

READING & UNDERSTANDING DEEDS

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Overview

- History
- Deeds- Definition/Elements/Details
- Legal terms
- Encumbrances / Clauses
- Types of deeds
- Property Ownership
- Life Estate
- Trusts

History of Deeds

- Real property was transferred through a ceremonial act known as "livery of seisin".
- The person transferring the land handed a twig or clod of turf from the land to the person taking possession.
- A verbal or written statement often accompanied the gesture

Current Trends

Increasing number of transfers to trusts and the creation of life estates due to;

- tax & estate planning purposes
- protecting assets for Medicaid purposes
- avoiding probate
- desire to also receive property tax exemptions

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What is a Deed

A property deed is a legal document used to transfer ownership of property from one party to another. It conveys the right, title or interest in a parcel of real estate. Sometimes a deed transfers only a part of the owner's interest

There are different types of deed, and each serves a specific legal purpose, and offer differing levels of protection during the transfer of a property or piece of land. Knowing the difference between deeds can help understand which level of protection is necessary for a particular real estate transaction

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Classifications

- Deeds fall into two Classifications:
 - Official and Private
 - Official: executed as result of court or legal rulings
 - Private: executed by deal struck between individuals or businesses

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Categories of Deeds

Categories are based on type of warranties

Warranty Deed (General or Special)

Quit Claim

Special Purpose

Types of Deeds - Categorized

- **Warranty (General of Special)**
- **Quit Claim Deed**
- **Bargain & Sale**
- **Grant Deed**
- **Deed of Trust**
- **Special Purpose**
 - Administrators Deed / Executor's Deed
 - Deed of Gift
 - Deed in Lieu of Foreclosure / Referee Deed
 - Tax Deed
 - Sheriff's Deed

Type of Title Warranties

- A Title Warranty is a transfer by the grantor (seller) that warrants three things:
 - (1) that the grantor is the owner with full power to sell,
 - (2) that the property is transferred free and clear of encumbrances (except those specifically identified), and
 - (3) that the grantor will defend title against anyone claiming an interest in the property.

The third promise is what differentiates a general warranty deed from a special warranty deed.

Types of Deeds – Categorized

- General Warranty – complete protection-buyer
 - Grantor makes promises (covenants & warranties)
 - Protecting against any prior claims and demands
 - Usual covenants:
 - Quiet enjoyment
 - Further assurance – documents delivered necessary to make title good
 - Against encumbrances – free & clear of liens
 - Seisin: grantor owns and has legal right to convey
 - Warranty forever

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Types of Deeds – Categorized

- Special Warranty
- With a special warranty deed, the warranty language is changed to limit the duration of the seller's warranty. The warranty clause will state something like: "and warrants title to all persons claiming under me." This "under me" part means that the warranty is limited to claims against title only for the time the seller owned the property, and not before.

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Warranty Deeds (Cont'd)

- Special Warranty Deed

A special warranty deed protects a grantee against any issues or claims that might have arisen during the time the grantor owned the property entirely. It doesn't apply to the entire history of the property.

Does not provide as much legal protection as a general warranty deed, it does:

Assure that the grantor is the legal owner of the property title, and Guarantee that the property was not somehow encumbered during the time when the grantor had ownership.

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Quitclaim Deeds

- A **quitclaim deed** provides the grantee with the least protection. It carries no covenant or warranties and conveys only whatever interest the grantor may have.
- Does not guarantee warranties on title
- A quitclaim deed is used to transfer property between familiar parties, such as family members or even divorced spouses.
- Little to no legal protection to grantee

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Bargain and Sale Deed with Covenant Against Grantor's Acts (Special Warranty Deed)

- The grantors imply that they have title to the property and add only one covenant, stating that they have done nothing to encumber the property while it was in their possession.

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Bargain and Sale Deed Without Covenant

- Contains no warranties.
- It does, however, imply that the grantor holds title to the property. The grantee has little legal recourse if defects appear in the title.

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Bargain and Sale Deed Without Covenant

- Offers no guarantee that the property is free of debts or liens. It only states that the grantor is the title-holder, and little else.

As with a quitclaim deed, the grantee would acquire any lien in place against the property along with the title

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Grant Deed

- A grant deed is a specific deed type that transfers the interest in a property from the seller to the buyer in exchange for a previously agreed upon price.
- Grant deeds provide a limited number of covenants, or promises. = a grant deed does not necessarily guarantee that the property is being transferred with good title.
- While the grant deed guarantees that the seller owns the property entirely, it doesn't offer the buyer legal protection against any title defects such as an:

▪ Error in public records	▪ Improper signature
▪ Undisclosed lien	▪ Boundary dispute

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Executor's and Administrator's Deeds

- An **executor's deed** transfers title of the decedent.
- An **administrator's deed** is used to transfer the property of a decedent who died without a will.

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Other Deed Types

- A **referee's deed** contains no covenants or warranties, although it does *imply* ownership.
- **Tax deed- (aka In Rem)**- issued when a property is sold for delinquent taxes.
- **Deed in lieu of foreclosure**- given by a borrower who is in default on a mortgage debt directly to the lender. Serves to prevent foreclosure.
- **Deed of Trust** – between lender, borrower, title company = beneficiary, trustor, trustee
- **Mortgage Deed**-borrower and lender=lender can put lien on property if goes in default

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Requirements for a Valid Deed

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Deed Elements

- Each state has own restrictions, requirements
- Most deeds must contain several essential elements to be legally valid

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QUIZ #1

For a conveyance to be valid it must???

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Requirements for a Valid Deed

- Be in writing
- Name the specific grantor & grantee
- Show the intent to transfer title
- Include a proper description of the property being conveyed
- Include the signature of the grantor
- With proper acknowledgement - notarized
- Must be delivered to the grantee, or their attorney, and accepted by him or her while grantee is alive.
- Recording is constructive notice of delivery

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Deed Specifics

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Date

- **Date** – Date on deed is not necessarily the closing date
- Closing date – executed and delivered
- The transfer date is the date that a deed is actually delivered to the buyer and the buyer accepts.

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Grantor vs. Grantee

- **GRANTEE** : grantee is any party that obtains an interest in a property
- **GRANTOR**: Any entity conveying ownership rights (interest in real property) of property to a grantee

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Consideration

- **Payment- Consideration** –may not be present in the body, can determine by the transfer tax
- To be valid a deed must contain a clause acknowledging the grantor's receipt of **consideration**.
 - **Consideration** is something of value given in an exchange.
 - Consideration in deed may not reflect real consideration

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- New York State imposes real estate transfer tax on transfers of real property or interests that exceed \$500. The tax is computed as follows:

NYS Transfer Tax Rates		NYS Transfer Tax Rate
Value Range	Property Type	
Up to \$500,000	Condos, co-ops, and 1-3 family houses	0.40%
Over \$500,000	Condos, co-ops, and 1-3 family houses	0.65%
Up to \$500,000	All other types of property	0.40%
Over \$500,000	All other types of property	0.65%

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- Connecticut bases its state conveyance tax on the value of the property. For residential real estate property that is sold for less than \$800,000, the tax is 0.75%. The tax increases to 1.25% for any amount exceeding \$800,000.
- Most towns in Connecticut have a municipal tax of .25%.
- The current rate for the Rhode Island transfer tax is **\$2.30 per every \$500 of the sale**. Part of this money goes to the local government and part goes to the state. For a \$150,000 home, the seller in Rhode Island will pay \$690 for the state transfer tax
- Transfer Fee: Sellers pay a **1% Realty Transfer Fee** on all home sales. The buyer is not responsible for this fee. However, buyers may pay an additional 1% fee on all home sales of \$1 million or more.

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Property Description

- **Property Description** – information regarding size, type, location of property

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Signature of Grantor

- A deed must be signed by all grantors.
- A state may permit a grantor's signature to be signed by an ***attorney-in-fact***, a person who has been given power of attorney to sign for the grantor.

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Delivery and Acceptance

- Before a transfer of title by deed can take effect, there must be an actual ***delivery*** of the deed by the grantor **and acceptance** by the ***grantee***. Title is said to pass when a deed is delivered.
- Recording is presumptive proof of delivery and acceptance

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Legal Description

- One of the essential elements of a valid deed is an adequate description of the land being conveyed
- Required to be submitted to County Clerk as this describes what is being purchased

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Legal Description

Land can be described by 3 methods:

- **Metes and bounds** - description of boundaries and measurements
- **Government survey**
- **Reference to a plat/ block and lot method** (map – drawn to scale)

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Alienation

- The legal term for **transferring title** to R/E
- Title to real estate can be transferred either by **voluntary alienation**, with the owner's control and consent, or by **involuntary alienation**, without the control or consent of the owner

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Alienation - Types

Voluntary

- Sale
- Gifts
- Wills
 - If a person dies leaving a will, this is referred to as having died testate

Involuntary

- Enforcing Liens - Foreclosure
- Eminent Domain
- Adverse Possession
- Escheat
- Bankruptcy
- RICO

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Title Encumbrances

A title encumbrance is any right or interest that exists in someone other than the owner. It does not prohibit the passing of title but **may** diminish its value

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Title Encumbrances-Examples

- Easements – the right to use another's land for a stated purpose
- Private Restrictions
- Restrictive Covenants – no longer valid
- Riparian Rights
- Mineral/Subterranean Rights
- Water rights
- Light and Air rights

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Deed Clauses

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Granting Clause (Words of Conveyance)

- A deed must contain words in the **granting clause** that state the grantor's intention to transfer (convey) ownership of the property

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Habendum Clause

- When it is necessary to define or explain the ownership to be enjoyed by the grantee, a habendum clause follows the granting clause.
- The habendum clause begins with the words **"to have and to hold"**. Its provisions must agree with those set down in the granting clause.

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Exceptions and Reservations

- A grantor may reserve some right in the land for his or her own use, or for another's use (an easement for instance).
- A grantor also may place certain restrictions on a grantee's use of a property.

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Deeds and Covenants

- Deed is an action or act where something is done
- Covenant is agreement to do or not to do

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Covenants of Title

- Covenant of Seisin
- Covenant of against encumbrances
- Covenant of Quiet Enjoyment
- Covenant of further assurance
- Covenant of warranty forever

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Covenants of Title (Cont'd)

- **Covenant of seisin** (ownership): The grantor warrants that he or she is the owner of the property and has the right to convey it
- **Covenant against encumbrances**: The grantor warrants that the property is free from any liens or encumbrances except those specifically stated in the deed

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Covenants of Title (Cont'd)

- **Covenant of quiet enjoyment:** The grantor guarantees that the grantee's title is good against anyone who challenges the grantee's ownership
- **Covenant of further assurance:** The grantor promises to obtain and deliver any instrument needed to make the title good

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Covenants of Title (Cont'd)

- **Covenant of warranty forever:** The grantor promises that if at any time in the future the title fails, he or she will be liable.

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Forms of Property Ownership

- Joint Tenancy
- Tenancy in Common
- Tenancy by Entirety
- Sole ownership

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Forms of Property Ownership

- **Joint Tenancy-** 2 or more natural persons at same time and they share equal, undivided interests in the property.
- One passes, rights of ownership pass to surviving tenant through legal relationship known as right of survivorship which avoids probate even w/o a will

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Forms of Property Ownership (cont'd) Joint Tenants

- It is common for *husband and wife* to take title as *joint tenants with rights of survivorship*.

The deed usually reads:

"to Grantees, A and B, as joint tenants with rights of survivorship and not as tenants in common."

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Forms of Property Ownership (cont'd)

- ***Joint Tenants with Rights of Survivorship***

How 2 or more persons may take title to property when they want the entire ownership to go to the survivor instead of the heirs of the survivor.

Upon the death of the joint tenant with rights of survivorship, the entire interest of the deceased co-tenant goes to the surviving co-tenants.

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Forms of Property Ownership (cont'd)

▪ Tenancy In Common

- 2 or more owners at the same time, interest do not have to be equal
- When one dies, interest goes to heirs

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Forms of Property Ownership (cont'd)

▪ Tenancy by Entirety

- Special form of joint tenancy
- Each owning $\frac{1}{2}$ interest and can't sell without each other

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Forms of Property Ownership (cont'd)

▪ Sole ownership or entity

- A single person owns a complete interest

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Future Interests

- If a current property owner creates a will bequeathing the property to a person, that person has a **future interest** in the property.

The ownership becomes a present interest when the interest transfers to that person by operation of the will.

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Life Estate

- The right to use the property during a lifetime, until they pass, or decide to no longer reside on the premises, but can't sell the property w/o consent of remainderman.
- The holder of a life estate is known as a **life tenant**. They own the property until they die.
- The **grantee** is known as the **remainderman**.
A remainderman has a **future ownership interest**.

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Life Estates

- Typically, with life estates the wording used is;
"life estate", or "exclusive life use", or
"use and possession" or "lifetime use"

Whole bundle except fee title and goes away when dies or leaves

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TRUSTS

- A **trust** is a relationship whereby property is held by one party (the trustee) for the benefit of another—the trust beneficiary.
- A trust is created by a **grantor**, (a/k/a settlor or creator) who transfers property to a **trustee** by deed

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Trusts (Cont'd)

- The **trustee** holds the property for the **beneficiary** of the trust, or commonly known as the trust's **beneficial owner**, who is the person that benefits from the property being placed in a trust.
- The **trustee** manages the assets in the trust as described in the **trust document (trust agreement)**, which provides the directions, or rules of the trust.

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Trusts (Cont'd)

- Commonly the grantor is the beneficial owner. You need to read the trust document in order to make a determination.
- It may identify the beneficial owner, but you can determine who the beneficial owner is by reading the document and seeing who is benefitting by the creation of the trust.

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Trusts (Cont'd)

- Property transferred to a trust is legally owned by the trustees, unless the grantor retained a life estate.
- With no life estate, trust property must be assessed in the name of the trustees.

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Types of Trusts

- A trust created while someone is living is known as a living trust.
- 2 types of living trusts-
Revocable or Irrevocable
- For real property tax purposes it does not make a difference whether revocable or irrevocable

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Trusts

- A revocable trust allows the grantor to also be the trustee. Upon the grantor's death, the revocable trust becomes irrevocable.
- Where no life estate exists, trust property must be assessed in the name of the trustees.

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Trusts & Life Estates

Deed to a trust and the deed grants a life estate:

- A deed may transfer a property to a trust and the deed may provide to the grantor a life estate. This results in the grantor remaining as the owner as a life tenant, and the trustee is a remainderman with a future interest.
- Exemption eligibility is based on the owner-the life tenant.

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Trusts & Life Estates

Deed to a trust and the deed does not grant a life estate:

- A deed may transfer a property to a trust and the deed may be silent regarding a life estate. ***However, the trust document may grant a life estate.*** This results in the deed's grantor remaining as the owner as a life tenant, and the trustee is a remainderman.
- Exemption eligibility is based on the owner-the life tenant.

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Summary

- Different Types of Deeds
 - Different levels of warranties/covenants
- Elements contained in deed to make it valid
- Title (property ownership)
- Trusts & Life Estates

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Thank you for attending!

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