

SLIDE 12 – Deeds

Remember at its most fundamental point a title is full legal ownership of property and the associated bundle of rights. A deed is nothing more than a legal instrument that establishes someone's right to claim ownership. It's common for a party to hold a deed on a property without having title to that property.

For example, a mortgage lender may have the title while a mortgage holder has the property deed. When the mortgage is paid off the lender will transfer the title to the buyer.

In this section we'll take a thorough look at deeds, what are common parts of deeds, requirements for deeds, the different types of deeds and common deed clauses.

SLIDE 13

Parties to a deed

A deed is a legal instrument used by an owner, **the grantor**, to transfer title to real estate voluntarily to another party, **the grantee**.

A deed conveys ownership to real property, but does not automatically guarantee title.

SLIDE 14

Parts of a deed

1. Grantor and grantee – We've already mentioned the parties to the deed, the grantor and grantee. Over the next few slides we'll clarify these other sections of a common property deed, such as:
2. Consideration
3. Words of conveyance (granting clause)
4. Interest or estate being conveyed (habendum clause)
5. Deed restrictions
6. Exceptions and reservations
7. Appurtenances
8. Legal description of property
9. Voluntary delivery and acceptance
10. Signature of grantor and two witnesses

SLIDE 15

Consideration

Conceptually consideration is the practice of giving something of value in exchange for something else.

It's common for people to think consideration is money exchanged between two parties but it's much more than that.

From a legal view consideration is the obligation each party agrees to within the terms of a contract instrument.

Each party to the contract must obligate himself/herself by placing some consideration into the agreement.

SLIDE 16

Words of conveyance

Commonly referred to as the "Granting Clause", it identifies the grantor and grantee, and states that the property is being transferred between the two parties.

Habendum clause

Defines the interest or estate being conveyed and must agree with the words in the granting clause. This would clarify whether this is a fee simple or life estate.

SLIDE 17

Deed restrictions

The grantor may add restrictions to the deed that dictate allowable uses of the property.

The restriction may be in place from a past owner, or they could be covenants of a developer, builder, neighborhood, or homeowners association.

Deed restrictions are usually aimed at ensuring that there is an aesthetic uniformity among neighboring properties and that certain other activities are limited. Reasons for including these restrictions may be in place to maintain property value or to promote good relations within a residential community.

Restrictions could be very extensive so they should always be carefully explained to potential buyers.

SLIDE 18

Exceptions and reservations

Exceptions to a deed would exclude some part of the property described in the deed from the operation of the deed.

A reservation refers to the estate retained by the grantor.

For example, a deed exception could be:

Party A owns a square 10-acre piece of land, which he conveys to party B by metes and bounds description. In the transfer he wants to retain the west 200 feet. In the property description he would describe the full 10-acre tract but at the end of the description he would add the phrase, *"Less and except, however, the West 200 feet thereof."*

The West 200 feet retained by "A" constitutes an exception.

Now if party A owned a tract of land and in conveying it to party B, reserved unto himself a life estate, that would be a reservation.

The reservation by party A of a life estate creates a new right which did not exist before.

SLIDE 19

Appurtenances

Any object or right associated with the property described in the deed is considered an appurtenance.

Say a landowner has been given an Easement for the passage of light and air over an adjoining lot, the easement is an appurtenance to the land. Other common appurtenances to land might include barns, outbuildings, fences, drainage or irrigation ditches, and rights of way.

Legal description of property

The exact legal description is wording that would leave no doubt about the precise boundaries of the property being conveyed.

These could be as simple as lot numbers from a platted subdivision, or a very lengthy dissection of metes and bounds (distances or dimensions from point to point) or references to other landscapes – rivers, roads, existing plats, or anything else that can nail down exact locations and dimensions.

SLIDE 20

Delivery and acceptance

The title conveyance does not occur until the grantor delivers the deed and the grantee accepts it.

Grantor signature F.S. 727.117

The deed form must include the grantor's signature and the signatures of two (2) witnesses.

The deed must also be acknowledged in the presence of a notary public to be valid.

SLIDE 21

Requirements for a valid deed

Since most of these were extensively covered in the last section we'll stick to the bullets and only add further explanation if necessary.

1. Deed must be in writing (Statute of Frauds– F.S. Title XLI)
2. Names of grantor and grantee
3. Grantor must have legal capacity – in other words does he have the legal capacity to execute a contract. Is he of age? Is he of sound mind? Is he intoxicated or heavily sedated? These are the things to consider.
4. Consideration must be described
5. Must have granting clause
6. Must have habendum clause – it must define the quality of the ownership interest being conveyed
7. Legal description of property
8. Grantor and witnesses must sign
9. Delivery and acceptance

SLIDE 22

Types of statutory deeds

The most common deeds are statutory deeds.

The covenants are defined in law and do not need to be fully stated in the deed.

- General warranty deed
- Special warranty deed
- Bargain and sale deed
- Quitclaim deed
- Special purpose deeds

SLIDE 23

Types of statutory deeds

General warranty deed

Contains the fullest possible assurances of good title and protection for the grantee.

The grantor promises to defend against any and all claims to the title.

The overall general warranty covenant is: "I own and will defend."

SLIDE 24

Types of statutory deeds

Special warranty deed

The grantor warrants only against title defects or encumbrances not noted on the deed that may have occurred during the grantor's period of ownership or trusteeship.

The deed does not protect the grantee against claims that predate the owner's period of ownership.

The overall special warranty covenant is: "*I own and will defend against my acts only.*"

SLIDE 25

Types of statutory deeds

Bargain and sale deed

The grantor covenants that the title is valid but may or may not warrant against encumbrances or promise to defend against claims by other parties.

If there is a warrant of defense, the deed is a full warranty bargain and sale deed.

The overall bargain and sale covenant is: "*I own but won't defend.*"

SLIDE 26

Types of statutory deeds

Quitclaim deed

A quitclaim deed transfers real and potential interests in a property, whether an interest is known to exist or not.

The grantor makes no claim to any interest in the property being conveyed and offers no warrants to protect the grantee.

The quitclaim is typically used to clear title rather than convey it. Where there is a possibility that prior errors in deeds or other recorded documents might cloud (encumber) the title, the relevant parties execute a quitclaim deed to convey "any and all" interest to the grantee.

The overall quitclaim covenant is: "*I may or may not own, and I won't defend.*"

SLIDE 27

Types of statutory deeds

Special purpose deeds

Personal representative's deed –

- used by an executor to convey a decedent's estate

Guardian's deed –

- used by a court-appointed guardian to transfer property of minors or mentally incompetent persons

Committee's deed –

- A deed in which two or more people in an indenture agreement have reciprocity and obligations toward each other.

Tax deed –

- Used to convey property sold at a tax sale

SLIDE 28

Deed clauses

Covenant clauses present the grantor's assurances to the grantee. Some common covenant clauses are:

1. Covenant of seisin
2. Covenant against encumbrances
3. Covenant of quiet enjoyment
4. Covenant of further assurance
5. Covenant of warranty forever

SLIDE 29

Deed clauses

Covenant of seisin

Says that the grantor owns the estate described in the deed that conveys ownership to the grantee.

Covenant of seisin promises that no other party has a conflicting claim, past, present or future, or any legal interest in the property described.

For example, if a deed says it conveys a fee simple absolute, but another party owns a future interest in the property, that future interest would violate the covenant of seisin.

The *covenant of right to convey* is similar. It's a promise that the grantor has the right to convey the described estate. Obviously, if the grantor doesn't own all of the described estate, then she doesn't have the right to convey it all.

SLIDE 30

Deed clauses

Covenant against encumbrances

An *encumbrance* is any title problem that would not breach the covenants of seisin and right to convey.

Mortgages, liens, easements, and covenants are all encumbrances.

In some situations, an encumbrance doesn't violate the covenant even though the deed doesn't exclude it from the covenant. These could be situations such as:

The grantee knew of the encumbrance. or

The encumbrance was visible. Like an easement for a public street, doesn't violate the covenant against encumbrances, even though the encumbrance isn't mentioned as an exception. It considers that the grantee must have intended to accept the property subject to such encumbrances, or would not have gone forward with the purchase.

The encumbrance is beneficial. For example, the encumbrances might enhance the property value.

Or maybe **code violations exist.** Most courts agree that such violations don't violate the covenant because they don't affect title to the property at all.

SLIDE 31

Deed clauses

Covenant of quiet enjoyment

This covenant promises that the grantee can use and enjoy the property without interference by other parties claiming valid interests in the property.

For leased properties the covenant states that the landlord ensures that during the term of the tenancy no one will disturb the tenant in the use and enjoyment of the premises.

Quiet enjoyment includes the right to exclude others from the premises, the right to peace and quiet, the right to clean premises, and the right to basic services such as heat and hot water and, for high-rise buildings it would likely include elevator service.

The *covenant of warranty* is similar because the grantor promises not only the quiet enjoyment but agrees to warrant and assist the grantee to defend any claims that infringes on quiet enjoyment.

SLIDE 32

Deed clauses

Covenant of further assurance

The grantor promises to obtain and provide documents necessary to clear up any problem that comes up with the title.

For example, if both parties are anxious to complete the transaction immediately, but certain paperwork is required that cannot be immediately obtained or for the purposes of protecting against anything that might have been forgotten or overlooked, the grantor may agree to further assurance and will take whatever steps are necessary (if it is reasonable to do so) to provide the grantee with the full title of the property.

SLIDE 33

Deed clauses

Covenant of warranty forever

Assures that the grantee will receive good title and that grantor will assist in defending any claims to the contrary.

Keep in mind this covenant is not limited to matters that occurred during the time the grantor owned the property: they extend back to its origins. The grantor defends the title even against himself/herself and all those who previously held title.

SLIDE 34

Legal requirements

For a deed to be legal and valid it must include:

- The grantor must have legal capacity – of age, of sound mind, not under duress or undue influence
- Consideration must be stated
- Words of conveyance
- An accurate/legal description
- Deed must be acknowledged – Signed by the grantor and notarized by notary public
- Two witnesses required
- Delivery and acceptance