

THE DAILY RECORD

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TitleTRACK

Deeds are more than just a conveyance

During my quest to become an Eagle Scout, I learned, and continue to practice today, the Boy Scout tenet of doing a good deed daily. Having reviewed countless deeds over the years, I have often thought that an appropriate motto for real estate practitioners should be: "Draft a good deed, always."

In its most basic form, a deed is a legal instrument that conveys or transfers a person's interest in real property. Deeds come in many forms, including Warranty Deeds, Quit Claim Deeds, Bargain and Sale Deeds, and Executor's Deeds. Each form of a deed makes certain representations from the grantor to the grantee.

Every deed contains a legal description of the property being transferred, the property address, tax map numbers and the address for mailing of all tax bills. In addition, deeds can also be instruments which, upon the passage of a sufficient period of time, can establish proof of a grantor's death, proof of heirship, establish property boundaries or grant an easement.

For example, a properly prepared deed, which contains a recital that John Smith died on Jan. 1, 1962, survived by his wife Mary Smith, which has been recorded for more than 10 years, can be taken as presumptive evidence of the date of John Smith's death and that he was married to Mary Smith when he died.

The same holds true for a deed given by John Smith, Mary Smith and Thomas Smith, being all the heirs at law of Michael Smith, deceased, having died on Jan. 1, 2000. After 10 years on record, that recital will be taken as presumptive evidence of the heirship of Michael Smith.

This language is now a part of the public record and cannot be lost or destroyed — no need to obtain new death certificates and heirship affidavits. For more immediate results, attaching a copy of a death certificate to a deed is also a way to prove that someone is dead, show the date that they died, and their marital status when they died.

Since deeds can also be used to help establish property boundaries using temporary or hard to locate monuments, they may create problems when trying to interpret metes and bounds descriptions. For instance, a description can include language that has courses running to the easterly line of the lands of Frank Smith. Running northerly along the easterly line of the lands of Frank Smith shows the intent of the deed was to go to the east line and then follow along that same east line. There can be no strips or gores if the deed is worded properly.

This is useful when there is a discrepancy between a record description course and a new survey measured course. Adding language that the course runs to the easterly line eliminates any question if there is a small deviation or measurement error. Additionally, attaching a current instrument survey for the property explains what the surveyor believes the property looks like and where the present boundaries and the improvements are located. Furthermore, it can help homeowners who misplace their surveys years after they purchase their property.

A copy will always be attached to their recorded deed. This will also help them when they sell or refinance their property. They are forever memorialized in the public records. These simple add-ons to deeds are an easy way to prevent title issues from arising later. The careful drafting of deeds today could save time and money when the property is transferred in the future.

How multiple individuals take and hold title, called "vesting," is a crucial aspect of every deed that is often overlooked and can cause many problems, particularly when one of the owners dies. Do you want buyers to hold as tenants in common, joint tenants with rights of survivorship or as tenants by the entirety? If so, this should be clearly stated. Failure to state vesting or erroneously mixing types of vesting — such as joint tenants in com-

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Continued ...

mon — will result in title being held as tenants in common.

Also, don't vest in a life estate when you only want to create a right to lifetime occupancy. Life estate vesting language should be applied when intending to create a remainderman interest.

There may also come a time when affidavits should become a part of a deed. An original judgment and bankruptcy affidavit attached to a deed will eliminate the time that is spent hunting down affidavits from prior owners that were placed on an abstract of a title that has been lost, or one that is in an attorney's file that

has been purged or lost. For the added cost of an additional page or two to a deed, adding an affidavit, affirmation or other curative as an exhibit to the conveyance could end up saving money and time spent looking for the document.

All in all, it only takes a few extra moments to draft a better deed and one that will benefit real estate practitioners for years to come.

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