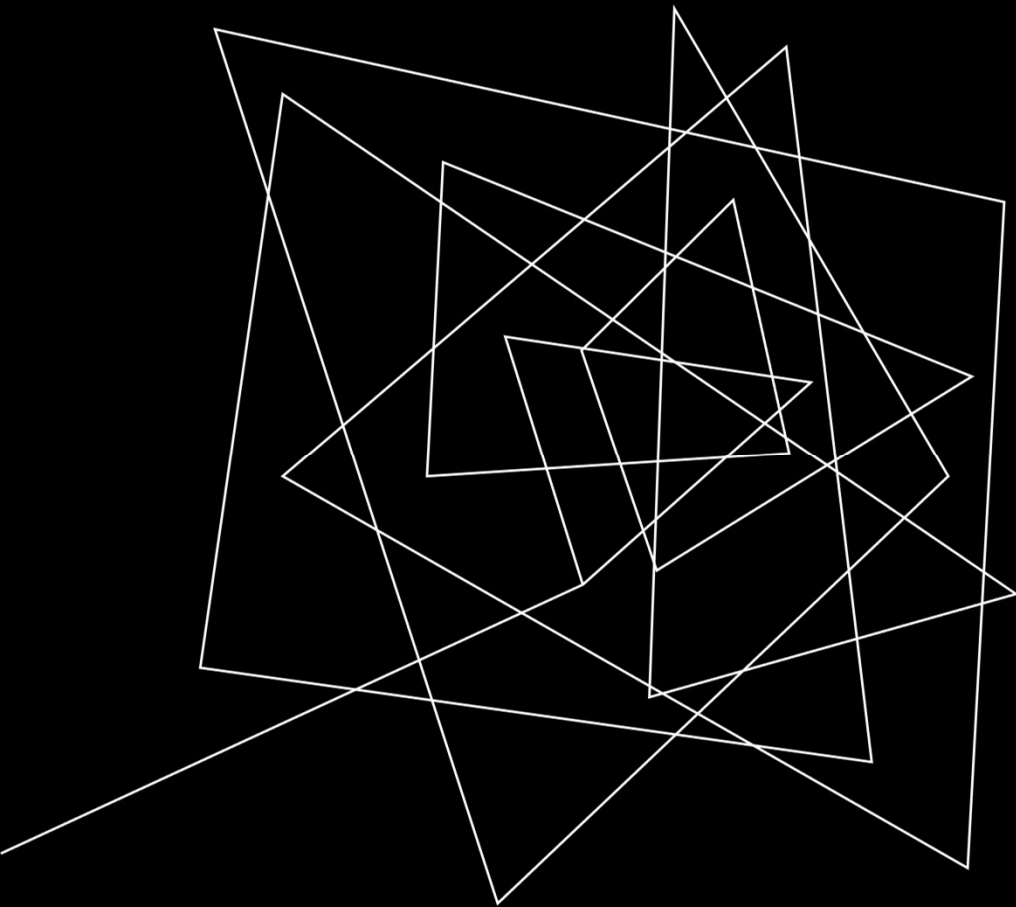


TITLE ISSUES AND PROBLEMS

Bryan M. Kreft and Suzette Z. Torres

TOPICS FOR DISCUSSION

- What is “Title” and why it is important to understand it.
- Title Insurance: *Waive or Not to Waive...that is the question!*
- Title Problems
- Corrective Actions
- Examples (time permitting)



WHAT IS TITLE?

And why it is important to understand it

WHAT IS “TITLE”?

Title describes ownership and usage rights in real property. It is both the “by whom” and “in what way or manner” real property is owned or held.

Every parcel of real property has its “chain of title” from creation to the present that can be analyzed and may or may not include problems. Research may be done in different ways.

- Grantor/Grantee index
- Title Insurance Company

COMMON WAYS TO HOLD TITLE TO PROPERTY

Sole Ownership - Examples of common vesting cases of sole ownership are:

1. A Single Man/Woman, an Unmarried Man/Woman, or a Widow/Widower
2. A Married Man/Woman as His/Her Sole and Separate Property
3. A Domestic Partner as His/Her Sole and Separate Property

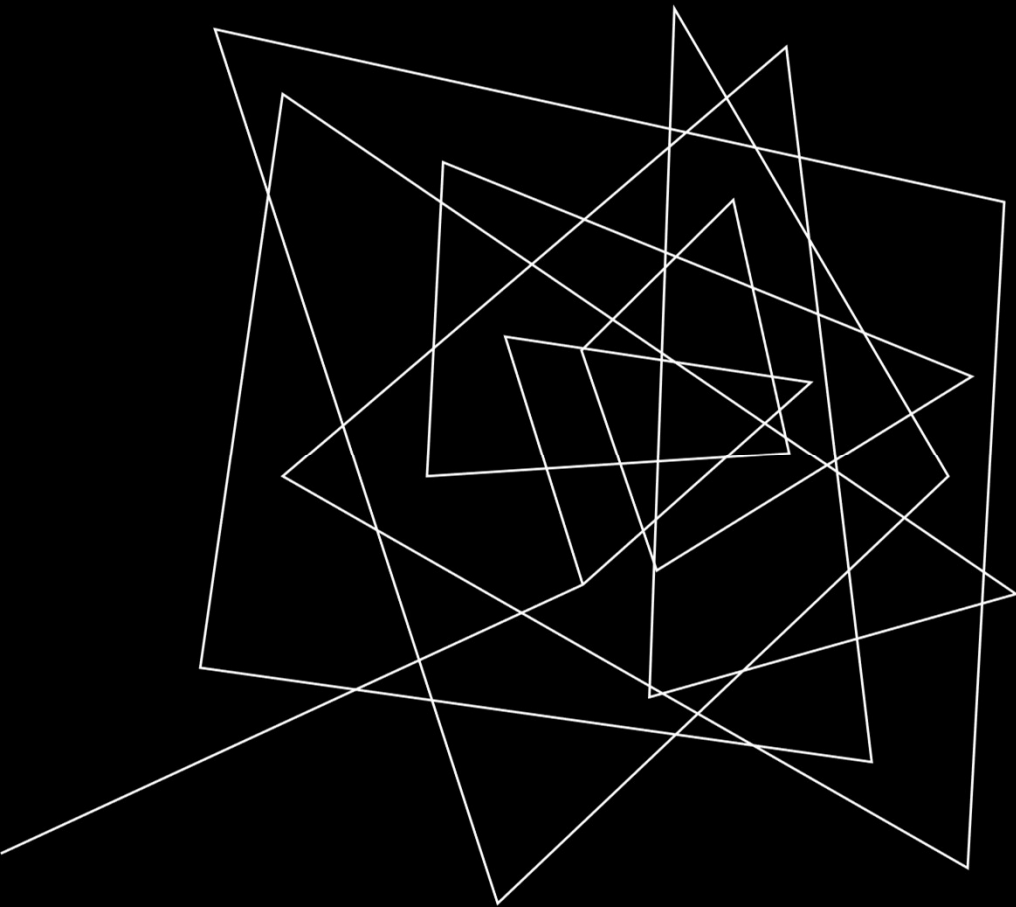
Co-Ownership - Title to property owned by two or more persons:

1. Tenancy in Common
2. Joint Tenancy
3. Community Property
4. Community Property with Right of Survivorship

Other vesting (i.e. Entity/Organization/Trust):

1. Corporation
2. Partnership
3. Trustees of a Trust
4. Limited Liability Company

[Common Forms of Residential
Ownership in California -
Lennar Title ©](#)



TITLE INSURANCE

Waive or Not to Waive....that is the question!

TITLE INSURANCE

Department of Insurance: Title insurance is a contractual obligation that protects against losses that occur when title to a property is not free and clear of defects (e.g. liens, encumbrances and defects that were unknown when the title policy was issued).

I already have Homeowners Insurance, why do I need title insurance?



TYPES OF POLICIES:

- OWNER V. LENDER

PROCESS:

- PRELIMINARY TITLE REPORT
(INS. CODE SEC. 12340.11)
- Can I obtain a policy on my neighbor's property?
- Can I obtain a policy with a policy limit higher than the value of my property?

SHOULD I WAIVE TITLE INSURANCE? WHAT ARE MY OPTIONS?

April 12, 2022: Fannie Mae and Freddie Mac now accepts written attorney opinion letters in lieu of a title insurance policy “in limited circumstances”

The attorney issuing the title opinion letter must be licensed to practice law in the jurisdiction where the subject property is located and must be insured against malpractice in rendering opinions of title in an amount commonly prevailing in the jurisdiction.

The attorney title opinion letter must:

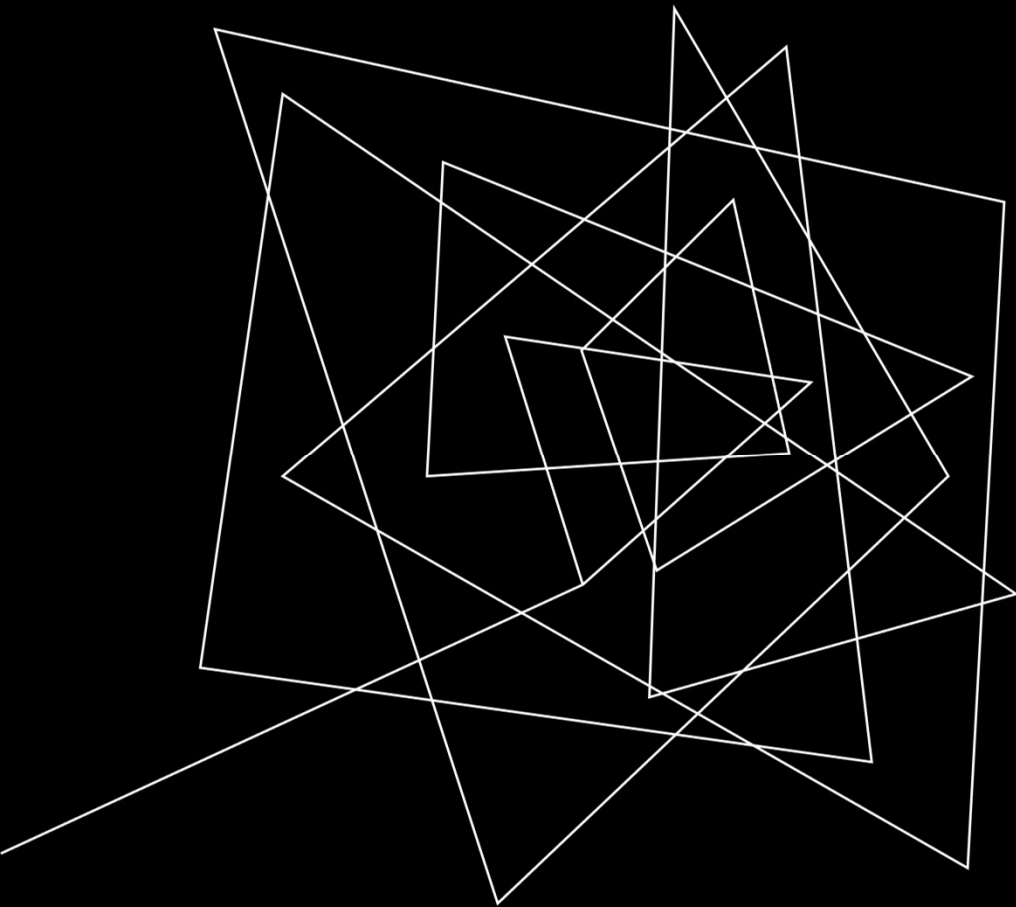
- be addressed to the lender and all successors in interest of the lender
- be commonly accepted in the area where the subject property is located
- provide gap coverage for the duration between the loan closing and recordation of the mortgage
- list all other liens and state they are subordinate
- state the title condition of the property is acceptable and the mortgage constitutes a lien of the required priority on a fee simple estate in the property

AMERICAN LAND TITLE ASSOCIATION (ALTA)

ALTA created a [one-page summary](#) outlining the risks of alternative title products for Lenders.

ALTA also developed a comparison chart that highlights the more comprehensive protection an ALTA Loan Policy provides versus an AOL with a liability wrap.

- [Coverage Comparison](#)
- [Summary Comparison](#)
- [ALTA Presentation on title insurance and alternative products \(August 2022\)](#)

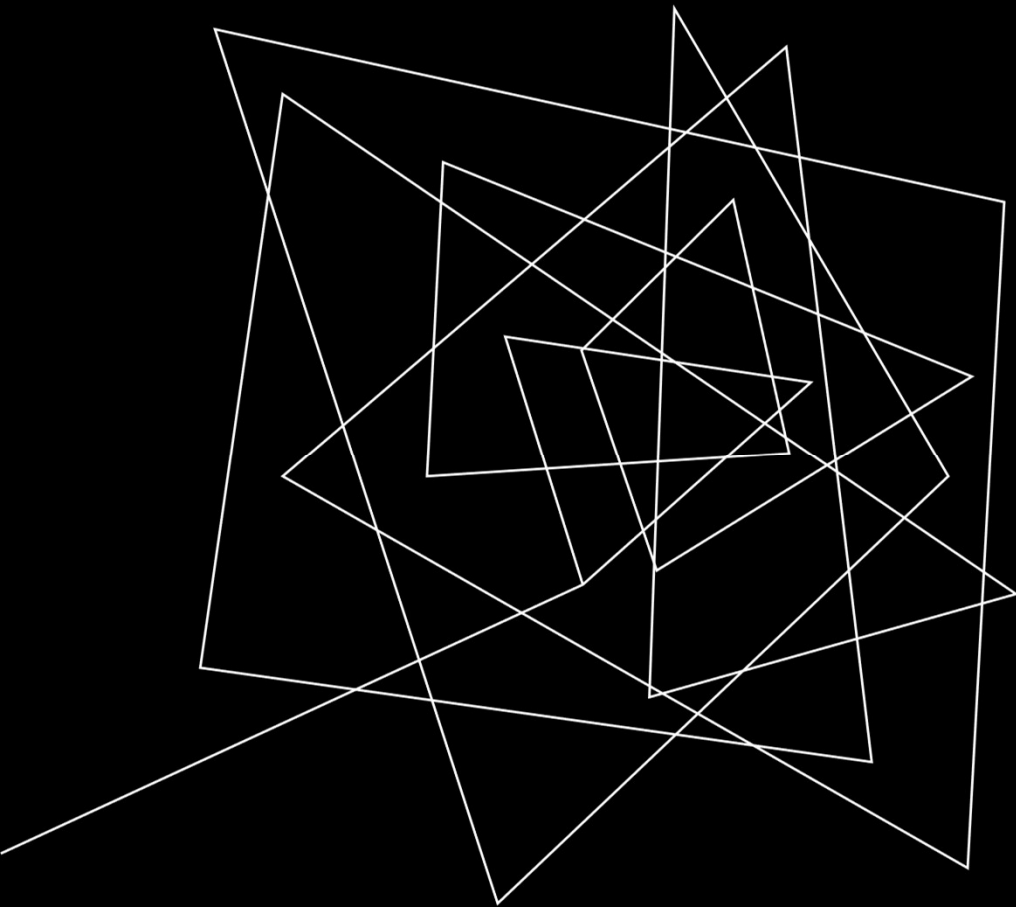


TITLE PROBLEMS



TYPES OF PROBLEMS

- Incorrect information within Deed (name misspelled, legal description issues, APN incorrect, improper notary seal/acknowledgement)
- Wild Deed (not recorded or not properly indexed)
- Failure to timely address change (death or incapacity)



CORRECTIVE ACTIONS

CORRECTIVE ACTIONS:

- NEW DOCUMENT TO BE RECORDED
- LITIGATION

If new document, what type?

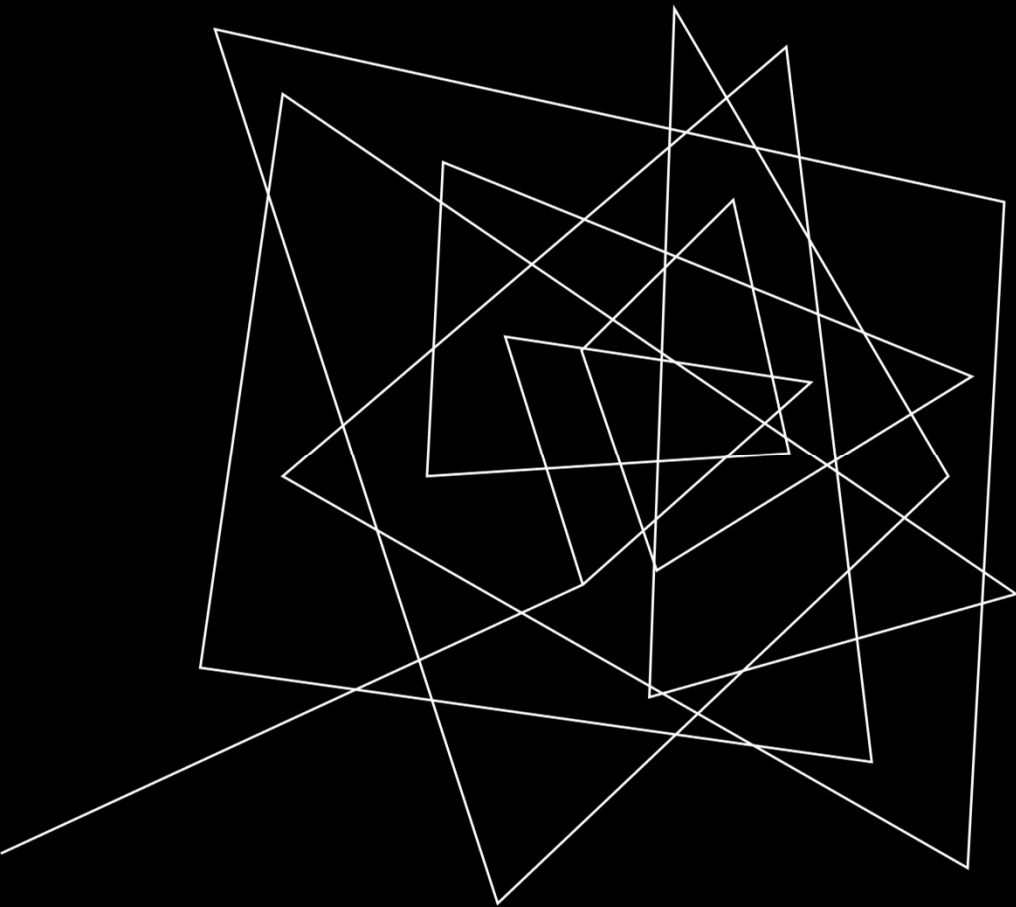
- Grant Deed, Quitclaim Deed, Rescission, Interspousal Deed, Corrective Deed

If litigation, what form?

- Quiet Title, Declaratory Relief

Topics to discuss with your clients

- Time
- Cost
- Filing a claim under the title policy



REAL WORLD
EXAMPLES

PROBLEMATIC VESTING DESCRIPTION EXAMPLE

Grantor hereby grants to SON, a single man and FATHER
and MOTHER, husband and wife as community property All
as Joint Tenants

ALL GRANTEEES ON LAST VESTING DOCUMENT ARE NOW DECEASED

- Judgment recorded distributing to three siblings A, B and C
- A and Wife move in, and buy out B and C
- No deeds recorded transferring B and C's interest to A
- A, B and C die
- No estates probated
- Wife of A is last to die, son probates estate and ownership of property is question raised



SUMMARY

Title issues and problems arise in a number of practice areas:

- Real Property (transactions, ownership issues, construction, easements)
- Will, Trusts and Estates
- Probate
- Bankruptcy
- Family Law/Divorces/Conservatorships
- Contractual ownership issues

If you have a title problem, seek out a practitioner who has knowledge in the area for assistance.



THANK YOU

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