



A Paralegal's Guide to Deed Drafting

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A PARALEGALS GUIDE TO DEED DRAFTING

I. DEEDS-WHAT THEY ARE AND WHO NEEDS THEM

If you want to enjoy the “title to property”, you need a deed!

Everybody thinks a “deed” is “title” to the property a person owns. It’s not! Title is “legal ownership” of a property and is the equivalent of a group of rights that a person or entity might have to a property.

Deed on the other hand is the actual physical/metaphysical document that connotes ownership of a property.

Title gives you: (1) right of possession; (2) right of control; (3) right to exclude; (4) right of enjoyment; and (5) the right to “dispose” of the property.

A common phrase that people utter is that they have “taken title” to a particular property. So far, so good. But the devil is in the details, isn’t it? You want “clear title” when you “take title” and when you give it away.

A. WHAT’S THE ALTERNATIVE TO A DEED

In a word, none. Unless you are a “king” or unless you have “force”.

B. DOES ONE SIZE FIT ALL?

This is an ambiguous question. A deed in California may not work in Hawaii. So, don’t think that you can use a form from one area and substitute it for another.

Requirements obviously vary state to state but the overall concept/requirements are generally the same:

1. Grantor has to have legal right to transfer the property and must be of sound mind
2. Grantor has to sign the deed
3. Deed must have a valid legal description
4. All buzz words/legal terms/"jingles" must be in the deed (check out your state's requirements)
5. Deeds have to be "delivered"
6. Deeds have to be accepted

C. WHAT QUESTIONS NEED TO BE ASKED AND WHAT ANSWERS NEED TO BE GIVEN TO PREPARE A DEED

- ___Who owns the property
- ___Who has the right to convey the property
- ___Who is to receive the property
- ___Who is going to use the property
- ___How is the property going to be used
- ___Who has the legal description for the property
- ___Has the legal description been fully and completely vetted and what are the multiple ways that the description has been determined
- ___When is the property to be conveyed
- ___Is there a "hook" for when and why the property is being conveyed
- ___Are all parties on each side (grantor, grantee, related persons, and entities) "willing" "sound" and "ready"
- ___What's the consideration
- ___How is the closing being handled
- ___Who is going to "clean up the mess" and "close the deal"

___Are everyone's eyes wide open as to what's being given and received and is there anyone that might be surprised after the transaction occurs

II. TYPES OF DEEDS

A. QUIT CLAIM DEED

Grantor is giving up everything and offering no protection

B. SPECIAL WARRANTY DEED

Seller/grantor only warrants or promises against anything that occurred during their ownership of the property. Seller/grantor is not promising that there aren't any defects in clear title before they took possession.

C. GENERAL WARRANTY DEED

Seller/grantor transfers the property guaranteeing that: (1) he/she holds clear, unencumbered legal title to the property; and (2) he/she will pay or defend against any liens/claims against the property.

D. BARGAIN AND SALE DEED

Seller/grantor represents he has title but does not guarantee that there are no claims to the property. Often times, this is used pursuant to a foreclosure a tax sale or a sale from an estate.

III. WHEN YOU KNOW YOU HAVE IT RIGHT/WHEN YOU FIND OUT YOU HAVE IT WRONG

A. STARTING OUT ON THE WRONG FOOT

If you have an uneasiness about the transaction, you have to slow down and make sure there's not a bum's rush that is going to create a bunch of post-closing issues. Some of the uneasiness can occur from:

- ___Who the parties are on both sides
- ___If there's a sense that one or both sides don't have a full appreciation of the transaction
- ___What is being paid or is the consideration
- ___Who might really be involved in the transaction
- ___The amount of information that has been shared/not been shared about the property or the parties or the transaction
- ___Incomplete title information

B. MUDDLING IN THE MIDDLE

If you are seeking answers to issues that were never originally discussed, you compound the problems that will appear post-closing and the transaction has to be undone or "re-imagined"

C. COMPLETING THE "ERROR OF YOUR WAYS"

Many times, the people handling the transaction will "suffer in silence" rather than stop a transaction or insist on clarification of matters. Bottom line here is that if you are facilitating the transaction and you allow yourself to be pushed to complete it, the problems become excessively harder to deal with post transaction.

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