

# **Chapter 52—Transfer and Control of Real Property**

## **A. Contract of Sale**

### **Marketable Title**

#### **Title free from**

- 1. encumbrances (such as mortgages, easements, liens, leases, and restrictive covenants)**
- 2. defects in the chain of title (the record of successive ownership of the property) appearing in the land records (such as prior recorded conveyance of the same property by the seller)**
- 3. events that deprive the seller of title, such as adverse possession or eminent domain**

**If the title search reveals any defect not specifically expected in the contract, the seller has materially breached the contract. The buyer's remedies for breach include specific performance with a price**

**reduction, rescission, and restitution, or damages for loss of bargain.**

## **B. Deeds**

### **Types of Deeds**

**--In addition, the grantor, either expressly or implicitly, obliges herself to make the grantee whole for any damage the grantee suffers, should the grantor's title prove defective.**

**--A warranty deed includes certain promises or covenants, the most usual being title, against encumbrances, quiet enjoyment, and warranty. These constitute an assurance that the grantee will have undisturbed possession of the land and will be able, in turn, to transfer it free of the adverse claims of third parties.**

**--A phrase common in a warranty deed is "convey and warrant;" also, in a number**

**of states, the phrase “grant, bargain, and sell” is used together with the seller’s covenant that she will “warrant and defend the title.”**

## **C. Secured Transactions**

### **Rights and Duties**

**Mortgagor’s Rights:** In most states, the mortgagor retains title and is entitled to possession of the premises to the exclusion of the mortgagee, even if the mortgagor defaults. Only through foreclosure or through court appointment of a receiver can the right of possession be taken from the mortgagor.

**The mortgagor has the right to redeem his mortgaged property by paying the debt that the mortgage secures. This right of**

**redemption can be defeated only by operation of law.**

**Mortgagor's Duty: The mortgagor has a duty not to commit waste, which would impair the security. For example, the debtor's failure to pay taxes or to discharge a prior lien may impair the security of the mortgagee.**

## **II. Public and Private Controls**

### **Zoning**

#### **Enabling Acts and Zoning Ordinances**

**A typical enabling statute grants municipalities the following powers:**

- 1. to regulate and limit the height and bulk of buildings to be erected**
- 2. to establish, regulate, and limit the building or setback lines on or along any street, trafficway, drive or parkway,**

- 3. to regulate and limit the intensity of the use of lot areas and to regulate and determine the area of open spaces within and around buildings,**
- 4. to classify, regulate, and restrict the location of trades and industries and the location of buildings designated for specified industrial, business, residential, and other uses;**
- 5. to divide the entire municipality into districts of such number, shape, area, and classes as may be deemed best suited to carry out the purposes of the statute, and**
- 6. to set standards to which buildings or structures must conform.**