

Transfer of Real Property in Washington

A Primer on Deeds

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Relation to Title Insurance



(Why do we care?)



Title Insurance Coverages

- Covered Risks:
 - ALTA Loan and Owner's Policy 2006:
 - 2. Any defect in or lien or encumbrance on the title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered...
 - ALTA Homeowner's Policy 2013
 - 6. Your title is defective. Some of these defects are:
 - c. A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.

Overview

- Statutory basics of real property transfers in Washington
- Elements of a valid deed
- Forms of deeds
- Breach of warranties and damages
- Special Considerations



Statutory Basics of Real Property Transfers in Washington



Conveyances and Encumbrances by Deed

- RCW 64.04.010 states, in relevant part,

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed...

- Use of a deed is required

Requisites of a Deed

- RCW 64.04.020:

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgments of deeds.

- In writing;
- Signed by the grantor; and
- Acknowledged before a notary public

Elements of a Valid Deed



Writing

- A deed must be in writing and bear the signatures of all grantors.

Grantor

- A deed must identify a grantor and the grantor must be a legal entity.
- Must be signed by grantor and acknowledged by a person not named as grantor

Grantee

- A deed must identify a grantee to whom the title passes.
- Grantee must be capable of taking title
- Grantee must either be named or designated in such a way that it can be ascertained with certainty who he/she is.
- Special consideration: executed deed with grantee name left blank can be still valid if filled in by grantor or someone authorized by grantor to do so.

Words of Conveyance

- There must be words manifesting an intention to pass title
- Warranty Deed: conveys and warrants
- Bargain and Sale Deed: bargains, sells and conveys
- Quit Claim Deed: conveys and quit claims

Consideration

- Consideration can be an act, a forbearance, the creation, modification or destruction of a legal relationship, or a return promise given in exchange for the other party's act or promise. *Lehrer v. DSHS*, 101 Wn.App. 509, 5 P.3d 722 (2000).
- No requirement of any exchange of consideration to support a transfer of title
- HOWEVER, lack of consideration precludes the grantee from being a “purchaser for value”. See WA Uniform Fraudulent Transfer Act RCW Ch. 19.40.

Property Description

- Must contain a complete legal description.
- “Legal description”: any description that would permit a competent surveyor to identify the property with reasonable certainty.

Execution

- Must bear the signatures of all the grantors to be valid.

Acknowledgment

- Must be signed by grantor and acknowledged by a person not named as grantor
- A deed must be acknowledged by a notary public.

Delivery

- A deed must be delivered by the grantor to the grantee.
- The grantor must part with dominion and control over it and manifest clear and apparent intention to presently transfer title to the property. *Showalter v. Spangle*, 93 Wash. 326, 160 P. 1042 (1916).
- Presumptions (all rebuttable):
 - Deed in possession of grantee: delivery presumed
 - Deed in possession of grantor: non-delivery presumed
 - Recordation: delivery presumed

Acceptance

- A deed must be accepted by the grantee to effectively pass title.

Non-Essential to Validity

- Private seal
- Corporate seals
- Witnesses
- Word “heirs” or other words of inheritance
- Consideration
- Date

Forms of Deeds



Statutory Warranty Deed (RCW 64.04.030)

- Statute gives example conveyance language
 - Must contain the word “convey”
- Conveys the entire estate of the grantor, in fee simple
 - Includes after-acquired title
- Covenants and warranties of title
 - Anything done or suffered by the grantor or previous owners (known or unknown)
- Granting clause must contain the words “conveys and warrants”.



Warranties of Title



Warranty of Seisin

- Warranty that the grantor is seised of an estate in fee simple
- Grantor is warranting that he/she owns the interest he/she is conveying.
- A little history...
 - William the Conqueror-Battle of Hastings in 1066



Warranty of Right to Convey

- Warranty that Grantor has a good right to convey that estate.
- Almost identical to warranty of seisin

Warranty Against Encumbrances

- Warranty that title is free from encumbrances
- In order to avoid breach of warranty, the grantor must specifically exclude those items which he wishes excluded from the statutorily implied warranties, even though the items may be of record and beyond his control.
- Encumbrances include mortgages, liens, easements, restrictive covenants, leases and encroachments.

Warranty of Possession

- Warranty that Grantee, its heirs, and assigns, will have quiet possession.
- This means that no one with superior title will interfere with the grantee's possession.

Warranty to Defend

- Warranty that Grantor will defend the grantee's title.
- Covenant to defend against and compensate the grantee for any lawful claims against the title.

Bargain and Sale Deed (RCW 64.04.040)

- Statute gives example conveyance language
 - Must contain the word “convey”
 - Conveys the entire estate of the grantor, in fee simple
 - Includes after acquired title
 - Covenants and warranties of title
 - Anything created or suffered by the grantor
- Granting clause must contain the words “bargain, sell and convey”.

Quit Claim Deed (RCW 64.04.050)

- Statute gives example conveyance language
 - Must contain the word “convey”
 - Conveys the legal and equitable rights which the grantor has in the premises on the date of the deed.
 - Does NOT include after acquired title, unless specifically stated as so doing.
 - No warranties of title
- Granting clause must contain the words “convey and quitclaim”.

Special Warranty Deed

- Non-statutory form
 - Must contain the word “convey”
- Conveys the entire interest of the grantor
 - Does NOT include after acquired title, unless specifically stated as so doing.
- Covenants and warranties of title
 - Warranties expressly stated in instrument itself
 - Anything created or suffered by the grantor

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Warranties Comparison Chart



	Warranty Deed (Grantor's period of ownership and looks back at prior owners as well)	Bargain & Sale Deed (Grantor's period of ownership)	Special Warranty Deed (Grantor's period of ownership)	Quit Claim Deed
Warranty of seisin	X	X		
Warranty of right to convey	X			
Warranty free of encumbrances	X	X		
Warranty of possession	X	X		
Warranty to defend	X			

Breach of Warranties and Damages



Breach of Warranties

- Present warranties—defect, lien or encumbrance must be in existence at the time of the grant.
 - Seisin
 - Power to convey
 - Against encumbrances
- Warranty of possession—defect, lien or encumbrance can happen at any time during grantee's period of ownership.

Damages

- Remedy for breach of a covenant of title is an action at law for damages.
- Grantee must give notice to the grantor of the existence of the claim between the grantee and the claimant.

Special Considerations



Estate or Interest Being Conveyed

- Presumption is that the interest being conveyed is fee simple absolute.
- Exceptions:
 - Ambiguity
 - Exclusions and exceptions
 - Appurtenant rights and benefits
 - Reservations

Ambiguity–Easement or Fee Simple?

- When a deed contains a clause saying that the property is to be used for right of way purposes, it has **SOMETIMES** been held to grant an easement only.
 - Courts are not uniform in this interpretation.
 - Courts seem to look at the parties' intent in each case.

Exclusions and Exceptions

- Exclusions are commonly placed in the “subject to” clause in the body of the conveyance. These are items which the grantor wishes to exclude from the statutorily implied warranties (even if the items may be of record and beyond his/her control).
 - Special consideration: General exception of “easements, restrictions, provisions and reservations of record, if any”.
- Exception is some part of the estate which is not granted at all.

Appurtenant Rights and Benefits

- A conveyance of land carries with it by implication all fixtures and appurtenances belonging to and essential to the use of the land unless expressly excepted.
- Examples:
 - A building permanently affixed and resting on the ground and its fixtures.
 - Minerals and other substances in and under the land
 - Water rights

Reservations

- Creation of a new right concurrently granted back to the grantor out of the estate granted.
- Courts look to the intent of the parties when ruling on ambiguous or doubtful reservations.
 - Ambiguous or doubtful reservations will be construed against the grantor and in favor of the grantee.

Validity of Conveyance

- Void Deeds
 - Pass no title
 - Do not ignore unless it has been declared void by a court
 - Examples:
 - *Forged deeds;*
 - *Deed executed in blank and blanks filled in by unauthorized person;*
 - *Undelivered deed;*
 - *Deed by insane or incompetent person for whom a guardian has been appointed*
- Voidable Deeds
 - Pass title subject to being set aside
 - Grantee in such deeds prior to action to set aside may pass good title to a bona fide purchaser
 - Examples:
 - *Deeds procured through fraud, mistake, undue influence, or duress;*
 - *Deeds by persons of unsound mind for whom no guardian has been appointed and who have not been judicially determined to be insane;*
 - *Deeds by minors*

Thank you!



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