

All About Deeds



Joseph W. Marzo
Gould & Ratner LLP
222 N. LaSalle
Suite 300
Chicago, IL

Joseph W. Marzo's practice focuses on commercial real estate: acquisitions & dispositions, lending, leasing and land use.





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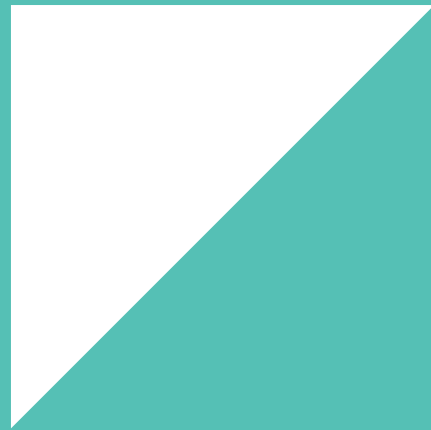
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Formed in the 1930s, Gould & Ratner LLP represents Fortune 500 corporations, closely held businesses, financial institutions and entrepreneurs, as well as families and their businesses, in real estate, corporate tax, estate and succession planning, litigation, human resources, and employment matters.

General Overview

1. Functions of a Deed
2. Deed Requirements
3. Legal Descriptions
4. Forms of Ownership
5. Estates in Land
6. Types of Deeds
7. Recording Requirements and other State and Local Laws Affecting Conveyances by Deeds

Functions of a Deed



Main Purpose of a Deed: Convey An Interest in Real Property



Livery of Seisin:

- Thankfully no longer required.
- Many state conveyancing acts start out by dispatching with this requirement:

“Livery of seisin shall in no case be necessary for the conveyance of real property” (765 ILCS 5/1).

Ancillary Purposes of a Deed

- Notice to third parties.
- Control the use of real property.
- Control future disposition of real property.
- An agreement between the parties as to who will bear the risk that someone other than the parties to the deed asserts that they have an interest in the property.
- Avoid tax or probate.

Deed Requirements



Requirements for a Valid Deed

Although requirements vary by state, the majority of state conveyancing acts require the following:

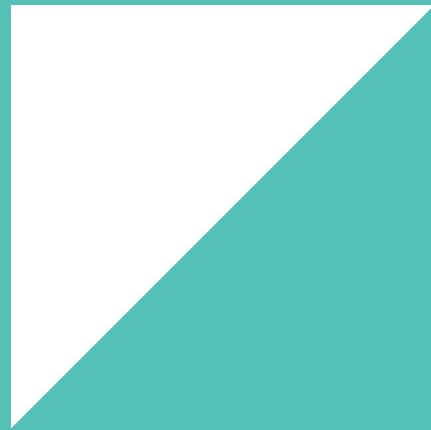
1. Deed must be in writing.
2. Deed must contain operative words of conveyance.
3. Deed must identify the real estate to be conveyed.
4. Names of the grantor and grantee must be set forth in the deed.
5. Deed must be signed by the grantor.
6. Deed must be delivered and accepted.

Not Required for a
Valid Deed - but
Strongly
Recommended.

1. Consideration.
2. Acknowledgement.
3. Recording.

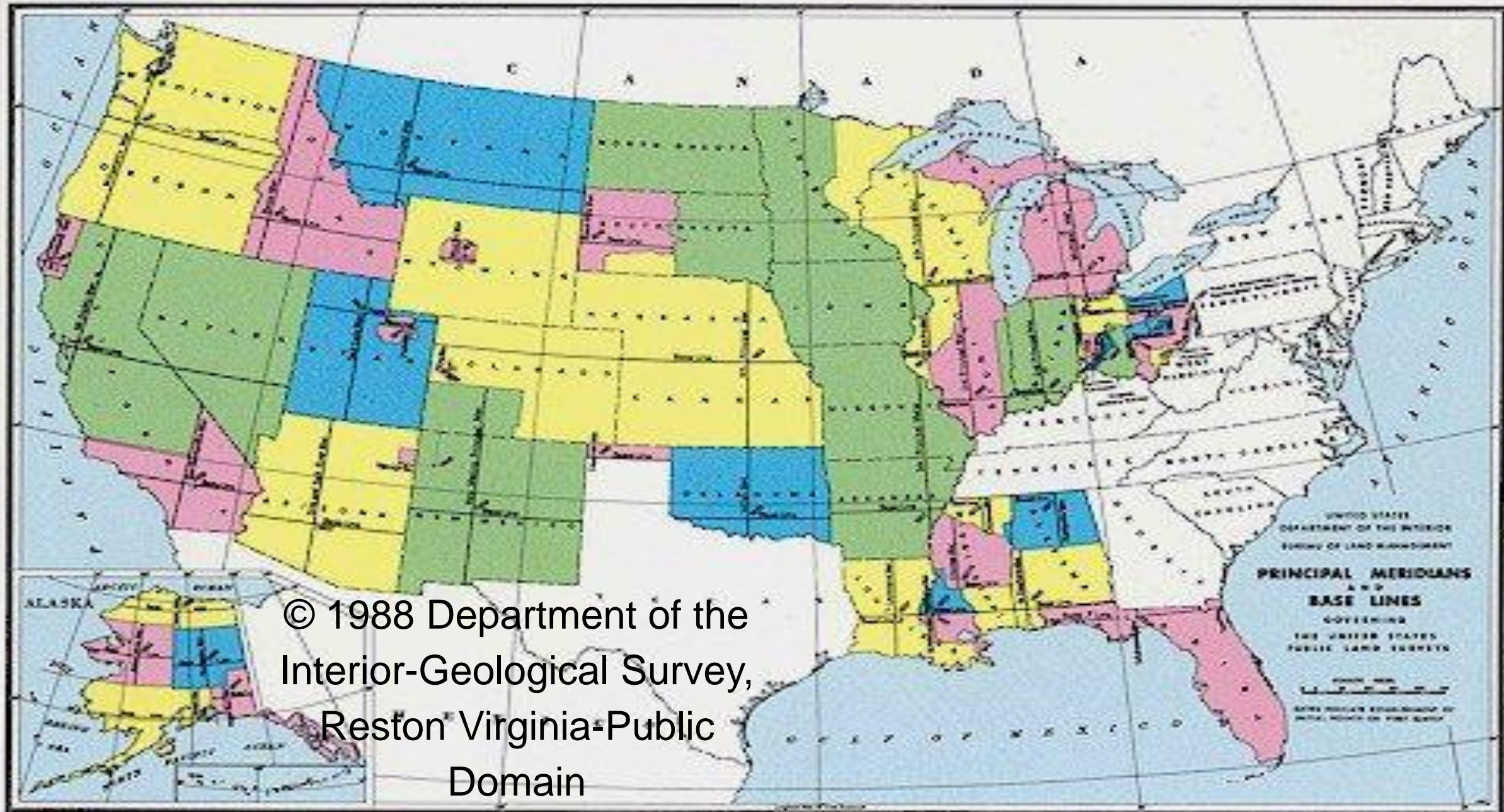


Legal Descriptions



Legal Descriptions of Land

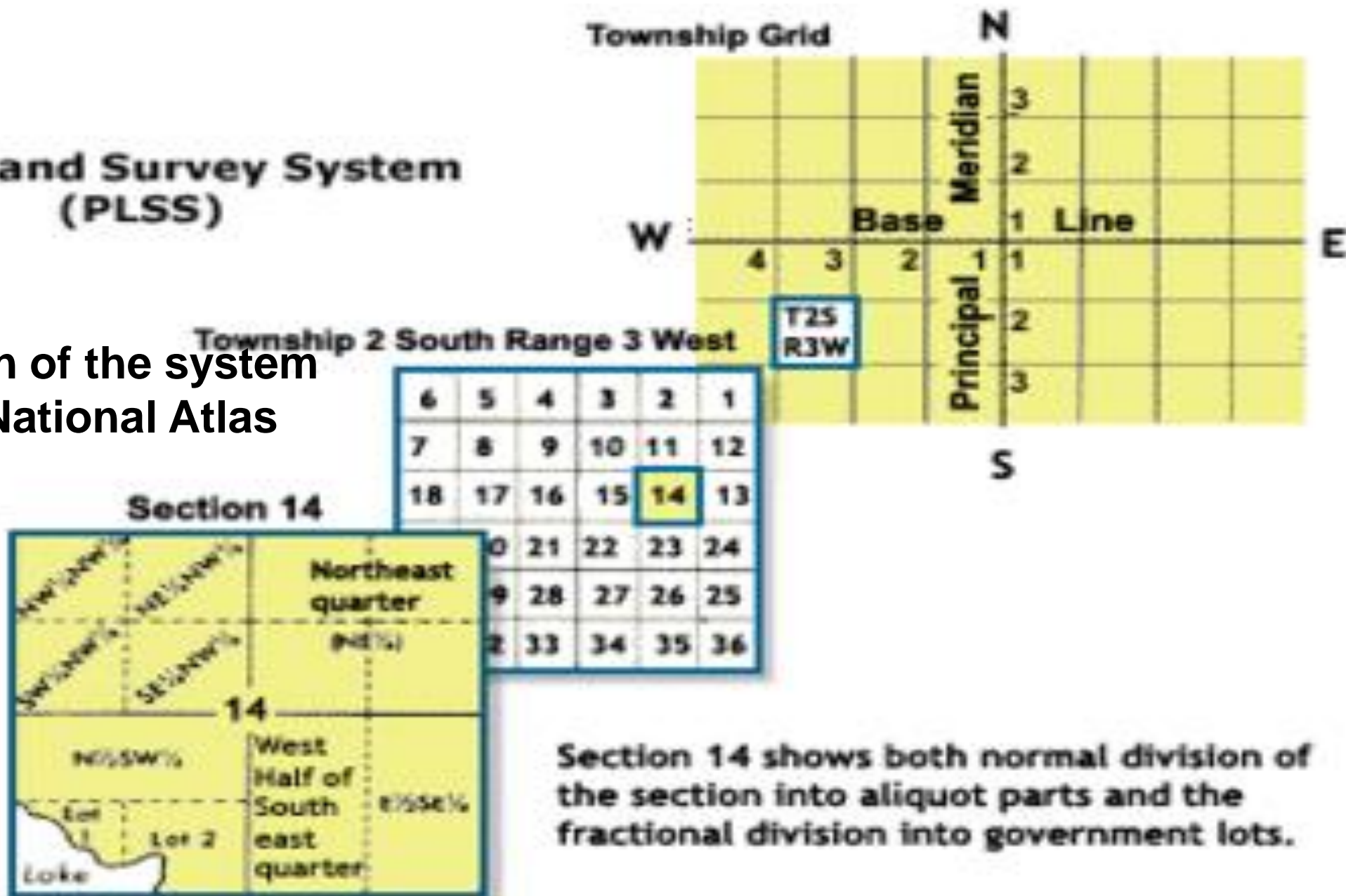
1. Principal Meridians and Base Lines.
2. Townships.
3. Sections.
4. Metes and Bounds.
5. Lot and Block (References to Plat of Subdivision)
6. Boundary Description.



© 1988 Department of the
Interior-Geological Survey,
Reston Virginia-Public
Domain

Public Land Survey System (PLSS)

Illustration of the system from the National Atlas



Section 14 shows both normal division of the section into aliquot parts and the fractional division into government lots.

Metes and Bound

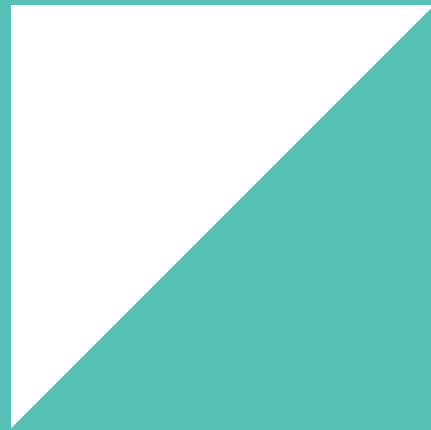
A parcel of land beginning at the Southwest Corner of Section 14 Township 2 South Range 3 West of the [3rd] principal meridian; thence 0° a distance of 100 feet, thence 90° a distance of 200 feet; thence 180° a distance of 100 feet; thence 270° a distance of 200 feet to the point of beginning.

Lot and Block

“Lot 15, Block 2 in the Baumgardner Subdivision, Boone County, Missouri.”

Beware of Plat Act Requirements when dividing up existing parcels.

Forms of Ownership



Ways Multiple Grantees Can Hold Title

1. Tenants in Common.
2. Joint Tenants.
3. Tenancy by the Entirety.

Tenancy in Common

1. Tenant in common owners each take a divided fractional share of the property.
2. Each owner's share of the property can be sold or mortgaged without the consent of the other tenant in common owners. A tenant in common's creditors can reach that tenant's interest in the property, and in certain circumstances will be able to force sale of the property (via action for partition).
3. The interest of a tenant in common passes by will/probate of that tenant in common. There is no right of survivorship in the other tenants in common.

Joint Tenants

1. Owners have no separate divided interest in the property; unified interest.
2. Unlike a tenancy in common, each joint tenant owns an equal interest in the property.
3. To create joint tenancy requires use of magic words: “as joint tenants with right of survivorship and not as tenants in common.”
4. When one joint tenant dies, the interest of that joint tenant passes to the other remaining joint tenant (not to that joint tenant’s heirs).
5. Joint tenants and their creditors can sever the joint tenancy interest.

Tenancy By The Entirety

1. Tenancy by the entirety is only available to married people.
2. The law of most states supplies a presumption that grantees who are married intended to take title as tenants by the entirety.
3. Like a joint tenancy, tenancy by the entirety provides right of survivorship.
4. Unlike a joint tenancy, only a creditor of both spouses can reach the property.
5. Unlike a joint tenancy, a tenancy by the entirety may only be severed with the consent of both tenants.

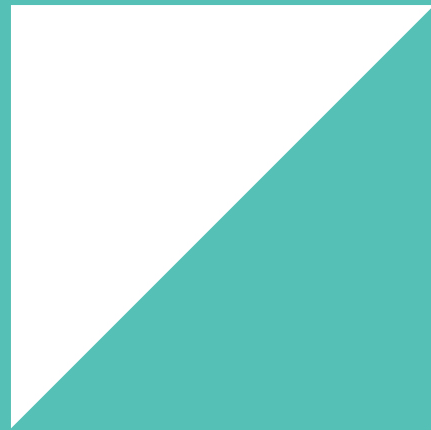
Estates in Land



Types of Estates Conveyed by Deed

1. Fee Simple - all of the grantor's estate passes to the grantee.
2. Fee Simple Determinable - Title reverts to grantor if grantee does something prohibited by the deed.
3. Fee Simple with a Condition Subsequent - same as a Fee Simple Determinable, but the reversion to the grantor is not automatic if the condition is violated.
4. Life Estate/Estate for Years - estate that continues for the natural life of someone alive at the time of the deed, or that continues for a set period of years.
5. Homestead.

Types of Deeds



Types of Deeds

1. General Warranty Deed.
2. Special Warranty / Grant Deed.
3. Quitclaim Deed.
4. Administrator's Deed.
5. Executor's Deed.
6. Sheriff's Deed.
7. Tax Deed.
8. Deed in Lieu of Foreclosure.



Warranty Deed

THE GRANTOR(S) _____

_____ of _____, _____,
_____, for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and
other good and valuable consideration in hand paid, CONVEYS and WARRANTS to
_____, of
_____, _____, _____, the
following described Real Estate situated in the County of _____ in the State of
_____, to wit:

Permanent Real Estate Index No.:

Address(es) of Property:

Covenants of Warranty in a Warranty Deed in Illinois

1. At the time of the making and delivery of such deed, grantor was the lawful owner of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same;
2. That the same were then free from all incumbrances;
3. That grantor warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises; and
4. That grantor will defend the title thereto against all persons who may lawfully claim the same.
5. Note: General Warranty Deed also conveys “after acquired title.”

Special Warranty Deed

THIS SPECIAL WARRANTY DEED is made as of _____, from _____, having an address at _____, (the “Grantor”), to _____ having and address at _____ (the “Grantee”).

WITNESSETH, that said Grantor, in consideration of Ten and No/100s Dollars (\$10.00) in hand paid by Grantee, and other valuable consideration, receipt of which is hereby acknowledged, does hereby GRANT, BARGAIN, SELL, REMISE, RELEASE, ALIEN AND CONVEY unto Grantee and its successors and assigns, FOREVER, all of Grantor’s interest in and to the real property situated in _____, as more particularly described in Exhibit A attached hereto and made a part hereof (the “Property”).

TOGETHER with the tenements and appurtenances thereunto belonging.

SUBJECT TO those matters as contained in Exhibit B attached hereto and made a part hereof (collectively, the “Permitted Exceptions”).

[CONTINUED ON NEXT SLIDE]



Special Warranty Deed (continued)

TO HAVE AND TO HOLD the same unto said Grantee in fee simple forever.

GRANTOR, subject to the Permitted Exceptions, does hereby specially warrant the title to the Property and will defend the same against any claims of all persons claiming by, through or under the Grantor, but not otherwise, subject, however to the Permitted Exceptions



Quitclaim Deed

THE GRANTOR, _____, having an address at _____ for and in consideration of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration in hand paid, CONVEYS and QUITCLAIMS to _____, the following described Real Estate situated in the County of _____ in the State of _____ to wit:

IN WITNESS WHEREOF, said party of the first part has caused this Quitclaim Deed to be executed this ____ day of _____.

Title Insurance - A few very basic points

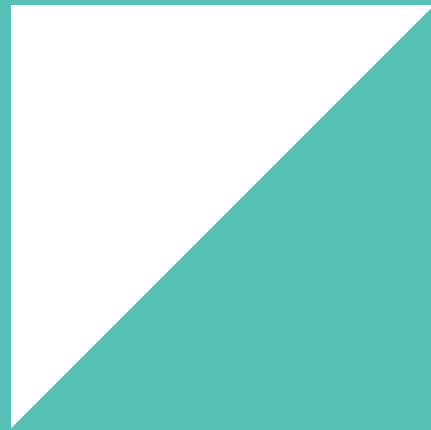
1. Title commitments are not a record of all the matters recorded against the property.
2. Title insurance policies give the title insurance company the option of defending against the claim, or paying the amount of your damages.

Attendance Verification Code: bjhga

This code is for states that need additional proof of attendance.

It is not a CLE course number.

Recording Requirements and Other State and Local Laws Affecting Conveyances by Deeds



Recording Act Requirements

1. These acts set forth the formal requirements that a deed must satisfy before it can be placed of record.
2. These acts also provide the framework for deciding which of two competing claims of interest in a property will have priority.

Acknowledgments

State of [name of state]

ss.

County of [name of county]

I [name and official title of officer] certify that [name of grantor, and if acknowledged by the spouse, his or her name, and add "his or her spouse"] personally known to me to be the same person whose name(s) is (are) subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he/she/they signed and delivered the instrument as his/her/their free and voluntary act, for the uses and purposes therein set forth.

Dated [insert date]

[Signature of officer]

[Seal]

Other Statutes or Ordinances Commonly Affecting Conveyances by Deed

1. Real Property Tax - is the Deed conveying land that shares a tax parcel identification number with other land.
2. Transfer Tax - Many jurisdictions, including some municipalities, impose a tax on the transfer of an interest in real property.
3. Other - Some municipalities require water meters to be read and final bills paid, or building code inspections to be performed, before a Deed may be recorded.

Fixes for Incorrect Deeds

1. Check your deeds more than once before closing, and then check them again after recording. The sooner a problem is detected, the easier it will be to address.
2. If necessary, reverse the incorrect conveyance and then reconvey to fix the error.
3. Ask a court to reform if there is a mutual mistake included in the deed, and no bona fide purchaser for value exists other than the grantee.
4. Seek a quiet title action.

Questions?



Thank you

