



Real Estate for City Attorneys

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Real Estate for City Attorneys

Introduction

- A. Classification (What is it?)
- B. Acquisition (I want it, what will it take?)
- C. Sale (Just kidding, how do I get rid of it?)

Classification

What is real property?

1. Generally
2. Deeds
3. Easements
4. Other interests
5. Does it matter?

Classification - Generally

What is real property?

● Real Property =

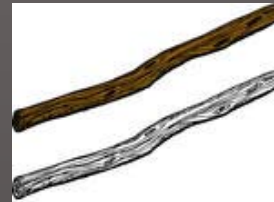
This means the right to:

- Use
- Sell
- Exclude
- Mortgage
- Etc.



Classification - Generally

- Deed vs. Easement...and pretty much everything else
 - Deed: I am giving you ***all*** the sticks except for...



- Easement (or other): I am ***only*** giving you this stick...



Classification - Deed

- A deed is a conveyance of all the sticks except for:
 1. Fee limitations (life estate, fee simple determinable)
 2. Exceptions/exclusions (e.g. mineral rights)
 3. Covenants and restrictions (e.g. lot sizes, setbacks, uses)
 4. Easements, encroachments, leases (e.g. gas lease with surface rights)
 5. Security interests (e.g. liens, deeds of trust, etc.)

Classification - Deed

- Tex. Prop. Code § 5.022 General warranty deed form:
 1. Grantor/Grantee
 2. Consideration (BFP)
 3. Words of grant
 4. Legal description
 5. Exclusions/reservations
 6. Warranty
 7. Execution by Grantor




Classification – Deed

State of Texas

County of _____

Know all persons by these presents, That I, (Seller), of the City of ____,
____ County, Texas, for and in consideration of \$10 and other valuable
consideration, to me in hand paid by (Buyer), have granted, sold, and
conveyed, and by these presents do grant, sell, and convey unto the
said (Buyer), of the City of ____, ____ County, Texas, all that certain
property (metes and bounds, lot and block, or Vol., Pg. ref.).



To have and to hold the above described premises, together with all and
singular the rights and appurtenances thereto in any wise belonging,
unto the said Buyer, his heirs or assigns forever. And I do hereby bind
myself, my heirs, executors, and administrators to warrant and forever
defend all and singular the said premises unto the said Buyer, his heirs,
and assigns, against every person whomsoever, lawfully claiming or to
claim the same, or any part thereof.

"Witness my hand, this _____ day of
_____, A.D. 20____.



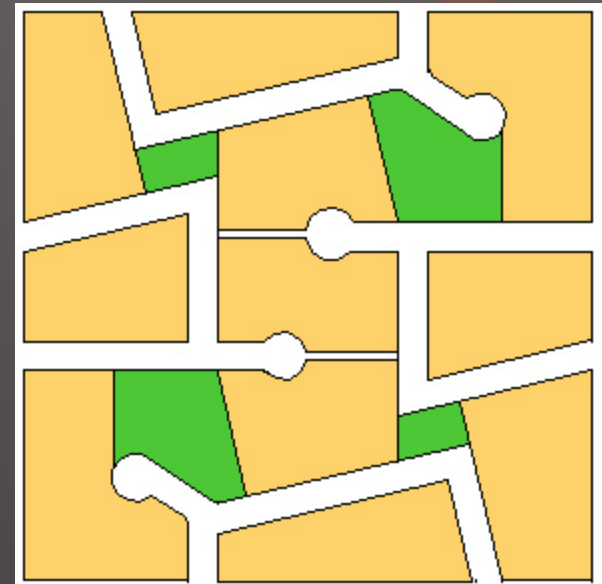
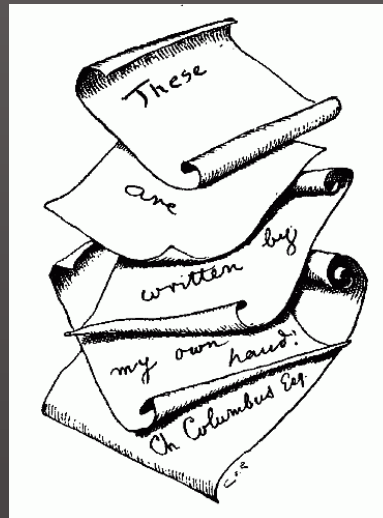
Classification - Deed

- ◉ General Warranty
 - ◉ Conveyance of the interest and obligates the grantor to indemnify against any loss resulting from a title defect "against anyone"
- ◉ Special Warranty
 - ◉ Conveyance of the interest and obligates the grantor to indemnify against any defects caused by the grantor "against any person claiming though grantor, but not otherwise"
- ◉ Deed without Warranty
 - ◉ Conveyance of the interest stated, but no guarantee
- ◉ Quitclaim
 - ◉ Conveyance of any interest owned by grantor, but no description or guarantee

Classification - Easement

- An easement is a conveyance of one or more sticks. The grantor keeps the rest.

1. Express - written
2. Implied - prescription/necessity
3. Recorded?
4. Duration?
5. Exclusive?
6. Assignable?



Classification - Easement

- What does a recorded easement look like?
 - Minimal statutory requirements (heading, notary, signature)
- General considerations
 - Grantor (We've been talking to the owner and....)
 - Priority (Are there any liens, prior easements, etc.)
 - Legal description (Beware CAD descriptions)
 - Use (What do you mean by "drainage"?)

Classification - Other

- Other interests that aren't really "real property":
 1. Right of way (not really its own thing)
 2. License
 3. Lease
 4. Permit
 5. Lien/deed of trust

Classification – Does it matter?

- What is the difference if you are getting a deed, an easement, or some other interest
 - Rules regarding acquisition and sale of real property
 - Limitations on use of property
 - Oil/gas/mineral rights, water rights, air rights
 - Exclusivity
 - Duration

Acquisition

I want that, how do I get it?

1. Acceptance
2. Statutory Rules
3. What's it worth
4. Condemnation

Acquisition - Acceptance

A. Plats

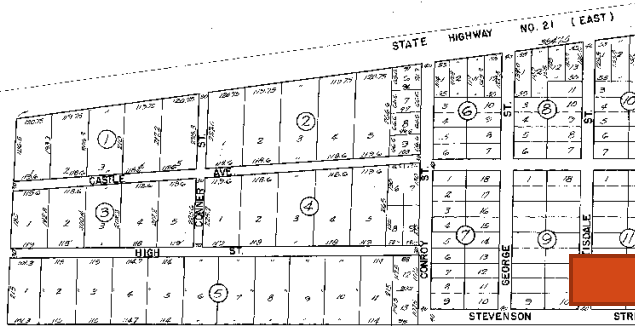
- Dedication Language –

I (we) _____, owner(s) of the land shown on this plat, and designated herein as the Blackacre Subdivision to the City of Anycity, Texas, and whose name(s) is/are subscribed hereto, hereby dedicate to the use of the public forever all streets, alleys, parks, greenways, infrastructure, easements, and public places thereon shown for the purpose and consideration therein expressed. All such dedications shall be in fee simple unless expressly provided otherwise.

- Acceptance

- City Planner, City Engineer, City Council/P&Z etc.

Acquisition – Acceptance



What is this?

What about this?

And this?

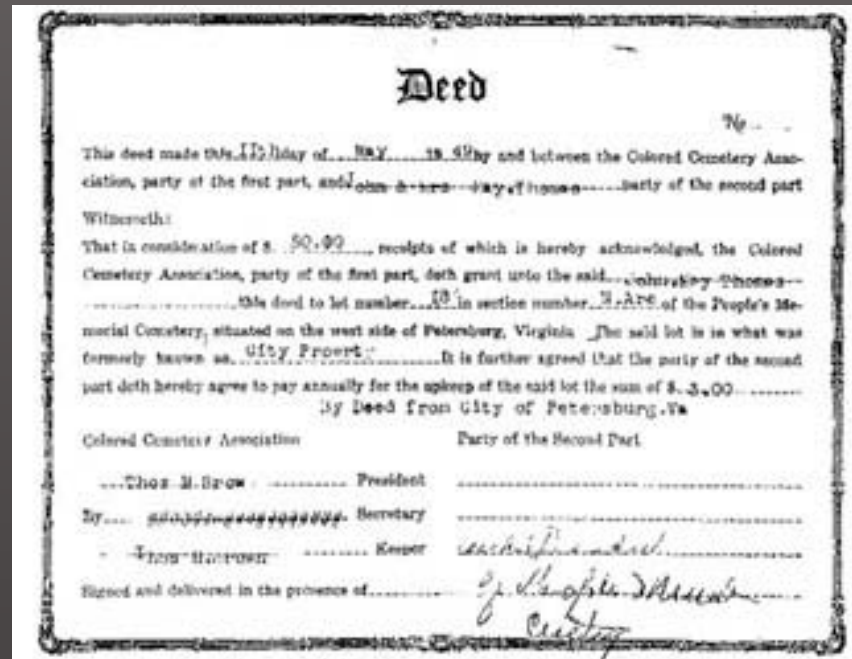
Or this?



Acquisition - Acceptance

B. Separate Instrument

- Substantive review?
- Legal review?
- Authority to accept?
- Record of acceptance?



Acquisition – Statutory Rules

Rules that don't apply

- Notice and bidding statutes
 - LGC § 252.022(a)(6) – this chapter does not apply to an expenditure for a purchase of land or a right-of-way
 - LGC § 271.056(6) – competitive bidding not required to spend Cert. of Obligation revenue for purchase of land/right-of-way
- Public Information Act
 - Gov § 552.105 – the location/price of real property is confidential, up until purchase
- Open Meetings Act
 - Gov § 551.072 – deliberations regarding real property can be held in closed session, if city would be prejudiced

Acquisition – Statutory Rules

Rules that do apply:

Can you buy the land?

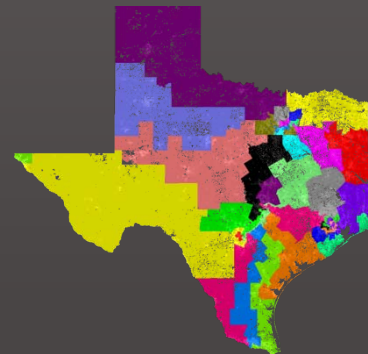
- LGC § 51.015 Type A general law city may take, hold, purchase, lease, grant or convey property located inside or outside the city
- LGC § 51.034 Type B general law city may hold and dispose of real property only within city limits
- LGC § 51.051 Type C municipality with < 500 people, same as Type B; with > 500 people, same as Type A
- LGC § 51.076 Home Rule city may hold property (see charter for rules)

Acquisition – Statutory Rules

Rules that do apply:

Can you buy the land? Cont.

- LGC § 273.001 – city may acquire property, separately or jointly with another gov't entity, by gift/purchase/condemnation. Property must be within the same county. List of uses (non-exclusive).
- LGC § 280.001 city may acquire land for the use of the federal government, if within the same county
- LGC § 331.001 – property acquired for a city park must be within same county



Acquisition – Statutory Rules

Rules that do apply:

How much can you pay?

- Constitution – Art. III, § 52 – legislature may not authorize the grant of public money (or thing of value) to any individual, association, or corporation
- LGC § 252.050 – lease/purchase or installment purchase of property using cert. of participation, may not acquire property for more than the FMV as shown by an appraisal obtained by city
- LGC § 252.051 – appraisal required before purchasing property with bond proceeds



Acquisition – What's it worth?

- What is the value of real property?
 - Willing buyer/willing seller
 - Not an exact science
- How much is too much?
 - Incidental benefit to private entity is constitutional if made for a public purpose. Walker v. Georgetown, 86 S.W.3d 249, 260 (Tex. App.—Austin 2002, pet denied).



Acquisition – What's it worth?

- What is an appraisal?
 - An estimate of the value of the property that would be paid by a willing buyer and accepted by a willing seller
 - Not an exact science
- Different kinds of appraisals
 - Cost - value of land plus cost to construct replacement
 - Comparison – value of land plus comparable sales of similar property in same area.
 - Income – revenue generated by property
- Limits on accuracy

Acquisition - Condemnation

- Everything I have to tell you about condemnation
 1. Hire outside counsel
 2. Be the outside counsel
- Two pieces of advice
 - Landowner's bill of rights: hand it over with caution.
 - Bona fide offer does not need to be "best"

Sale – Just kidding

How do I get rid of it?

A. When property cannot be sold

B. Procedure for Sale

1. Sealed bids
2. Auction
3. Broker

C. Exceptions

Sale – Property can't be sold

1. LGC § 253.001(b) land owned, held, or claimed as a public square or park may not be sold unless the issue of the sale is submitted to the qualified voters. See subsections (e) – (i) for bracketed exceptions.
2. Parks & Wildlife § 26.001 city may not use/take park, rec area, scientific area, wildlife refuge, or historic site without having a hearing to determine if there is a reasonable alternative. Notice must be published 1/wk for 3 wks, in paper of gen. circ. in same county.
3. Deed restrictions in conveyances to city



Sale – Procedure for Sale

Typically, one of three methods:

1. Sealed bids
2. Auction
3. Broker

Sale must be authorized by ordinance

- LGC § 253.001 – city may sell land owned as park, square, city hall, other municipal building, or that is an abandoned part of a street/alley by adopting an ordinance directing the mayor or city manager to execute the conveyance

Sale – Procedure for Sale

1. Sealed Bids

- LGC § 272.001 – before a city may sell/exchange property, notice must be posted in the newspaper of gen. circ. on two separate dates at least 14 days before the sale/exchange
- Notice must include a description of the land, location, and the procedure for accepting bids
- The statute does not require the city to accept any bid/offer or to complete the sale/exchange
- The statute does not require the city obtain an appraisal
- Best price?

Sale – Procedure for Sale

2. Public Auction

- LGC § 253.008 – public auction
- Notice of the auction must be posted once a week for 3 consecutive weeks in the newspaper of gen. circ. 20 days prior to the auction.
- Notice must describe the property as well as the date, time, and location of the auction. The notice must be published in the same county as the property being sold.



Sale – Procedure for Sale



3. Broker

- LGC § 253.014 – Contract with broker
- The governing body of a home-rule city may contract with a real estate broker to sell property it owns or holds in trust and has authority to sell (see tax foreclosures).
- Governing body may pay a fee if broker produces a ready, willing, and able buyer
- Broker must list the property for at least 30 days on the MLS, then the governing body may sell the property to a ready, willing, and able buyer who submits the highest cash offer.

Sale – Exceptions

Property may be conveyed without notice/bidding to

- 253.009 Municipal Development Corp.
- 253.010(a)(1) non-profit providing low income assistance
- 253.010(a)(2) non-profit (with conditions) providing low income housing
- 253.010(a)(3) religious organization owns other property in the city and enters into an agreement to revitalize
- 253.011 Non-prof for public purpose, with reverter
- 253.012 Type A or B EDC in cities with 20,000 people or less
- 253.013 adjacent owners if property has 0 value and is in a city with
a) 150,000-200,000 people and located in 3 counties; or b) a city with 65,000-90,000 people and in a county with part, but not all, of a military base

Sale - Exceptions

Continued

- ◉ 272.001(b)(1) and (2) abutting property owners, if narrow strips (or otherwise unusable) or streets/alleys
- ◉ 272.001(b)(3) anyone if it is an exchange of streets, rights of way, easements
- ◉ 272.001(b)(4) an independent foundation that the city wants to develop the land
- ◉ 272.001(b)(5) a governmental entity that has the power of eminent domain
- ◉ 272.001(b)(6) a developer in a reinvestment zone, if land to be developed per plan
- ◉ 272.001(b)(7) anyone if property is conveyed by base development authority

Sale - Exceptions

Almost done

- 272.001(g) an entity that provides low/moderate income housing, or to low/moderate income families
- 272.001(h) a tenant leasing land within 5,000 feet of a lake in a city with 825,000 people or less
- 272.001(i) a non-profit or for profit company for economic development purposes, if land acquired with CDBG funds
- 272.001(j) an institution of higher education
- 272.002(k) anyone, if sale is by municipally owned utility
- 272.001(l) another political subdivision if the sale is for a public purpose

Sale - Exceptions

The last of what I found before I stopped caring

- ◉ 272.002 a city within a county bordering Mexico, or an adjacent county, may donate/sell land to the United States to carry out a law in aid of navigation, flood control, or improvement of water courses
- ◉ 272.003 city may lease or provide office space to state/federal agencies providing relief to the unemployed/needy
- ◉ 272.004 a city may sell, lease, or otherwise transfer property in the same manner as a subregional board of a regional transportation authority, if the sale, lease, or transfer is approved at an election
- ◉ 272.005 city may lease property/office space to a state/federal agency to accomplish a public purpose of the city

Sale - Exceptions

Most common exceptions in my experience

1. Non-profits/religious institutions
2. Other governments
3. Streets and junk

Sale - Nonprofits



Low/moderate Income Housing

- 272.001(g) city may sell, exchange, or otherwise convey land to a person or entity for the development of low/moderate income housing
- May be for less than fair market value



Sale - Nonprofits

Religious institution

- 253.010(a)(3) a religious organization that owns other tax exempt land in the city may enter into an agreement for the revitalization of land in the city

Community revitalization

- 253.011 conveyance to a non-profit [501(c)(3)] for a public use
- City may enter into an agreement defining the public purpose to be obtained on the property
- Deed must include a reverter in the event that the public purpose ceases
- Only allowed in cities with fewer than 1.9 million people

Sale – Other governments

272.001(b)(5) to a governmental entity with the power of eminent domain

- This does not mean Type A or B EDC
- Must be for Fair Market Value

272.001(j) institution of higher education

- Must be to promote a purpose related to higher education
- Must determine terms and conditions
- May be for less than fair market value



Sale – Other governments

272.001(I) To another political subdivision of the state of Texas

- Land must be used for a public purpose of the city donating/selling
- Donation/sale must be under terms that promote the purpose
- Deed must include reverter



Sale – Streets and junk

272.001(b)(1) unusable land (b)(2) streets, alleys

- May be conveyed for less than fair market value to adjacent owner
- Adjacent owner entitled to ½ of property or equitable portion



The End

Thank you for your attention



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