DEEDS FAQ

Source: www.nolo.com

What is a deed? What type of deed -- grant, quitclaim, warranty -- should I use?

A deed is the document that transfers ownership of real estate. It contains the names of the old and new owners and a legal description of the property, and is signed by the person transferring the property. You can't transfer real estate without having something in writing, which is almost always a deed.

Here's a brief rundown of the most common types of deeds:

A quitclaim deed transfers whatever ownership interest a person has in a property. It makes no guarantees about the extent of the person's interest. Quitclaim deeds are commonly used by divorcing couples; one spouse signs all his or her rights in the couple's real estate over to the other. This can be especially useful if it isn't clear how much of an interest, if any, one spouse has in property that's held in the other's name. (However, a quitclaim deed doesn't relieve the individual transferring ownership from the mortgage, if there is one.)

Quitclaim deeds are also frequently used when there is a "cloud" on title -- that is, when a search reveals that a previous owner or some other individual, like the heir of a previous owner, may have some claim to the property. The individual can sign a quitclaim deed to transfer any remaining interest.

A grant deed transfers ownership and implies certain promises -- that the title hasn't already been transferred to someone else or been encumbered, except as set out in the deed.

A warranty deed transfers ownership and explicitly promises the buyer that the transferor has good title to the property, meaning it is free of liens or claims of ownership. The transferor guarantees that he or she will compensate the buyer if that turns out to be wrong. The warranty deed may make other promises as well, to address particular problems with the transaction.

How do you take ownership of property as tenants in common or as joint tenants? What's the difference?

If you're buying property with one or more other people, you must choose how to take title. It's an important decision--there are significant differences between tenancy in common and joint tenancy.

Holding property as "joint tenants" is a way for two or more people to share ownership of real estate. In all but a few states, the joint tenants must own equal interests in the property; for example, if you buy a home with two others, you each own a one-third interest.

When one joint tenant dies, the remaining owners automatically own the deceased owner's interest in the property. For example, if a parent and child own a house as joint tenants and the parent dies, the child automatically becomes full owner. Because of this right of survivorship, a will is not required to transfer the property; the property goes directly to the surviving joint tenants without the delay and costs of probate.

Holding property as "tenants in common" is another way that two or more people can own real estate together. Unlike joint tenants, tenants in common can hold property in unequal shares. And each of you can leave your interest to beneficiaries of your choosing--it won't automatically go to the surviving co-owners. In some states, two unmarried people are presumed to own property as tenants in common unless they've agreed otherwise in writing.

JUDI MONTEE

Account Executive

805.432.6818

JMontee@LTIC.com

Lawyers Title

DEEDS FAQ

(Continued from reverse)

Depending on where the property is, married couples may also take title as "tenants by the entirety" or as "community property" or "community property with right of survivorship." Community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. (And in Alaska, spouses can sign an agreement making specific assets community property.)

To take property in joint tenancy, tenancy by the entirety, or tenancy in common, you don't need any special kind of deed. You'll just specify, in whatever deed you use, how the new owners are taking title.

Does a deed have to be notarized, witnessed, or filed?

A deed must always be notarized and filed in the public records; it may also have to be witnessed.

The person who will sign the deed (the person who is transferring the property) should take the deed to a notary public, who will watch the person sign the deed and will sign and stamp it. The notarization means that a notary public has verified that the signature on the deed is genuine.

In some states, deeds must also be signed by witnesses who watch the owner sign the deed.

The person who signed the deed should "record" (file) the deed, with its notarized signature, in the land records office in the county where the property is located. This office goes by different names in different states; it's usually called the County Recorder's Office, Land Registry Office, or Register of Deeds. In most counties, you'll find it in the courthouse.

Recording a deed is simple: Just take the signed, original deed to the land records office. The clerk will take the deed, stamp it with the date and some numbers, make a copy, and give the original back to you. The numbers are usually book and page numbers, which show where the deed will be found in the county's filing system. There will be a small fee, probably no more than $15 a page, for recording.

Lawyers Title

Is a trust deed or a contract for deed an actual deed?

A trust deed (also called a deed of trust) isn't like the other types of deeds; it's not used to transfer property. It's really just a version of a mortgage, commonly used in some states (California, for example). A trust deed transfers title to land to a "trustee," usually a trust or title company, which holds the land as security for a loan. When the loan is paid off, title is transferred to the borrower. The trustee has no powers unless the borrower defaults on the loan; then the trustee can sell the property and pay the lender back from the proceeds, without first going to court.

A contract for deed is not really a deed at all. Also known as a "contract of sale," "land sale contract," or "installment sales contract," it's used when a seller finances a property for a buyer. The contract states that the seller will keep title to the property until the buyer pays off the loan.

What is a transfer-on-death deed?

These deeds, often called TOD or beneficiary deeds, are like regular deeds except for one very important difference: They don't take effect until your death. They're used to leave real estate without probate court proceedings.

Using a TOD deed avoids probate because after your death, the beneficiary named on the deed takes ownership of the property immediately. There's no probate paperwork or delay.

Filling out a TOD deed, which clearly states that it doesn't take effect until your death, is like filling out a regular deed. You name the beneficiary; sign the deed, get it notarized, and file (record) it with your local property records office.

TOD deeds are currently allowed in 13 states: Arizona, Arkansas, Colorado, Indiana, Kansas, Minnesota, Missouri, Montana, Nevada, New Mexico, Ohio, Oklahoma, and Wisconsin. Be sure to use a deed form that contains all the elements required by your state.