

Conveyance Instruments

Title transactions

Title by will or descent, title by tax deed, or deed by trustee, referee, guardian, executor, administrator, sheriff, or any other form of deed, or decree of any court, as well as warranty deed, quitclaim deed, mortgage, or transfer or conveyance of any kind

Often the newest (least experienced) person in the office is placed in a position of processing legal instruments. This person must understand legal descriptions, including metes and bounds, have a good understanding of the assessors' calendar, and what impact each transaction makes other than changing a name. This position in the office requires the broadest knowledge, i.e.: understanding types of deeds, the intent of the instrument, reading and understanding legal descriptions, understanding implications of changing information during the year and how all of this applies to Ad Valorem taxation. We plan to give you a broad range of information regarding this process.

What is the relevance?

68 O.S. 2001, §2841. Land List. Each County Assessor in the state shall prepare and keep a book to be known as a “land list” which shall contain: 1) the name of the owner and a description, sufficient for identification of all real estate in the county with the number of acres and value of the land and the value of the improvements; 2) the number of the lot or lots; 3) the name of the city or town; 4) the value of the city or town lots; and 5) the value of the improvements.

Form/Presentation

16 O.S., §28. Instruments to be printed or handwritten in English. No instrument affecting the title to real estate shall be filed for record or recorded unless plainly printed, typed, or handwritten or partly printed, partly typed, or partly handwritten, and the instrument is an original or a certified copy of an original instrument, clearly legible in the English language

Components

1. Seller or Grantor
2. Buyer or Grantee
3. Form/format of body of document
4. Documentary stamps
5. Consideration
6. Legal Description
7. Signature
8. Acknowledgement

Title Examination Standards

Chapter 1, App.

Chapter 5. Name Variances

§5.1. Abbreviations and Idem Sonans.

Identity of parties should be accepted as sufficiently established in the following cases:

A. Where there are used common abbreviations, derivatives or nicknames for Christian names, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Bob" for Robert, "Eliza" or "Liza" for Elizabeth, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, "Susan" for Suzanna, "Ellen" for Eleanor, "Rich." for Richard, "Mc" for Mac (as prefix to a name);

B. Names within the rule of the generally accepted doctrine of idem sonans; and

C. In all instruments or court proceedings where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the surnames are the same or idem sonans, and

in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the surnames are the same or idem sonans.

A greater degree of liberality should be indulged with the greater lapse of time and in the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the parties.

Authority: 16 O.S. § 53; Patton & Palomar on Land Titles §§ 73-78 (3d ed. 2002); King v. Slepka, 194 Okla. 11, 146 P.2d 1002 (1944); Collingsworth v. Hutchinson, 185 Okla. 101, 90 P.2d 416 (1939); Maine v. Edmonds, 58 Okla. 645, 160 P. 483 (1916); Annot., 57 A.L.R. 1478 (1928). West Digest System, Century Digest, Names, Key Number 4; Decennials, 4 and 5, Deeds, Key Number 31.

Form/format of body of document

16 O.S., §40. Form of warranty deed.

A warranty deed to real estate may be substantially in the following form, to wit:

Know all men by these Presents:

That ___ part ___ of the first part, in consideration of the sum of ___ dollars, in hand paid, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto ___ the following described real property and premises, situated in ___ County, State of Oklahoma, to wit: ___ together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same.

To have and to hold said described premises unto the said part ___ of the second part, ___ heirs and assigns forever, free, clear and discharged of and from all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature; Signed and delivered this ___ day of ___ 191_.

_____.

All title transfers will contain the same basic format with a few variations in wording, i.e. Sheriff's Deed, Quitclaim, etc.

Documentary stamps

CHAPTER 30. DOCUMENTARY STAMPS

[Authority: 68 O.S. §§203, 5105]

[Source: Codified 12-30-91]

710:30-1-1. Purpose

The provisions of this Chapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of taxes and other levies enacted by the Oklahoma Legislature with respect to documentary stamps.

710:30-1-3. Purchase and affixing of documentary stamps

(a) Only documentary stamps shall be used in payment of the tax imposed by Oklahoma Statutes. The requisite stamps shall be affixed to the deed, instrument, or other writing by which the realty is conveyed. If there is insufficient space on the face of the deed, instrument, or other writing to affix the required documentary stamps, such stamps shall be affixed to a second or subsequent page of the document, or in the absence of a second or subsequent page, the stamps shall be affixed to the back of the deed, instrument, or other writing by which the realty is conveyed. It shall be the responsibility of the County Clerk to ensure that the page on which the stamps are affixed is recorded as part of the deed, instrument, or other writing conveying the realty. [See: 68 O.S.1991, §3203(B)]

(b) Documentary stamps may be purchased, and requisite forms for the purchase of such stamps may be obtained, from the sources and in the manner provided for by statute. [See: 68 O.S.1991, §3204]

(c) If a taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the face of the deed indicating the reason for claiming the exemption, the county clerk shall make a brief notation on the face of the deed indicating the reason for claiming the exemption.

(d) If a single deed conveys property located in more than one county, the stamps will be purchased from, and the deed filed in, the county having the largest portion of the property. Certified copies of the deed showing the stamps affixed will then be filed in the affected counties. [Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94; Amended at 11 Ok Reg 4689, eff 8-15-94 (emergency); Amended at 12 Ok Reg 2625, eff 6-26-95]

710:30-1-4. Documentary stamp tax based on consideration; interest; property for purposes of computing the amount received in a transaction subject to the documentary stamp tax imposed by this statute no distinction is to be made between cash or security received by the seller.

(1) Measurement. The tax shall be measured by:

- (A) The consideration;
- (B) The value of the interest conveyed; or
- (C) The value of the property conveyed.

(2) Basis. In each instance the basis for computing the tax shall be:

- (A) The down payment; plus
- (B) The amount of new and assumed mortgages; plus
- (C) Any other valuable benefits received by the seller.

(3) Personal property. Any personal property transferred shall have its value deducted from the gross value transferred prior to computing the tax.

710:30-1-5. Use of documentary stamps on conveyances by defaulting mortgagee; exemptions

(a) Unless otherwise exempt, a conveyance by a defaulting mortgagee in consideration of the cancellation of the mortgage debt is subject to the documentary stamp tax based on the remaining balance plus accrued interest.

(b) Effective with deeds filed July 1, 1988 or subsequent, 68 O.S. 1988, Section 5102(13), now codified at 68 O.S. 1991, §3202(13), was amended to exempt three categories of conveyances:

(1) Deeds in foreclosure actions. Deeds executed in a Foreclosure Action in which the grantee of the new deed was the mortgage holder of the property being foreclosed, and the

property was deeded to the mortgagee for no additional consideration.

(2) Deeds executed pursuant to a power of sale. Deeds executed pursuant to a Power of Sale in which the grantee of the new deed was the mortgage holder of the property being sold and no additional consideration is exchanged.

(3) Deeds in lieu of foreclosure. Deeds accepted In Lieu of Foreclosure in which the grantee of the new deed was the mortgage holder of the property being conveyed to the mortgage holder for no consideration other than the cancellation of the debt and no additional consideration is exchanged. [See: 68 O.S.1991, §3202(13)]

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-8. Property subject to the documentary stamp tax

(a) All property transferred by deed that is not specifically exempted by statute is subject to the documentary stamp tax, and shall be paid by either the grantee or the grantor. Some examples of property which are subject to the tax are:

(1) Mineral deeds;

(2) Sheriff's deeds. The tax is based on the amount bid for the property plus any other costs incurred by the purchaser. (See 710:30-1-5(b) for exception);

(3) A conveyance of realty in consideration of life maintenance. The tax will be based on the net value of the realty conveyed;

(4) Assumed and/or wraparound mortgages. The tax will be based on the balance of the mortgage plus any other valuable consideration exchanged;

(5) Realty traded. Documentary stamps will be required on both deeds if the deeds conveyed property. The tax will be based on the market value of the property conveyed; and

(6) Conveyance of property in forming a new corporation in exchange for stock of that corporation. The tax will be based on the original purchase price of the realty conveyed plus any improvements placed thereon since the original purchase. If

the original purchase price can not be determined the tax will be based on the fair market value of the property conveyed.

(b) The properties listed in (a) of this Section are examples only and are not intended to be all inclusive.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-9. Conveyances not subject to the documentary stamp tax. In addition to the exemptions allowed under 68 O.S.1991, §3202, the following nonexclusive list constitutes further examples of conveyances not subject to the documentary stamp tax:

(1) Conveyances of realty without consideration, including a deed conveying property as a bona fide gift;

(2) A conveyance given by an executor or executrix in accordance with the terms of a will;

(3) A conveyance from an agent to his principal conveying realty purchased for and with funds of the principal;

(4) True deeds of partition, unless, for consideration, some of the parties take shares greater in value than their undivided interests. In such a case, the tax will attach to the deed conveying such excess share and will be based upon the consideration for the excess;

(5) Ordinary leases of real property;

(6) A conveyance to a receiver of realty included in the receivership assets, and re-conveyance of such realty upon termination of the receivership; and

(7) Transfer of realty in a statutory merger or consolidation from a constituent corporation to the new or continuing corporation.

[Source: Amended at 10 Ok Reg 4677, eff 9-1-93 (emergency); Amended at 11 Ok Reg 3493, eff 6-26-94]

710:30-1-10. Duties and responsibilities of the county clerk

County clerks are responsible for selling Documentary Stamps to the taxpayers and have the duty of accounting for the stamps to the Oklahoma Tax Commission. For the purpose of collecting the stamp tax, the county clerks act as agents of the Oklahoma Tax Commission.

(1) Documentary stamps are to be purchased only from the county clerk of the county in which the realty conveyed is located. If the property being conveyed by the deed is located in more than one county, the stamps will be purchased from the county in which the original deed is filed. Certified copies of such deed, showing stamps affixed, can then be filed with the other county or counties where the property is located.

(2) In order to make a correct determination of tax due, the county clerks have the duty to request taxpayers to produce satisfactory documentation which correctly discloses the value of the property. The total value of the consideration paid can be determined from a real estate purchase contract, closing statement, bill of sale, or any other documentation showing the total price of the property sold.

(3) County clerks shall make sure that the Documentary Stamps are not sold over the counter. The stamps can only be sold when the tax is paid and the stamps affixed to the deed. Stamps are to be sold only when the deed is offered for recording.

(4) County clerks shall make sure that the proper amount of stamps are affixed. Metering machines may not be used to collect an odd tax amount or, in other words, to collect an amount of tax that is not a multiple of .75 cents. Stamps worth .75 cents must be affixed for each \$500.00 (or any fractional part thereof) of the consideration. When a metering machine is used, a single stamp can be printed for the total tax amount rather than attaching multiple stamps. However, whether a metering machine is used or not does not change the tax amount. Thus .75 cents is still required for each \$500.00 of consideration or fractional part thereof. This can be illustrated by the following example: The selling price of Blackacre is \$30,250.00. Based on this consideration paid, the deed will require 61 documentary stamps at 75 cents each, which computes to a tax amount of \$45.75. It is improper to use a metering machine to calculate the tax on 60.5 documentary stamps, or \$45.38.

How to calculate value of stamps:

Doc Stamp Value divided by .0015 = Value of property

\$2.25 divided by .0015 = \$1,500

or

\$75.00 divided by .0015 = \$50,000

(5) If the taxpayer claims exemption from the payment of the documentary stamp tax, and there is no notation on the deed indicating the reason for the claiming of the exemption, the county clerk shall make a brief notation on the face of the deed indicating the reason for claiming the exemption.

[Source: Amended at 11 Ok Reg 3493, eff 6-26-94; Amended at 11 Ok Reg 3943, eff 7-11-94]

§68-3202. Exemptions.

The tax imposed by Section 3201 of this title shall not apply to:

1. Deeds recorded prior to the effective date of Sections 3201 through 3206 of this title;
2. Deeds which secure a debt or other obligation;
3. Deeds which, without additional consideration, confirm, correct, modify or supplement a deed previously recorded;
4. Deeds between husband and wife, or parent and child, or any persons related within the second degree of consanguinity, without actual consideration therefor, deeds between any person and an express revocable trust created by such person or such person's spouse or deeds pursuant to which property is transferred from a person to a partnership, limited liability company or corporation of which the transferor or the transferor's spouse, parent, child, or other person related within the second degree of consanguinity to the transferor, or trust for primary benefit of such persons, are the only owners of the partnership, limited liability company or corporation. However, if any interest in the partnership, limited

liability company or corporation is transferred within one (1) year to any person other than the transferor or the transferor's spouse, parent, child, or other person related within the second degree of consanguinity to the transferor, the seller shall immediately pay the amount of tax which would have been due had this exemption not been granted;

5. Tax deeds;

6. Deeds of release of property which is security for a debt or other obligation;

7. Deeds executed by Indians in approval proceedings of the district courts or by the Secretary of the Interior;

8. Deeds of partition, unless, for consideration, some of the parties take shares greater in value than their undivided interests, in which event a tax attaches to each deed conveying such greater share computed upon the consideration for the excess;

9. Deeds made pursuant to mergers of partnerships, limited liability companies or corporations;

10. Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

11. Deeds or instruments to which the State of Oklahoma or any of its instrumentalities, agencies or subdivisions is a party, whether as grantee or as grantor or in any other capacity;

12. Deeds or instruments to which the United States or any of its agencies or departments is a party, whether as grantor or as grantee or in any other capacity, provided that this shall not exempt transfers to or from national banks or federal savings and loan associations;

13. Any deed executed pursuant to a foreclosure proceeding in which the grantee is the holder of a mortgage on the property being foreclosed, or any deed executed pursuant to a power of sale in which the grantee is the party exercising such power of sale or any deed executed in favor of the holder of a mortgage on the property in consideration for the release of the borrower from liability on the indebtedness secured by such mortgage except as to cash consideration paid; provided,

however, the tax shall apply to deeds in other foreclosure actions, unless otherwise hereinabove exempted, and shall be paid by the purchaser in such foreclosure actions; or

14. Deeds and other instruments to which the Oklahoma Space Industry Development Authority or a spaceport user, as defined in the Oklahoma Space Industry Development Act, is a party.

Added by Laws 1967, c. 259, § 2. Amended by Laws 1968, c. 186, § 1, emerg. eff. April 15, 1968; Laws 1971, c. 315, § 2, operative July 1, 1971; Laws 1988, c. 24, § 1, operative July 1, 1988. Renumbered from § 5102 of this title by Laws 1988, c. 162, § 160, eff. Jan. 1, 1992. Amended by Laws 1991, c. 338, § 3, eff. Jan. 1, 1992; Laws 1993, c. 366, § 48, eff. Sept. 1, 1993; Laws 1999, c. 164, § 41, eff. July 1, 1999; Laws 1999, c. 340, § 2, eff. July 1, 1999; Laws 2001, c. 405, § 48, eff. Nov. 1, 2001.

§68 O.S., §3203.C

The name and address of the buyer shall be shown on the face of the deed, instrument, or other writing by which the realty is conveyed PRIOR to the recording of such deed, instrument or other writing. Often not required by Clerks

'No doc stamps' does not mean an unmarketable title

6.3 Revenue Stamps

The absence of Internal Revenue or Oklahoma Documentary Stamps from an instrument or its record does not impair or affect the marketability of the title or necessitate inquiry. (Oklahoma Title Examination Standards)

Consideration

§68 O.S., §3201.3

The actual pecuniary value exchanged or paid or to be exchanged or paid in the future, exclusive of interest, whether in money or otherwise, for the transfer or conveyance of an interest of realty, including any assumed indebtedness.

Legal description

A description of a parcel of land that will be accepted by courts because it is complete enough to locate and identify the premises. The chief purpose of the description is to furnish a means for identifying a particular parcel of land. In addition, the description must describe an area that is bounded completely. In other words, the boundaries indicated by the description must close the parcel. Although a description by street and number is not advisable, it passes title if the property is located in a municipality that has established a standard system of numbering.

Legal descriptions in the Assessor's Office are for taxation purposes only

Signature

§16 O.S., §34. Execution by mark.

When real estate is conveyed or encumbered by an instrument in writing by a person who cannot write his or her name, the person shall execute the same by a mark, and the person's name shall be written near the mark by one of two persons who saw the mark made, who shall write their names on the instrument as witnesses.

In case the instrument is acknowledged, then the officer taking the acknowledgment shall, in addition to the other necessary recitals in the acknowledgment, state that the grantor executed the instrument, by inserting in the form of acknowledgment provided in Section 33 of this title by individuals after the words "foregoing instrument" the words "by the person's mark, in my presence and in the presence of ____ and ____ as witnesses".

R.L.1910, § 1180. Amended by Laws 1999, c. 104, § 2, emerg. eff. April 19, 1999.

Acknowledgement

§16 O.S., §33. Form of acknowledgment.

An acknowledgment by individuals of any instrument affecting real estate shall be in substantially a form as provided for in the Uniform Law on Notarial Acts or in substantially the following form:

State of Oklahoma,)

) ss.

_____ County.)

Before me, _____ in and for this state, on this _____ day of _____, _____ personally appeared _____ to me known to be the identical person(s) who executed the within and foregoing instrument, and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

R.L.1910, § 1179. Amended by Laws 1998, c. 189, § 1, eff. Nov. 1, 1998; Laws 1999, c. 104, § 1, emerg. eff. April 19, 1999.

§16 O.S., §35. Acknowledgment to be under seal Before whom taken.

Every acknowledgment must be under seal of the officer taking the same; and when taken in this state, it may be taken before any notary public, county clerk, clerk of the district court, clerk of the county court, or county judge; and when taken elsewhere in the United States, or United States possessions, or Canada (including Newfoundland), it may be taken before any notary public, clerk of a court of record, or commissioner of deeds duly appointed by the Governor of the state for the county, state or territory where the same is taken; and when taken in any other foreign country, it may be taken before any court of record or clerk of such court, or before any Consul of the United States, provided, that acknowledgments relating to military business of the state may be taken before an officer in charge of any summary Court Martial appointed under the provisions of Section 157, Title 44, Oklahoma Statutes, 1941, a certified copy of whose appointment is placed of record in the office of the Secretary of State by the Adjutant General.

What are we transferring?

60 O.S., §1. Definition of property.

The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. The thing of which there may be ownership is called property

60 O.S., § 5. Real property defined.

Real or immovable property consists of:

1. Land.
2. That which is affixed to land.(fixtures)
3. That which is incidental or appurtenant to land.(appurtenances)
4. That which is immovable by law.(streams, riverbeds, etc)

60 O.S., §6. Land defined.

Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance. R.L. 1910 Sec. 6591

60 O.S., §7. Fixtures defined.

A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs, or embedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws. R.L. 1910 Sec. 6592.

60 O.S., §8. Appurtenances defined.

A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

60 O.S., § 315. Goodwill.

The goodwill of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.R.L.1910, § 6742.

60 O.S., §316. Goodwill as property.

The goodwill of a business is property, transferable like any other. R.L.1910, § 6743.

60 O.S., §331. Property acquired, how.

Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.
4. Will; or,
5. Succession

Property Deeds That Transfer Title to Real Estate

Property deeds are legal instruments that are used to assign ownership of real property, to transfer title to the land and its improvements such as a house. Words used to convey property transfer may be grant, assign, convey or warrant, but they basically all do the same thing, they transfer the interest of the person selling the house to the person buying the house.

A **life estate** is a term used in common law to describe the ownership of land for the duration of a person's life. In legal terms it is an estate in real property that ends at death. The owner of a life estate is called a life tenant.

Although the ownership of a life estate is technically temporary because it ends at a person's death (a tenancy), it is treated as complete ownership (fee simple) for the duration of the person's life, subject to limitations. Because a life estate ceases to exist upon death, the owner of the life estate cannot leave it to heirs, and the life estate cannot be inherited.

A **life estate** is typically used as an estate planning tool. The use of a life estate can avoid probate and ensure an intended heir will receive title to real property. For example, 'A' may own a home and desire that 'B' inherit the home after 'A's' death. 'A' can effectuate that desire by transferring title to the home to 'B' and retaining a life estate in the home. 'A' keeps a life estate interest and 'B' receives a vested fee simple remainder interest. As soon as 'A' dies, the life estate interest merges with 'B's' remainder interest and 'B' has a fee simple title. This avoids the use of a will and the probate process. The danger to 'A' though, is that the grant to 'B' is irrevocable.

Fee simple is an estate in land in common law. It is the most common way real estate is owned in common law countries, and is ordinarily the most complete ownership interest that can be had in real property short of allodial title, which is often reserved for governments. Fee simple ownership represents absolute ownership of real property but it is limited by the four basic government powers of taxation, eminent domain, police power, and escheat and could also be limited by certain encumbrances or a condition in the deed. (Refer to Bundle of Rights in Definition Section) How ownership is limited by these government powers often involves the shift from allodial title to fee simple such as when uniting with other property owners acceding to property restrictions or municipal regulation

The owner(s) of real property in fee simple title have the right to own the property during their lifetime and typically have a say in determining who gets to own the property after their death. In a sense, one might say fee simple owners 'own' the property forever.

Appropriateness & Application of Each Title Transfer

Grant Deed

There are two guarantees contained in a grant deed:

- The grantor states that the property has not been sold to anybody else.
- The grantor states that the property is not burdened by any encumbrances apart from those the seller has already disclosed to the buyer.

Grant deeds do not need to be recorded to be valid, nor do they need to be notarized to be valid, but most sellers do ask a notary to witness the deed, acknowledging that the seller is the person who signed the deed. And most buyers want the protection of recordation, to give "constructive notice to the world" that the property has been sold.

A grant deed needs to contain six essential elements. Those six items are defined as:

- A written document.
- A clause that transfers title, called a granting clause.
- The names of the Grantor and the Grantee.
- A description of the property being transferred.
- Execution, delivery and acceptance. It must be signed by a competent grantor, meaning minors and those declared incompetent cannot sign a deed; given to the buyer while the seller is still alive (not after death) and accepted by the buyer.
- Grantor's signature.

Warranty Deeds

Warranty deeds are used all over the United States but are more common to the Midwest and Eastern states. They are very similar to grant deeds with one main exception: grant deeds contain two guarantees but warranty deeds contain three guarantees:

- The grantor states that the property has not been sold to anybody else.
- The grantor states that the property is not burdened by any encumbrances apart from those the seller has already told the buyer about.
- More important, the grantor will warrant and defend title against the claims of all persons. This means the grantor is guaranteeing the grantee that title is free of any defects that may affect the title, even if the defect was caused by a prior owner.

Quitclaim Deeds

Used to convey any interest that the grantor **might** possess in the property. The grantor might be a legal owner or the grantor might never have formally been identified on a deed describing the property.

Quitclaims are most often used during a divorce, to deed the property from one spouse to the other. If a married person holds title to a property as sole and separate or perhaps he or she acquired the property before marriage, the spouse not in title might be asked to sign a quitclaim deed when the property is sold to a third party, just to make sure the spouse who was not on the deed does not later come back and lay claim to the property.

Quitclaim deeds transfer or "quit" any interest in real property. The grantor may not be in title at all, so the grantee cannot assume that the grantor has any real interest to convey. However, if the grantor were, say, married to the owner of the property, signing and recording a quitclaim deed in favor of the spouse would transfer any interest the grantor may have in the property to the spouse.

Common Misspellings: quick claim deed, quit claim deed

A quitclaim deed is a term used in property law to describe a document by which a person (the "grantor") disclaims any interest the grantor might have in a piece of real property, and passes that claim to another person (the "grantee"). A quitclaim deed neither warrants nor professes that the grantor's claim is actually valid. By comparison, a grant deed (or a warranty deed), which is normally used for real estate sales, contains certain warranties that vary from State to State. Quitclaim deeds are sometimes used for transfers between family members, gifts, or to eliminate clouds on title, or in other special or unusual circumstances.

The grantee in a quitclaim deed receives no better title than what the grantor possessed.

An example of a circumstance where a quitclaim may be used is where one spouse (grantor) is disclaiming any interest in property that the other spouse (grantee) owns.

In most common law jurisdictions, a quitclaim deed is not technically considered to be a deed at all and in some jurisdictions a buyer who receives a quitclaim deed may not be considered a bona fide purchaser for value unless the quitclaim deed meets certain requirements. It fails to meet all five traditional tests of a true deed found in common law. Instead it is considered to be an instrument of estoppel, which means it estops or

prevents the grantor of the quitclaim deed from later claiming that he or she has an interest in the property. Title companies may be unwilling to issue title insurance based on a quitclaim deed; thus, quitclaim deed holders may have to obtain further proof that a bona fide sale occurred or institute a 'quiet title' action in a court to obtain clear title.

Other Types of Deeds

Tax Deed. A common form of deed similar to a quitclaim deed is the tax deed, which is used by government authorities when selling properties seized for nonpayment of taxes; the authority will not promise that the buyer will obtain clear title to the property. It may be possible to obtain such assurances, for a fee, from a title insurance company or an attorney who performs a title search.

Gift Deeds. The consideration is generally referred to as "love and affection," meaning the property is transferred without payment of money. Gift deeds are generally used to transfer title among people who are related to each other.

Deed-in-lieu of Foreclosure. Sellers who are behind in payments to the lender will sometimes negotiate with a lender to accept a Deed-in-Lieu of Foreclosure, which means the seller, has deeded the property to the lender to avoid foreclosure. But the deed may still show up on a seller's credit report

§60-49. Easements attached to land. The following land burdens or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial; and
18. The right to impose limitations or affirmative obligations relating to conservation pursuant to the Uniform Conservation Easement Act.

R.L.1910, § 6623. Amended by Laws 1999, c. 384, § 9, eff. Nov. 1, 1999
Added by Laws 1982, c. 109, § 3, emerg. eff. April 6, 1982.

In-Office Processing

Processing in a timely manner

Backlog impact

- Slows CAMA analysis
- May keep from 'uncapping'
- Sending 'Notices' to wrong party
- Slows data gathering for ratio study
- Hinders Homestead applications
- May send tax statement to wrong party
- May be sending tax statements to previous owner of property.

Unable to process

Erroneous legal descriptions

- A property description that doesn't close
- A property description that indicated NE 1/4 and should be SE ¼
- Document filed in the wrong county
- Land description of a plat that has not been filed
- Description does not add up: Tract 207' X 207' containing 5 acres
- Confusing/unclean descriptions: E 3 ac of W 25 ac of NE ¼

Grantor does not match records

- A divorce decree with following instruments (such as Quitclaims) has not been filed.
- A probate has been filed with the Court Clerk, but not with the County Clerk.
- A title transfer has been overlooked.

Processing Solutions

In the case of deeds that cannot be processed due to incorrect information (seller, legal, etc.), a follow-up letter should be sent to those parties involved; most likely the Grantee (perhaps Realtor or Closing company; whichever is easiest to find). The letter should refer to the parcel, with a legal description if possible, and include the grantor, grantee, book and page and address the area of concern. Resolving these issues as soon as possible prevents double taxation or unfair taxation, and keeps tax roll corrections to a minimum. This could also prevent 'backing up' and taxing omitted property for previous years.

Some issues may require a deed to correct the item in question; however.....

Courtesy Letters

This courtesy letter should inform the taxpayer of a potential problem. It should be written in such a manner as to not lay blame or cause undue concern.

In some cases, depending on your relationship with abstractors, etc. a phone call may resolve the issue.

**Kanda Sparagus
Sharp County Assessor
111 Courthouse Dr.
Taxpayer, OK 11111**

July 24, 2008

To Whom It May Concern:

In processing a certain instrument, filed with the Sharp County Clerk's office, in Book_____ Page_____, this office discovered a possible discrepancy described as follows:

Grantor does not appear to be record owner

or

Description of property does not match our records

or

Property does not appear to be in this county

It is felt that your prompt attention preclude future problems with regard to ownership or transfer of title. No further processing of this instrument will be done until we hear from you regarding this matter. If we can assist in any way, please feel free to contact us.

Sincerely

Kanda Sparagus
Sharp County Assessor

Distribution: Sharp County Clerk

Grantor:

Grantee:

Attorney of Record:

JOHNNY ROCKBOTTOM
SUNSHINE COUNTY ASSESSOR



Date ____/____/____

Dear Property Owner,

In reviewing our records, it appears that the name of the seller(s) on your deed, as recorded in Book___Page___ in the Office of County Clerk, does not exactly correspond with the name on our records. To insure the accuracy of our records, we ask that you contact our office to verify the information. Your assistance in the matter will assist in avoiding errors in tax billing.

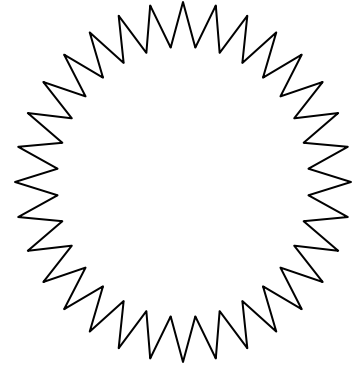
THIS DISCREPANCY DOES NOT MEAN THAT YOU DO NOT HAVE A GOOD TITLE TO YOUR PROPERTY.

Sincerely,

Deputy County Assessor

4444 Happy Way
Sunshine Oklahoma 44444
Phone 444-555-6666
Fax 111-222-3333

ALICE INAPALICE
KINGDOM COUNTY ASSESSOR



Date ____/____/____

Dear Property Owner,

In reviewing our records, it appears that the description on your deed, as recorded in Book____Page____, in the Office of the County Clerk, does not exactly correspond with the legal description on our records. To ensure the accuracy of our records, we ask that you contact our office to verify the information. Your assistance in this matter will assist in avoid errors in tax billing.

THIS DISCREPANCY DOES NOT MEAN THAT YOU DO NOT HAVE A GOOD TITLE TO YOUR PROPERTY.

Sincerely,

Deputy County Assessor

411 East West St.
Empire, OK 11245
Phone 111-111-1111
Fax 222-222-2222

DEFINITIONS

Acknowledgement – In conveyancing, the act by which a person who has executed an instrument goes before an authorized officer, usually a notary public, and declares that the instrument is genuine and executed voluntarily.

Affidavit of Surviving Joint Tenancy – Instrument filed after the death of a joint tenant to remove deceased party's name from ownership records. A Death Certificate must accompany this instrument for filing.

Allodium – Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof.

Bundle of Rights – The ownership of legal rights obtained with fee simple title. Six basic rights associated with private ownership of property:

- 1) right to use
- 2) right to sell
- 3) right to lease or rent
- 4) right to enter or leave (real property)
- 5) right to give away
- 6) right to refuse to do any of these

Call - A term used to refer to the different monuments, courses and distances that make up a metes-and-bounds description.

Common Law – As distinguished from statutory law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from the judgments and decrees of the courts recognizing, affirming and enforcing such usages and customs; and in this sense, particularly the ancient unwritten law of England. The "common law" is all the statutory and case law background of England and the American colonies before the American Revolution. It consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature.

Consideration – A promise, act or forbearance bargained for and given in exchange for real estate.

Contract for Deed – A contract in which the buyer pays the purchase price on an installment basis. The seller/owner retains the title until the purchase price is paid; also called a land installment contract.

Conveyance – Transfer of title to land from one person, or class of persons, to another by deed. Term may also include assignment, lease, mortgage or encumbrance of land. Generally, every instrument in writing by which an estate or interest in the realty is created.

Correction Deed – Corrects errors in previous deed (ex. Mistake in description). Grantee can force grantor to correct if original deed has covenant/assurance. Must refer to deed being corrected, "Correction Deed" usually typed at top.

Deed – A legal instrument that conveys title to real property upon delivery and acceptance by the grantee.

Deed of Trust – A legal instrument in which a borrower transfers real property to a trustee as security for a debt. The lender is the beneficiary of the trust.

Documentary Stamp – Stamp required by federal (prior to 1968) and state law to be affixed to deeds and other documents of transfer before they may be recorded, the cost of which is governed by the consideration recited in the document. §68, 3201.A - ...value of the interest or property must exceed \$100...The tax shall be prorated at the rate of \$.75 for each \$500 of the consideration or any fractional part thereof.

Encumbrances – Any right to, or interest in, land which may subsist in another to diminution of its value, but consistent with the passing of the fee by conveyance. A claim, lien, charge or liability attached to and binding real property; e.g. a mortgage; judgment lien; mechanics' lien; lease; security interest; easement or right of way, accrued and unpaid taxes. If the liability relates to a particular asset, the asset is encumbered.

Executed – Completed; carried into full effect; already done or performed; signed; taking effect immediately; now in existence or in possession; convey an immediate right or possession. Act or course of conduct carried to completion. Term imports idea that nothing remains to be done.

Fee Simple (absolute) – The most extensive estate in real property that an owner can possess.

Foreclosure – To shut out, to bar, to destroy an equity of redemption. A termination of all rights of the mortgagor or his grantee in the property covered by the mortgage. The process by which a mortgagor of real or personal property, or other owner of property subject to a lien, is deprived of his interest therein.

Grantee – One to whom a grant is made.

Grantor – The person by whom a grant is made. A transferor of property.

Legal Description – A description of a parcel of land complete enough to locate and identify the premises.

Lien – A claim against another's property securing either payment of a debt or fulfillment of some other monetary charge or obligation.

Life Estate – An ownership interest in real property created to last for a person's life. An estate whose duration is limited to the life of the party holding it, or some other person. Upon the death of the life tenant, the property will go to the holder of the remainder interest or to the grantor by reversion.

Metes and Bounds – A method of describing land using compass directions, monuments or landmarks, and linear measurements. The term "metes" refers to measurement and the term "bounds" refers to the boundaries, including features of the terrain described in conjunction with compass bearings and distances.

Example: A certain tract or parcel of land, including the mill-seat and mill known as the "Jethro R. Franklin Mill," the said tract situated in the county of Gates, embracing as far as the high-water mark, and bounded as follows: on the north by the lands of Richard E. Parker, Reddick Brinkley, and others, on the east by the lands of Harrison Brinkley and others, south by the desert road, west by the lands of Josiah H. Reddick and others.

Patent - A grant of privilege, property or authority made by a government or sovereign of a country to one or more individuals.

Probate – The legal process that establishes the validity of a will.

Probate Deed – Instrument filed following probate to transfer property into rightful owner name.

Quitclaim Deed – Simplest form of deed. Grantor transfers only the interest or rights they hold in the property, if any. No implication of good title/no warranty.

Real Estate Contract Deed – See Contract for Deed

Real Property – Land, buildings and other improvements permanently affixed to land.

Right of Survivorship – The right of survivor of a deceased person to the property of said deceased. A distinguishing characteristic of a joint tenancy relationship.

Sheriff's Deed – Instrument filed as part of foreclosure process. Contains no warranties.

Signature – Whatever mark, symbol, or device one may choose to employ as representative of himself is sufficient.

Special Warranty Deed – Grantor warrants/guarantees title only against defects arising during the period of their ownership. No guaranty against previous defects. Used sometimes by executors/trustees.

Tax Deed – Instrument given by Treasurer's office after property has been sold to clear real estate tax liens.

Tax Lien – A statutory lien, existing in favor of the state or municipality, upon the lands of a person charged with taxes, binding the same either for the taxes assessed upon the specific tract of land or for all the taxes due from the individual, and which may be foreclosed for non-payment, by judgment of a court or sale of the land.

Tenancy – Involves an interest in realty which passes to the tenant. Period of tenant's possession or occupancy. To acquire some definite control and possession of premises.

Title – The totality of rights and obligations possessed by an owner; evidence of ownership.

Title Insurance – A policy issued by a title company after searching the title, representing the state of that title and insuring the accuracy of its search against claims of title defects.

Trust – A legal relationship in which a person transfers legal title to property to a trustee who manages it for the benefit of third parties, the beneficiaries of the trust.

Undivided Interest – Interest of a co-owner that gives him (or her) the right to possession of the entire property along with the other co-owners.

Warrants – In conveyancing, to assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To stipulate by an express covenant that the title of a grantee shall be good, and his possession undisturbed.

Warranty Deed – A deed that conveys title and warrants that title is good and free of liens and encumbrances.

Wild Deed – A deed not in the chain of title. An instrument which is recorded but, because some previous instrument connecting it to the chain of title has not been recorded, will never be discovered in the indexes.

Citations:

IAAO, Property Appraisal and Assessment Administration

Black's Law Dictionary

Real Estate Law

Oklahoma Statutes