CHAPTER TWELVE

DEEDS

A **deed** is a written instrument which transfers an interest, right or title in realty. According to our system of land ownership, title to real property can be transferred from one person to another by four general methods: (1) by descent; (2) by will; (3) by involuntary alienation; and (4) by voluntary alienation.

1. A person who dies without a will is said to have died **intestate** and title to property owned at death is transferred by operation of law to the decedent's heirs by the **law of descent.** New Jersey's statutes pertaining to the rights and priorities of distribution for disposing of properties of the deceased are outlined in Chapter 6.

2. A person who dies leaving a will is said to have died **testate,** and the decedent's property is transferred and distributed according to the provisions of the will.

3. Transfer of title by **involuntary alienation** is a transfer without the owner's consent. Examples include: (a) adverse possession; (b) condemnation; (c) tax sales or public sales in actions to enforce liens (foreclosures); and (d) escheat.

4. The common means of transferring title to real property from one person to another is by **voluntary alienation**. In general the conveyance of real estate is accomplished by the execution and delivery of a deed, which is a legal instrument in writing, duly executed and delivered, whereby the owner of the land **(grantor)** conveys to another **(grantee)** some right, title or interest in or to the real estate. Where the property is a leasehold, the conveyance instrument used in place of a deed is an Assignment of Lease. Voluntary alienation may occur either by gift or by sale.

The transfer of privately owned lands from an individual to the government, without consideration, followed by an acceptance of the donation by the government, is called a **dedication**. Dedication may occur when the landowner transfers the entire fee simple interest or when only certain areas are set apart for public use, such as streets in a subdivision plat.

TYPES OF DEEDS

There are four major types of deeds: (1) warranty deed; (2) bargain and sale (covenant vs. grantor) deed; (3) bargain and sale deed; and (4) quitclaim deed.

1. Warranty Deed. The warranty deed, also known as a full covenant and warranty deed, is the one considered to offer the purchaser of real estate the greatest protection of any deed. The grantor in a warranty deed warrants or guarantees the title against defects existing before the grantor acquired title or arising during the grantor's period of ownership.

The warranties in a deed are commonly called **covenants,** and are grouped in headings as follows:

a. **Covenant of Seisin.** Here the grantor states that he or she actually owns and possesses the land and has the right to convey it to another.

b. **Covenant Against Encumbrances.** This is a guarantee that if there are any encumbrances except those specifically mentioned in the deed, then the covenant is violated and the grantee can sue the grantor. Examples of encumbrances are tax liens, easements, deed restrictions, encroachments, etc.

c. **Covenant of Quiet Enjoyment.** This is a promise by the grantor that the grantee can use and enjoy the property without interference of possession by someone with a superior title.

d. **Covenant of Further Assurance.** By this covenant the grantor promises to perform any reasonable acts necessary to make the title good. For example, if the legal description in the original deed is flawed, the grantor must correct it.

e. **Covenant of Warranty Forever.** Here the grantor promises to pay for defense of the grantee's title if it is challenged by a third party. Under this covenant, the grantor is also liable to the grantee for the value of the prop-

erty if the grantee is evicted by a third party who had a superior title.

The full covenant and warranty deed is rarely used today, mainly because of the increasing prominence of title insurance as a substitute for the protection given to the grantee by the covenants and warranties, and the grantor's desire to limit his liability.

2. Bargain and Sale Deed with Covenants Against Grantor's Acts. A bargain and sale deed (W/C/A/G) is a deed which supports a conveyance of property, but does not carry with it all of the warranties found in a warranty deed. Thus, the grantor's liability is limited to defects arising after title is acquired and not against defects arising before that time. This deed is the customary form of conveyance used today in New Jersey (also called **special warranty deed**).

3. Bargain and Sale Deed. This deed conveys any right, title or interest the grantor possesses and asserts by implication that the grantor possesses a claim to or an interest in the property. Such an assertion to a claim or interest is not present in a quitclaim deed.

4. Quitclaim Deed. The quitclaim deed provides the least protection of all deeds, and is one in which the grantor transfers to the grantee the grantor's rights, if any, in the property described. If the grantor has good title to the described property the grantee gets good title. If the grantor owns nothing, the grantee gets nothing.

A quitclaim deed is frequently used to cure a technical defect in the chain of title to a property. For example, if A wishes to clear all clouds from the title to his property, and she thinks (although she may not be certain) that B, who is a distant heir, may have a possible claim to the property, she would then ask B to give her a quitclaim deed and release any interest B may have in the land.

Deeds for Special Purposes

Although the following deeds are used for special purposes as indicated by their titles, they do not represent additional deed types. They generally take the form of a special warranty deed.

1. Administrator's Deed. An administrator's deed is used by a court-authorized administrator to convey title to property of a person who dies intestate.

2. Correction Deed. A correction deed serves to correct mistakes such as misspelled names or an incorrect property description contained in a prior deed. This deed is also known as a **deed of confirmation**.

3. Deed of Trust. A deed of trust is used to convey legal title from a grantor to a third-party trustee as security for a debt owed by the trustor (borrower) to the beneficiary (lender). At the closing, the borrower executes a deed to the trustee who holds title for the benefit of the lender, although the instrument itself may remain in the lender's possession. When the loan is paid off, the trustee deeds the property back to the borrower. If, however, the borrower defaults, the trustee sells the property and pays the proceeds of the sale to the lender to the extent of the loan balance. Any excess is paid to the borrower. Trust deeds are not generally used in New Jersey transactions.

4. Executor's Deed. An executor's deed is used to convey title to real estate owned by a decedent who dies testate, and generally contains only the covenant against the grantor's acts.

5. Gift Deed. A gift deed is one where the consideration is love and affection, and is considered valid unless the purpose of the gift deed is to defraud creditors. However, since the covenants are not supported by valuable consideration, often a donee cannot enforce the covenants of warranty against the donor.

6. Guardian's Deed. This deed is used by a guardian with permission of the court to transfer title to property owned by a minor, insane person or a spendthrift. As with all other fiduciary types of deeds, the actual consideration must be stated.

7. Sheriff's Deed. A deed given by a sheriff to the highest bidder at a public sale conducted upon foreclosure of a mortgage, unpaid taxes or a judgment.

Elements of a Deed

In general, the usual elements of a deed are: (1) written instrument; (2) date; (3) legal capacity of grantor; (4) grantee; (5) recital of consideration; (6) words of conveyance (granting clause); (7) habendum clause; (8) legal description; (9) exceptions and reservations; (10) warranties and covenants; (11) grantor's signature; (12) delivery and acceptance; (13) acknowledgment; and (14) recording.

1. Written Instrument. To be effective and to comply with the statute of frauds, a deed must be in writing. There is no prescribed form that must be used, and the wording is immaterial as long as the intent is clear. A deed should not be altered in any manner after delivery or it may be set aside by the courts. Even restoration to its original form will not make it valid again.

2. Date. Although a date is not essential to the validity of a deed, it is customarily included. Inclusion of the date frequently prevents any question as to the time of its delivery.

3. Legal Capacity of the Grantor. A grantor must be of legal age and sound mind, and must be named or clearly designated in the deed. Although the name in a deed should be identical to that appearing in the conveyance by which title was received, a discrepancy, such as a misspelling, will not invalidate the deed.

Corporation Grantors. A corporation can only conduct business through its authorized officers, and corporate business includes the ownership and sale of real estate. Corporate action is generally undertaken by a **corporate resolution** passed by the Board of Directors. In some cases, the certificate of incorporation may require shareholder approval to dispose of corporate property. Legal counsel must be sought in these transactions.

4. Grantee. To be effective a deed must designate an actual person capable of receiving as grantee, who is named or sufficiently identified. Misspelling or mistakes in the grantee's name will not invalidate the deed if the identity of the grantee is obvious. Unlike the requirements of a grantor, a grantee may be a minor or an insane person. The grantee's marital status, residence and post office address must appear on all deeds presented for recording.

5. Recital of Consideration. Under New Jersey law, the full and actual consideration must be stated in the deed. A deed which recites the consideration as "one dollar and other good valuable consideration" must be accompanied by an affidavit which stipulates an allowable exclusion such as "love and affection."

6. Words of Conveyance. Since a deed transfers a present interest in real estate, the words of conveyance found in the granting clause must show an intent to transfer such an interest now. Thus, words of intent to convey at some future time are inadequate. Although no specific words of conveyance are required, those usually used are "convey and warrant," "grant, bargain and sell," or "remise, release and quitclaim." It is by this clause that the interest or title is transferred, therefore great care should be taken to make sure these words clearly indicate the intentions of the grantor.

7. Habendum Clause. The habendum clause, which begins with the words "to have and to hold," restates the grantor's intention to convey the quantity of the estate (such as fee simple or a life estate) shown in the granting clause.

8. Legal Description. The description clause must unquestionably describe the real estate conveyed. Therefore, a description of a more permanent nature than an address, and one that can be readily found in years to come is necessary, because a deed is part of the permanent record in the chain of title. To avoid discrepancies in the records, it is normal practice to use the same description as found in the previous deeds or in documents evidencing title.

9. Exceptions and Reservations. Often a deed will contain certain exceptions or reservations of the real estate being conveyed which withholds some right or interest which otherwise would pass with the deed. A grantor may wish to withhold from the deed some part of the estate, conveying all the land except a particular, specified portion. This is an exception. A reservation, on the other hand, is the creation of a new right created by the grantor in his own favor. For example, a parent might convey the property described to his son, reserving a life estate for the parent in the property. Following the exceptions and reservations, the grantor would set forth any restrictions on the use of the land.

10. Warranties and Covenants. These are specific assurances or guarantees given by the grantor that the deed conveys good and unencumbered title (see Warranty Deed).

11. Grantor's Signature. To be valid, a deed must be signed by the grantor. If there is more than one grantor, such as ownership by a multiple tenancy, each must sign the deed or their separate deeds. If the grantor is married, the wife's dower rights may be released by reciting her name in the deed and having her sign with her spouse.

12. Delivery and Acceptance. In order for a deed to be effective, it must be delivered by the grantor and accepted by the grantee. Delivery is the act by which the deed takes effect and passes title. Delivery is not necessarily the act of manually handing over, but rather the intention that the grantor, by his final act, signifies that he wishes the deed to become effective. Thus, if a deed is given to the grantee (or his lawyer or other agent) for purposes of inspection for accuracy, there has been no delivery. The necessary intent is absent. If it had been delivered to the grantor's attorney, there has not been a delivery because it is still in control of the grantor. Likewise, the grantee must actually intend to accept ownership of the property, though acceptance may be presumed by the courts if the deed would benefit the grantee. Often a deed may be delivered to a third party, such as an attorney, with intent to pass ownership here and now.

Acceptance by such an agent for the grantee constitutes a valid delivery.

13. Acknowledgment. Although acknowledgment by the grantor on the deed is not essential to its validity, it is essential before the deed can be recorded. (See Chapter 8).

14. Recording. (See Chapter 8).

To be valid, however, a deed need not contain all of the elements listed above, as only seven are essential for a valid deed: (1) written instrument; (2) legal capacity of grantor; (3) grantee; (4) words of conveyance (granting clause); (5) legal description; (6) grantor's signature; and (7) delivery and acceptance.

Lost or Destroyed Deeds

The existence of a lost or destroyed deed may be confirmed by a judgment of the Superior Court. However, the court must receive "clear and convincing evidence" before judgment will be entered. A certified copy of the judgment is then recorded in the county clerk's or registrar's office, in lieu of the missing deed.

If there has been an error in a deed, the grantor may execute a quitclaim deed with a clause stating the purpose of the deed. Such a deed is often called a correction deed. Another alternative is to follow the description clause in the correction deed with a statement saying that the realty conveyed is the same as that conveyed by a certain deed, naming the parties, date of record, etc.

Realty Transfer Fee

A realty transfer fee based on the actual consideration must be paid by the **grantor (Seller)** and the deed cannot be recorded until this fee is paid. The fee is collected by the county recording officer at the time the deed is offered for recording. 28.6% of the proceeds is retained by the county for use by the county, and the balance is paid to the state treasurer for use by the state. In addition, for transactions in excess of $1,000,000 the **grantee** pays a 1% transfer tax calculated on the entire consideration.

REALTY TRANSFER FEE RATES

Total Consideration Not in Excess of $350,000

- $2.00/$500 of consideration not in excess of $150,000
- $3.35/$500 of consideration in excess of $150,000 but not in excess of $200,000
- $3.90/$500 of consideration in excess of $200,000 but not in excess of $350,000

Total Consideration in Excess of $350,000

- $2.90/$500 of consideration not in excess of $150,000
- $4.25/$500 of consideration in excess of $150,000 but not in excess of $200,000
- $4.80/$500 of consideration in excess of $200,000 but not in excess of $550,000
- $5.30/$500 of consideration in excess of $550,000 but not in excess of $850,000
- $5.80/$500 of consideration in excess of $850,000 but not in excess of $1,000,000
- $6.05/$500 of consideration in excess of $1,000,000

The Realty Transfer Fee for senior citizens, blind persons, disabled persons and on property that is low and moderate income must be calculated as follows:

Total Consideration Not in Excess of $350,000

- $0.50/$500 of consideration not in excess of $150,000
- $1.25/$500 of consideration in excess of $150,000 but not in excess of $350,000

Total Consideration in Excess of $350,000

- $1.40/$500 of consideration not in excess of $150,000
- $2.15/$500 of consideration in excess of $150,000 but not in excess of $550,000
- $2.65/$500 of consideration in excess of $550,000 but not in excess of $850,000
- $3.15/$500 of consideration in excess of $850,000 but not in excess of $1,000,000
- $3.40/$500 of consideration in excess of $1,000,000

The following title transfers are exempt from payment of the fee:

1. Transfers with a true consideration of less than $100 (requires filing of an Affidavit of Consideration, Form RTF-1).
2. Transfers involving the United States, the State of New Jersey or any agency or subdivision thereof.
3. Transfers which have the sole purpose of satisfying a debt or obligation.
4. Transfers that confirm or correct a previously recorded deed.
5. Transfers involving a merger of corporations.
6. Transfers involving a partition of property.
7. Transfers involving a sale of property for taxes or assessments.
8. Transfers between husband and wife and

between parent and child.
9. Transfers involving "low and moderate income housing" as defined in P.L. 1985, Chapter 225.

Filing of Real Estate Transactions

Under a revision to the Internal Revenue Code 6045, persons closing a real estate transaction are required to report the names, social security numbers and amount of the transaction to the IRS on a 1099 B form. In New Jersey, the primary filing responsibility falls on the closing attorney or title company; however, if the closing agent is not going to file, the responsibility lies with the following parties, in this order: the mortgage lender, the seller's broker, the buyer's broker, or any other party designated responsible by the IRS regulations.

While brokers are not primarily responsible for filing, they can assist the closing agent by securing the social security numbers of the buyers and sellers at the time of contract. By doing so, the broker can assure that closing will not be delayed or postponed because of missing information.

Specimen Deed

The specimen deed on the following pages has been numbered in the margin to note the significance of certain portions. It should be noted that these numbers are not meant to correspond with numbers of items listed previously under "Elements of a Deed."

Key to Specimen Deed

1. If grantor is married, spouse's name must be given.
2. Marital status of grantee is required.
3. Grantee's address must be shown.
4. These are the "words of conveyance" or "granting clause." The Plain Language Deed has effectively merged the habendum clause and the granting clause by use of the language, "transfers ownership of."
5. Consideration.
6. Legal description of property.
7. This is a notation regarding encumbrances.
8. These are the covenants of Warranty:
   a. and b. Covenant of Seisin.
   c. Covenant of Quiet Enjoyment and Covenant Against Encumbrances.
   d. Covenant of Further Assurance.
   e. Covenant of Warranty Forever.
9. Signatures.
10. The acknowledgments are made by the signers and taken by the notary public or other authorized officer of the court. The authorized officer states that the signer appeared before him or her, that they identified themselves and that they signed the document of their own free will.

KEY WORDS

Administrator's Deed
Alienation
Bargain & Sale Deed
Bargain & Sale Deed W/C/A/G
Cloud on Title
Conveyance
Correction Deed
Covenant
Deed
Deed of Trust
Delivery and Acceptance
Exception
Full Covenant and Warranty Deed
Grantee
Grantor
Habendum Clause
Quiet Enjoyment
Quitclaim Deed
Realty Transfer Fee
Reservation
Seisin
Special Warranty Deed
Warranties
Warranty Deed