

# 1. DEEDS & TRANSFER

## I. Definitions

- A. **Deed:** The evidence of ownership of all the real property which is inside the property boundaries as defined by the property description in the deed. In a transfer of ownership or sale, the real property is that which exists on the property at the time the sales agreement is signed rather than the date of closing. *A deed is considered corporeal, or tangible.*
- B. **Title:** An abstract term denoting ownership of real property. An owner holds title and proves it by showing the deed. There is no actual document in real property called a title. *Title is considered incorporeal, or intangible.*
- C. **Alienation of Title:** A transfer of ownership in any of its forms is an alienation of title. The alienation may be voluntary or involuntary.

## II. Essential Elements of a Deed

When someone claims title to property, he must prove his ownership with a valid deed. The following are items which must be incorporated into the deed to make it valid.

- A. **Intent:** The intent of the grantor must be evident. In court, the judge will try to determine what the grantor was attempting to do with his property. The intent is established by each of the other items on this list.
- B. **Signature:** The deed must have the signature of the grantor.
- C. **Granting Clause:** It must contain a granting clause "I transfer," "I grant," "I convey," etc.
- D. **Names of the Parties:** Both grantor and grantee, must be written on the deed.
- E. **Description:** In Utah, all documents involving real estate must have a legally acceptable, or adequate, description. This would mean the description is adequate to separate the parcel in question from every other parcel on the face of the earth.
- F. **Consideration:** There is some debate as to whether it is necessary to include consideration in a deed. However, to solve this problem, in most instances the phrase "Ten Dollars and other good and valuable consideration" is noted as the consideration, thus showing there was consideration while hiding the actual amount paid for the property.
- G. **Written:** As required by the Statute of Frauds, a conveyance of an interest in real property must be done in writing (Note that this is different than the Statute of Frauds requirement that real estate contracts be in writing).
- H. **Delivery:** To be valid, a deed must be delivered to the grantee. Forms of delivery include:
  - 1. **Actual delivery:** The grantor actually hands or sends the deed to the grantee. If mailed it should be sent by registered mail.
  - 2. **Constructive delivery:** This is usually accomplished by having the deed recorded on the public records.
  - 3. **Third Party delivery:** The grantor authorizes a third party to hold the deed in escrow or trust until some designated time, such as when the grantor dies. Then the deed is delivered to the grantee. The third party must have written, acknowledged or notarized instructions to make this form of delivery valid.

## *Warranty Deed*

**Granting Clause:**

I \_\_\_\_\_ convey this  
prop....

**Property Description:**

Lot 21, Block K, New Haven Su....

**Names of the parties:**

Grantor: Ezra L. Selor

Grantee: Ezekiel M. Bier

**Consideration:**

\$10 and other good and val....

**Warranties:**

**Seizin:** Grantor has title & can  
convey it.

**Against Encumbrances:** No  
unrevealed liens, etc.

**Quiet Enjoyment:** No  
unexpected claims against the  
title

**Further Assurance:** Grantor  
will defend against adverse

## *Quit Claim*

## *Deed*

**Granting Clause:**

Quit claim of all interest of grantor,  
including releases and removal of  
various clouds on title.

**Property Description:**

Lot 21, Block K, New Haven Su....

**Names of the parties:**

Grantor: Ezra L. Selor

Grantee: Ezekiel M. Bier

**Consideration:**

\$10 and other good and val....

**Warranties:**

No warranties or guarantees except  
that the grantor gives up all of  
his/her interest, which may legally  
be no interest whatsoever.

### III. Establish the Validity of a Deed

The following items are usually used to establish the validity of a deed. The absence of any or all of these may give rise in the court's mind of the possibility of fraud. If their absence can be explained, then the transfer of ownership will be valid. They are:

- A. **Recording:** Though the most common form of delivery is recording, it is not the only form of delivery and therefore need not be used. Nevertheless, recording or constructive delivery is probably the safest form of delivery and is highly recommended. In the event a grantor wrongfully transferred the same property to two different parties, the one who recorded the deed first would be declared the owner, even if that deed had a later delivery date than one not yet recorded.
- B. **Acknowledgment** (notarized or witnessed): If the deed is not recorded, it does not have to be acknowledged in order to be valid. It is the signature of the grantor that is being notarized or witnessed (acknowledged), not the actual content of the deed. Most county recorders require that the signature of the grantor be acknowledged before they will record the deed.
- C. **Date:** Though a deed need not have a date to be valid, it is important and should not be neglected.
- D. **Habendum Clause:** It is sometimes referred to as the "to have and to hold clause," the "Exceptions and reservations clause," or the "subject

to” clause. It serves to define, lessen, enlarge, qualify, or affirm the extent of ownership the grantor is transferring. It must agree with the granting clause. For instance, if the grantor was selling all of his real property, except the mineral rights, he would note that exception in the habendum or exceptions and reservations clause.

#### IV. Types of Deeds

- A. **Quit Claim Deed:** A quit claim deed performs the following:
1. Conveys all interest, both ownership and non-ownership, without giving any guarantees.
  2. Most common use is removing clouds from a title.
  3. It can legally be used in instances where the grantor has no interest whatsoever.
- B. **Bargain & Sale Deed:** This deed is similar to the Quit Claim Deed except it implies that the grantor has an interest in the property. It is seldom used in Utah, but is utilized in other states.
- C. **General or Full Warranty Deed:**
1. The most complete transfer of ownership with the greatest protection.
  2. It includes the following five warranties:
    - (a) **Covenant of Seizin:** The grantor states that he/she holds title and has the right to convey it.
    - (b) **Covenant Against Encumbrances:** It is promised that there are no encumbrances against the property *except* those that have been revealed to the grantee and are accepted in the deed.
    - (c) **Covenant of Quiet Enjoyment:** The grantor guarantees that the grantee has rights to the property free of interference from acts or claims of third parties.
    - (d) **Covenant of Further Assurance:** Should anyone make a claim against the title after the transfer of the deed, the grantor promises to perform any acts necessary to perfect the title.
    - (e) **Covenant of Warranty Forever:** The grantor will bear the expense of defending the grantee’s title if any person asserts a rightful claim to the property. If he is unsuccessful, the grantee may sue for damages up to the value of the property at the time of the sale.
  3. It covers the period of time from the conveyance back to the Patent Deed conveyed by the government.
- D. **Special Warranty Deed:**
1. Warrants only against defects arising during the period of the grantor's ownership.
  2. Gives only the Covenant of Seizin and Covenant Against Encumbrances.
- E. **Grant Deed:** In some states, notably California, Idaho, and North Dakota, a grant deed is often used in place of a warranty deed. A grant deed gives less protection since it gives no guarantees relative to encumbrances that may have been created by owners previous to the grantor. These states have determined that title insurance gives adequate protection and a warranty deed is not necessary.
- F. **Deeds having to do with probate** (the process by which a court transfers title of a deceased individual’s property to his/her heirs):
1. Administrator's Deed
  2. Executor's Deed
  3. These deeds are usually Special Warranty Deeds, which guarantees that the executor or administrator has not encumbered the property. Bargain and Sale Deeds are sometimes used.

- G. **Deeds having to do with foreclosure:** These deeds usually take the form of Special Warranty Deeds or Bargain and Sale Deeds and are sometimes referred to as “Foreclosure Deeds.” They include:
  - 1. Sheriff's Deed
  - 2. Trustee's Deed
  - 3. Tax Deed
- H. **Gift Deed:** The conveyance of property for love and affection. If creditors could prove this was not a bona fide gift, but a way to avoid the property being used to satisfy a debt, the courts could order the property conveyed back to the grantor.
- I. **Patent Deed:** This deed, sometimes called a “Public Grant,” is used by the government to convey public property to private individuals.

## V. Transfer by Devise or Descent

Death interrupts the ownership of property. Laws have been established by which a person can provide for the inheritance of his property if he so chooses, and then sets up the procedures for the distribution. Laws have also been established so that if the deceased did nothing to provide for the transfer of ownership, it can still be taken care of.

- A. The following terms create the basis of the transfer of ownership after death.
  - 1. **Probate:** The process of validating a will with the court and carrying out the terms as set forth in the will.
    - a. Utah is governed in these matters by the Utah Uniform Probate Code (Utah Code Title 75).
    - b. Some other states use Dower and Curtesy rights. Dower rights are the rights of the wife in her husband’s estate. Curtesy rights are the rights of the husband in the wife’s estate.
  - 2. **Testate:** A person who dies leaving a will is said to have died testate.
  - 3. **Intestate:** A person who dies and does not leave a will is said to have died intestate. Their assets will be distributed according to the State’s intestate succession law (sometimes called the law of descent).
  - 4. **Escheat:** When a person dies without a will and without heirs, the estate passes (escheats) to the state.
  - 5. **Testator** (male) or **Testatrix** (female): A person who has made a will.
  - 6. **Bequest** or **Legacy:** A gift of personal property given in a will.
  - 7. **Devise:** A gift of real property given in a will. The testator is the “devisor,” the one who receives the gift is the “devisee.”
  - 8. **Executor** or **Executrix:** A person or persons named in a will to carry out the terms of the will. In Utah, this person is called a Personal Representative.
  - 9. **Administrator:** A person assigned by the court to carry out the terms of a will, since no executor was named in the will. Some states, Utah included, also refer to the Administrator as the Personal Representative.
  - 10. **A Formal Witnessed Will:** A written document, usually prepared with the assistance of an attorney. It is considered the most valid form of a will and is least likely to be successfully challenged. If the signatures are notarized it is referred to as a self proving will. This type of will does not require the witnesses to appear in court if the will is challenged. If a notary public is not used, it is called a non-self proving will. A formal witnessed will requires:
    - a. The signature of the testator in the presence of the witnesses (or a notary); and
    - b. The signature of two witnesses present at the signing of the testator; or

- c. A notary public who is present at the signing and validates the signatures of the testator.
- 11. **Nuncupative Will:** An oral will, sometimes called a death bed will. The will must be written as soon as possible after the will has been spoken by the testator. Usually three witnesses, not beneficiaries of the will, must sign that the written document coincides with what they heard. A nuncupative will can only pass personal property. Not recognized in Utah.
- 12. **Holographic Will:** A handwritten will. It is written entirely in the handwriting of the testator and need not be witnessed. It should be dated, and it can pass both real and personal property.
- 13. **Codicil:** A change or addition made to an existing will. The creation of a codicil must follow all of the rules and formalities associated with creating the original will.
- B. **Living Will:** This will allow the testator to donate body organs to science, give instructions relative to use of life support systems, etc. It is considered advisory and not binding.
- C. **Trust:** A legal arrangement where legal title to real property and other assets is transferred by the grantor or trustor to the created trust to be held and managed by a named trustee for the well being of another person called the beneficiary. Because trusts provide for management of property and financial controls, as well as having some tax and estate planning advantages, this form of property ownership is growing in popularity. Trusts ordinarily take one of two forms:
  - 1. **A living trust or inter vivos trust.** This trust takes effect during the life of its creator to make sure that assets are properly made available for the benefit of the beneficiaries. This also comes in two forms, both of which will provide for the avoidance of probate:
    - a. **Revocable:** It can be changed by the trustor at any time. Since the trustor retains in control of the assets, it gives no protection from legal actions against the trustor.
    - b. **Irrevocable:** Once this trust is set up, the trustor loses the right to change it. For instance, if a husband set up an irrevocable trust for his wife and children and later a divorce took place, the husband would lose all assets in the trust. However, this form of trust provides good protection from legal actions.
  - 2. **A testamentary trust.** This trust takes effect after death. It does not allow one to avoid the probate process. It allows the trustor to give instructions as to how the assets are to be managed by the trustee, such as indicating how much and how often to pay the beneficiaries.
- D. **Caution –** The laws governing wills, trusts, and other estate planning techniques are complex and change from time to time. Therefore it is essential to consult specialists in these fields when doing your estate planning.

## DEEDS AND TRANSFER TERMS TO KNOW

- [ ] Acknowledge
- [ ] Actual Delivery
- [ ] Administrator
- [ ] Bargain and Sale Deed
- [ ] Bequest or Legacy
- [ ] Codicil
- [ ] Constructive Delivery
- [ ] Covenant Against Encumbrances
- [ ] Covenant of Further Assurance
- [ ] Covenant of Quiet Enjoyment
- [ ] Covenant of Seizin
- [ ] Covenant of Warranty Forever
- [ ] Descent
- [ ] Deed
- [ ] Delivery
- [ ] Devise (Devisor/Devisee)
- [ ] Exception and Reservations Clause
- [ ] Executor or Executrix
- [ ] Formal Will
- [ ] General or Full Warranty Deed
- [ ] Gift Deed
- [ ] Grant Deed
- [ ] Grantee
- [ ] Grantor
- [ ] Habendum Clause (“Subject to” clause)
- [ ] Holographic Will
- [ ] Intestate
- [ ] Nuncupative will
- [ ] Patent or Public Grant Deed
- [ ] Personal Representative
- [ ] Recording
- [ ] Quit Claim Deed
- [ ] Special Warranty Deed
- [ ] Testator
- [ ] Third Party Delivery
- [ ] Title

## DEEDS AND TRANSFER QUIZ

1. Jack and Jill have recently been divorced. The decree gave the house to Jill. Since there is no reason for Jack to give any guarantee of title, he will most likely pass his interest in the property with a:
  - A. Special Warranty Deed
  - B. Quit Claim Deed
  - C. General Warranty Deed
  - D. Patent Deed
2. Which of the following deeds would be most desirable as seen from the perspective of the buyer?
  - A. Special Warranty Deed
  - B. Quit Claim Deed
  - C. General Warranty Deed
  - D. Bargain and Sale Deed
3. When does title actually pass under a deed?
  - A. On the day of the date written on the deed
  - B. On the day the deed is executed or signed
  - C. On the day it is delivered and accepted
  - D. On the day it is acknowledged
4. A deed that the government uses to transfer government owned property to a private individual is known as a:
  - A. Warranty Deed
  - B. Patent Deed
  - C. Quit Claim Deed
  - D. Federal Land Deed
5. The most common use of a quit claim deed is to:
  - A. pass full title with all warranties to the grantee in a quick and timely manner.
  - B. pass title from the government to a private individual.
  - C. remove clouds from the title.
  - D. quit claim to all ownership and all liability for loans and other encumbrances on the title.
6. A property is sold at an estate sale and title is passed by the executor to the buyer. The executor's deed would be most like which of the following?
  - A. Special Warranty Deed
  - B. General Warranty Deed
  - C. Quit Claim Deed
  - D. Patent Deed
7. Which of the following describes the Covenant of Quiet Enjoyment?
  - A. Freedom from distressing noise from an adjoining property owner.
  - B. The seller must quietly relinquish possession.
  - C. The purchaser shall not be disturbed in the peaceful possession of the property.
  - D. All encumbrances have been recorded.
8. What clause means "to have and to hold" or "subject to" and defines the extent of a transfer of real property?
  - A. Escalator clause
  - B. Habendum clause
  - C. Escheat clause
  - D. Notice of Interest clause

9. Which of the following is **NOT** necessary to make a deed valid?
- A. Date of the transfer of ownership
  - B. Property description
  - C. Signature of the grantor
  - D. Delivery of the deed to the grantee
10. Which of the following is **NOT** a valid means of delivering a deed from the grantor to the grantee?
- A. The grantor hands the deed to the grantee.
  - B. The grantor tells the grantee that the grantee is to have the property after his death.
  - C. The grantor gives written, notarized instructions to deliver the deed to the grantee after the death of the grantor.
  - D. The grantor records the deed at the county recorder's office in the name of the grantee.
11. A handwritten will is:
- A. a nuncupative will
  - B. a holographic will
  - C. a bequest
  - D. invalid
12. A person appointed by the court to carry out the terms of a will is called a(n):
- A. Testator
  - B. Executor or Executrix
  - C. Administrator
  - D. Devisor
13. If a person dies intestate, his estate would be distributed according to the law of:
- A. Holographic
  - B. Devise
  - C. Codicil
  - D. Intestacy or descent

**Answers to this quiz are found in "Chapter Quiz Answers."  
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