person to person is slightly changed, so that when it is finished going around the circle, the final information conveyed is usually very different than the original speaker intended. Because of this danger, every new deed must be scrupulously constructed to mirror the previous deed as much as possible. The names and form of title of the grantors should be identical to the names and form of title of the grantees on the previous deed. Then the names and form of title of the new grantees must be carefully planned so as to be sure and convey the legal meaning the new owners intend that it should.

Unfortunately, even if the deed is done absolutely perfectly, the deed alone does not protect your chain of title. It also must be recorded. While a properly formed deed is a legal transfer of ownership of property as soon as it is signed and dated, another properly formed deed that is also signed and dated and recorded earlier could determine ownership of the property absent other

court action. The laws in this area are complicated, steeped in archaic history for the most part, and hopefully rarely needed, as most people record their deeds in a timely manner after the signing and dating procedure is completed.

It is also important to bear in mind that recording itself will not protect your chain of title. Any document can be recorded that is properly executed according to state law. It is not the Recorder's or Assessor's duty to make sure the facts stated in the deed are correct or consistent with earlier deeds. The Recorder has a duty to care about the form of the document, the procedure with which it was executed and the payment of the proper fees. The Assessor has a duty to care about being able to clearly identify an individual or legal entity who is responsible for paying taxes and assessments. Their responsibilities are to oversee the maintenance of an orderly society governed by law. Neither one has a duty to guard your particular chain of title. That is your own responsibility, along with your attorney(s) and the title insurance companies you employ to assist you.

Therefore, one bit of wisdom to carry away from this brief explanation is that it is usually not prudent to execute a deed changing ownership for your real property to another individual or entity without the assistance of an attorney who is experienced in this area and/or the involvement of a title insurance company. If you know what the forms of title mean, and you are certain that you want to switch from joint tenancy to community property, or from tenancy in common to joint tenancy or the reverse, with the identical owners, you can probably do it yourself. Otherwise, there are all too many pitfalls that could cause you to break your own chain of title and harm your chain of title in the long run

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