SYNDICATE LEGAL ADVISORY SERVICES

DEEDS

Syndicate Legal Advisory Services – *Real Estate Deeds*

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Team of:
Attorneys / Lawyers
Law Clerks
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ABOUT DEEDS:

When properly executed, delivered and accepted, a deed transfers title to real property from one person (the grantor) to another person (the grantee). Transfer may be voluntary, or involuntary by act of law, such as a foreclosure sale.

- There are several different essentials to a valid deed:
- It must be in writing;
- The parties must be properly described;
- The parties must be competent to convey and capable of receiving the grant of the property;
- The property conveyed must be described so as to distinguish it from other parcels of real property.;
- There must be a granting clause, operative words of conveyance (e.g., "I hereby grant");
- The deed must be signed by the party or parties making the conveyance or grant; and
- It must be delivered and accepted.

TYPES OF DEEDS:

Grant Deed

Because of inclusion of the word "grant" in a grant deed, the grantor impliedly warrants that he or she has not already conveyed to any other person and that the estate conveyed is free from encumbrances done, made or suffered by the grantor or any person claiming under grantor, including taxes, assessments and other liens. This does not mean that the grantor warrants that grantor is the owner or that the property is not otherwise encumbered. The grant includes appurtenant easements for ingress and egress and building restrictions. The grantor's warranty includes encumbrances made during grantor's, but no other individual's, possession of the property. It conveys any title acquired after the grantor has conveyed the title to the real property (after-acquired title), generally. Observe that these warranties carried by a grant deed are not usually expressed in the grant deed form. They are called "implied warranties" because the law deems them included in the grant whether or not explicitly expressed in the deed

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Quitclaim Deed
A quitclaim deed is a deed by which a grantor transfers only the interest the grantor has at the time the conveyance is executed. There are no implied warranties in connection with a quitclaim deed. This type of deed guarantees nothing and there is no expressed or implied warranty that grantor owns the property or any interest in it. Moreover, a quitclaim deed does not convey any after-acquired title. A quitclaim deed effectively says, "I am conveying all the title that I have in the property described in this quitclaim - if I have, in fact, any title." A quitclaim deed is generally used to clear some "cloud on the title." A "cloud on the title" is some minor defect in the title which needs to be removed in order to perfect the title. Deeds of court representatives, such as guardians, administrators, and sheriffs, usually have the effect of a quitclaim pursuant to court order.

Warranty Deed
A warranty deed contains express covenants of title. Warranty deeds are uncommon in California, no doubt because of the almost universal reliance in this state on title insurance to evidence marketable title.

Trust Deed
A trust deed (or deed of trust) is a 3-party security instrument conveying title to land as security for the performance of an obligation. There are three parties to a trust deed: borrower (trustor), lender (beneficiary), and a third party, called a trustee, to whom legal title to the real property is conveyed. The trustee holds the legal title in trust for the beneficiary and has the power to sell the property if the trustor does not fulfill the obligations as recited in the instrument. The trustee also possesses power to reconvey the legal title to the trustor provided the beneficiary requests a reconveyance of that title. This event occurs if the promissory note is paid in full. A trustor signing the trust deed retains what is called an equitable title. That is, the trustor enjoys the right of possession and can do with the property whatever the trustor pleases so long as the trustor does not jeopardize the interest of the lender (beneficiary). Business and Professions Code Section 10141.5 requires that a real estate licensee record a deed of trust within one week after closing of a transaction or deliver it to the beneficiary with a written recommendation that it be recorded or deliver it to the escrow holder. Failure of a real estate licensee to carry out the duties prescribed in Section 10141.5 does not affect the validity of the transfer of title to the real property.

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Reconveyance Deed
A reconveyance deed is an instrument conveying title to property from a trustee back to the trustor on termination of the trust. This title is held by the trustee until the note or obligation is fully paid. Then, when the beneficiary issues a "Request for Full Reconveyance," the trustee executes the reconveyance to the borrower. Termination of the trust usually occurs when the promissory note is paid in full.

Sheriff's Deed
A sheriff's deed is a deed given to a party on the foreclosure of property, levied under a judgment for foreclosure on a mortgage or of a money judgment against the owner of the property. The title conveyed is only that acquired by the state or the sheriff under the foreclosure and carries no warranties or representations whatsoever.

Gift Deed
A grantor may make a gift of property to the grantee, and use a grant deed form or a quitclaim deed form for the purpose. Grantor may, but need not, say in the deed that grantor makes the transfer because of love and affection for the grantee. A gift deed made to defraud creditors may be set aside if it leaves the debtor/grantor insolvent or otherwise contributes to fraud. (*Uniform Fraudulent Transfer Act, Civil Code Sections 3439 through 3439.12*)

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