Introduction

Before the modern-day concept of land ownership, title to real property was evidenced primarily by possession of the land and the power to defend the land against others. The earliest method of transferring title to real property was simply surrender of possession by the claimant to another.

The use of deeds to convey real property has a long and colorful history. Personal property has always transferred by giving possession of the property itself. In feudal land transfers, the seller presented a clod of dirt from the land to the buyer in the presence of witnesses to symbolize delivery of title. Today, the delivery of the deed constitutes the actual transfer of title to the land.

A deed is a legal instrument in writing, duly executed and delivered, whereby a grantor (owner) conveys to a grantee some right, title, or interest in or to the real estate.

Essential Deed Elements

While each state has its own requirements, Texas deeds must contain several essential elements to be legally operative:

- It must be in writing. While most deeds are completed on printed forms, there is no legal requirement that any specific form be used as long as the essential elements are included.
- The grantor must have legal capacity, and the grantee must be capable of receiving the grant of the property. A person who is competent to make a valid contract is considered competent to be a grantor.
- The grantor and grantee must be identified in such a way as to be ascertainable.
- The property must be adequately described.
- Operative words of conveyance must be present. All standard form deeds include the necessary legal language that actually transfers the property.
- The deed must be signed by the grantor, or grantors if the property is owned by more than one person.
- The deed must be legally delivered to the grantee or to someone acting on the grantee's behalf.
- The deed must be accepted by the grantee. Typically, deeds are accepted by the grantee but in certain circumstances, the grantee could reject delivery of the deed.

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1 The 2016 REPTL Leadership Academy, Real Estate Division, consisted of the following Texas attorneys: Newman “Tree” Baker, Allison Bastian, Michaella Dietrich, Travis Gray, David Sayabouasy, Katherine Van Wagner, and MarJuana Williams
Types of Deeds

Deeds can be classified in numerous ways. Broadly, deeds are classified as either official or private. Official deeds are executed pursuant to court or legal proceedings. Most property transactions, however, involve individuals and business entities using private deeds.

Deeds are also categorized based on the type of title warranties provided by the grantor. The general warranty deed, for example, provides the highest level of protection to the buyer. The quitclaim “deed,” on the other hand, typically provides the least buyer protection, if any.

Deeds also represent two different types of conveyances: (i) voluntary conveyances and (ii) involuntary conveyances. Voluntary conveyances usually come in the form of a deed or within the provisions of a will. Involuntary conveyances are when an owner of a property is divested of his/her interest in the property by a third-party (i.e., condemnation, adverse possession, foreclosure, tax sales, etc.).

It is the goal of this article to explain many of the questions and legal issues that arise regarding deeds, land ownership, and conveyances in the State of Texas. This article is intended to provide general guidance only. It is not a substitute for the advice of a lawyer. We hope, however, that by providing Texans with a better understanding of their legal rights and remedies, this article will prevent many legal problems from arising.

The following is a selection of common questions related to general conveyances, deeds, and their functions.

What is a Legal Description?

The legal description within a deed is the most common and accurate way to describe real property. Most people believe that the property address is the proper way to identify a property and for the purposes of using Google Maps or MapQuest to find directions to a specific location (i.e., a friend’s house, a restaurant, a movie theater, etc.); that assertion is accurate. But to adequately describe a property for conveyance purposes, the property address typically does not describe real property sufficiently.

The most common types of legal descriptions are “Lot and Block” and “Metes and Bounds” descriptions. A “Lot and Block” description is more common within a platted subdivision while a “Metes and Bounds” description usually involves either an unplatted property or a property that has an irregular shape. To understand a “Lot and Block” description, one must understand how a property’s lot and block number is determined (note that lots and blocks may also be identified by letters). When a plot of land is being developed, a plat is usually drafted showing the land being subdivided into smaller parcels known as blocks and further subdivided into smaller parcels referred to as lots. The plat will be filed in the county property records in which the property is located and will usually provide the dimensions of each lot and designate a number to each lot as well as to the block that the lot lies within for identification purposes.

Within the “Lot and Block” description, one can expect this type of legal description to contain, at a minimum, the lot number, block number, subdivision name, and reference to the recorded plat. As for a “Metes and Bounds” description, this description is usually the most accurate as the boundary lines of the property are determined through the use of terminal points and compass angles.

With the aforementioned information in mind, one can see the importance of describing a parcel of
real property by its legal description as the description itself will usually provide, directly or indirectly, the dimensions of the subject property. It is imperative to always use a proper legal description when dealing with real property given that one of the essential elements of a deed is to adequately describe the property being conveyed. To describe a property using anything other than a proper legal description (i.e., property address, parcel identification number, etc.) may jeopardize a conveyance of real property or cause an instrument being filed with the county clerk to be incorrectly indexed.

**What is the Difference Between a Special Warranty Deed and a General Warranty Deed?**

“Warranty Deed” refers to a deed that contains both express and implied warranties (as opposed to a deed without warranties). A general warranty deed expressly warrants the entire chain of title all the way back to the property’s original owner and binds the grantor to defend the grantee against title defects even if those defects were created prior to the grantor’s period of ownership. A general warranty deed warrants that the grantor has not transferred any interest in the property to anyone other than the grantee and that the property is free of encumbrances other than those specifically excepted within the granting deed itself.

Here is an example of a typical general warranty clause: “Grantor does hereby bind Grantor and Grantor’s heirs and legal representatives to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the matters set forth in this General Warranty Deed, unto Grantee and Grantee’s heirs, legal representatives, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.”

In a special warranty deed, the grantor’s warranty is limited to defects arising only during the grantor’s period of ownership. Here is an example of a typical special warranty clause: “Grantor does hereby bind Grantor and Grantor’s heirs and legal representatives to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the matters set forth in this Special Warranty Deed, unto Grantee and Grantee’s heirs, legal representatives, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.”

**What is a Quitclaim “Deed”?**

The term Quitclaim “Deed” is really a misnomer. A quitclaim is not a deed at all as it does not, in and of itself, establish title in the party or parties receiving the quitclaim deed. A quitclaim deed merely transfers to the grantee (the party or parties receiving the quitclaim deed) whatever present interest the grantor (the party or parties giving the quitclaim deed) may have in the property and interest described therein. A quitclaim deed will not transfer any property at all if the grantor does not own any interest in the property described.

Quitclaim deeds are often utilized in situations where the grantor lacks clear title to the property in question. Quitclaim deeds do not include any express or implied warranties including any warranty that the grantor owns any interest in the land described nor do they offer any innocent purchaser notice protections (bona fide purchaser for value) that other deeds may offer [where its mere existence puts the recipient and others on notice that there may be superior title claims]. Additionally, quitclaim deeds do not provide any after-acquired title protections. Therefore, if the grantor of a quitclaim deed has no interest in the property described at the time the quitclaim deed is executed and delivered but later acquires an interest in the property thereafter, the grantee does not have any right to the interest acquired later by the grantor. Title companies will, generally, not insure a transaction if a quitclaim deed is in the chain of title due to the above-mentioned issues a quitclaim deed poses.
Lastly, keep in mind that entitling an instrument “Quitclaim Deed” does not necessarily mean it will be treated as such by Texas courts.

**Are a Deed and Deed of Trust the Same Thing?**

In short, no. However, they often work in conjunction with one another. While a deed conveys the grantor’s described interest in real property to the grantees, a deed of trust is an instrument that transfers legal title to a trustee to hold as security for a party lending money to the grantee for the purchase of the real property interest. The grantee borrowing the loan retains equitable title to the real property.

A deed of trust is commonly used to secure an obligation or promise made by the grantee/borrower to repay borrowed funds used to purchase real property. The grantee/borrower has the right to occupy and use the real property subject to the mortgage. If the grantee/borrower defaults on the loan (i.e., fails to make timely payments or breaches another term of the loan), then the lien against the property may be foreclosed on by the lienholder. In the event the loan is fully repaid, the grantee/borrower will then own both equitable and legal title to the property, and the property will no longer be encumbered by the deed of trust lien. Generally, upon full repayment of the loan, the lienholder will file a Release of Lien in the county where the property is located, which will place the public on notice that grantee/borrower now has full legal title to the real property. Like a deed, deeds of trust are customarily recorded in the county records where the property is located to put the public on notice of the property’s encumbrance.

Consider the operation of a deed of trust similar in concept to the way you can finance the purchase of a car. Until the car is fully paid off, your interest in the car is subject to the loan agreement you have with the financing institution. If a car payment is missed or any other term of the financing agreement is breached, the car may be repossessed by the financing institution.

**What is the Difference Between a Mortgage and a Deed of Trust?**

Generally, a purchaser of real property requiring financing will, depending on the state in which the property is located, use a mortgage or a deed of trust. While both of these instruments generally function the same way in that each is a financing instrument that places a lien on a borrower’s property to secure repayment of a loan, there are some major differences between the two.

The main difference involves the number of parties. A mortgage only involves two parties: the lender (or mortgagee) and the borrower (or mortgagor). If the borrower fails to pay back the lender, the lender can take back the property through judicial foreclosure, which requires the assistance of the courts. A deed of trust, on the other hand, involves three parties—the borrower (or grantor), the lender (the trust beneficiary), and the trustee. The title to the real property is held by the trustee until the borrower satisfies the loan. If the borrower fails to adhere to the terms of the loan (i.e., defaults on the loan), the lienholder may direct the trustee to conduct a nonjudicial foreclosure of the property (no involvement of the courts).

Each state can, therefore, be divided into two categories: “mortgage states” and “deed of trust states.” Texas is, of course, a deed of trust state. Texas and other deed of trust states are also known as “lien theory” states as title is held by a trustee until the amount loaned to the borrower is satisfied. Once the loan is satisfied, the deed of trust lien is extinguished and both legal and equitable title vests in the borrower. Mortgage states are known as “title theory” states as title is transferred to the borrower prior to the loan being satisfied. This is why judicial foreclosures are necessary in mortgage states as the
borrower already has title to the property and thus, can only be divested of title to the property by the courts.

**What is the Difference Between a Reservation and an Exception?**

A reservation is a new right created by the grantor out of the land granted. This new right created did not exist prior to the grant. The grantor is retaining a right out of the land. An example reservation clause might read: “I grant, convey, and sell to grantee Blackacre with a reservation as to the minerals.” An exception excludes something from the grant which would otherwise pass to the grantee. An exception serves to prevent the interest from passing with the grant and does not create a new right. Easements are normally listed as exceptions to conveyances.

**What is a Mineral Deed and Why Might I Need One?**

The mineral estate of land is a separate interest from the surface estate that conveys with the surface estate until the minerals are severed. The mineral interests may be separated from the surface interest by a reservation, lease, or by a mineral deed. Once the minerals are separated from the surface interest, the minerals may be conveyed by a mineral deed. Mineral deeds serve to convey the rights to the minerals separately from the surface rights of the property. A mineral deed may include warranties to title or may take the form of a quitclaim deed.

The term mineral refers to oil and gas in most mineral deeds but it may also refer to coal, lignite, and other minerals. Before signing a mineral deed, be sure that the minerals are properly identified. Mineral interests can be fully or partially conveyed in mineral deeds. For example, if A owns a half (½) interest in the minerals of Blackacre, A may convey a quarter (¼) interest using a mineral deed. It is important to be clear when conveying any mineral interest. A carelessly drafted mineral deed could convey more than the grantor intended and leave the grantor with no mineral interest.

Any time land is purchased, the buyer and the seller should be aware of the mineral interests conveyed with the property. In Texas, the mineral estate is the dominant estate. This means that the mineral owner has the right to use as much of the surface as necessary to explore for and extract the minerals (right of ingress and egress).

**What is a Transfer on Death Deed and Why Might I Use One?**

A Transfer on Death Deed (TODD) is a special type of deed used to transfer real property to an individual/entity designated by the owner of the property, with the said transfer of property not occurring until the death of the real property owner. A TODD allows you, as the owner, to name both primary and contingent beneficiaries. In fact, a TODD works much like a life insurance policy or “Transfer On Death” designation on a bank account since the asset passes to your named beneficiary upon your death outside the probate system.

To be effective, a TODD must:

1. Have the elements and formalities of a recordable deed:
   - Be in writing;
   - Contain the legal description of the property;
   - Include the name and address of the designated beneficiary or beneficiaries; and
   - Be signed by you (the property owner) in the presence of a notary public;
2. State that the transfer of your interest to the designated beneficiary will not occur until your death; and
3. Be recorded **before** your death in the deed records in the county clerk’s office of the county where the real property is located.

Further, a TODD can be revoked during the property owner’s lifetime by signing a new TODD that expressly revokes the prior one, or that specifies that the property should pass to someone else, or by signing a separate document that expressly revokes the prior TODD. The property owner must sign the revocation before a notary and record it in the deed records in the county where the deed being revoked is recorded. Notably, a **recorded** divorce decree between a transferor and a designated beneficiary results in revocation of the TODD as to that designated beneficiary.

Significantly, a TODD trumps a will. Thus, a property owner may **not** revoke a TODD by making a contrary provision in a will.

**What is a Lady Bird Deed and Why Might I Use One?**

A Lady Bird Deed, also known as an Enhanced Life Estate Deed, is a legal document in which a property owner may transfer property to his/her designated beneficiaries while retaining a life estate as well as control over the property. Similar to the TODD, the Lady Bird Deed allows the property owner to transfer the property to designated remaindermen without the necessity of probate (property owner’s life estate interest would extinguish upon the property owner’s death and title to the property would vest in the remaindermen). Also, like the TODD, a Lady Bird Deed does not create an irrevocable interest in the remainder beneficiaries. Instead, a Lady Bird Deed reserves the right to:

- Take the property back;
- Mortgage, lease, sell, convey, and otherwise dispose of the real estate without involving the remainder beneficiary;
- Keep or spend the proceeds from any mortgage, lease, or sale of the property without giving any part of the proceeds to the remainder beneficiary; and
- Add or remove remainder beneficiaries during the owner/life tenant’s lifetime.

Moreover, use of a Texas Lady Bird Deed can preserve Medicaid eligibility during the property owner’s life. The deed can also prevent the property from going to the government at the time of the property owner’s death under the Texas Medicaid Estate Recovery Program. Finally, because full control is maintained by the property owner during the property owner’s life, the property owner may continue to claim favorable property tax and asset protection exemptions available in Texas.

**What is a Trustee’s Deed?**

A trustee’s deed is generally thought of, in the State of Texas, as a foreclosure deed executed in connection with a nonjudicial foreclosure sale. Nonjudicial foreclosures in Texas are governed by the [Texas Property Code](https://www.texaslegis.gov/), which outlines the foreclosure process for residential property secured by a deed of trust lien.

Within a deed of trust, a trustee (the grantee under the original deed of trust instrument), appointed by the lender or beneficiary, holds the deed to the property as collateral for a loan to be repaid by the borrower (the trustor under the deed of trust). If the borrower fails to fulfill the terms of the deed of trust, the lender may direct the trustee to enforce the terms of the deed of trust and begin
the foreclosure process. This starts with a notice mailed to the borrower, now debtor, of the intent to accelerate the loan. If the default is not cured by the Borrower within the specified time period provided for within the deed of trust or by law, then the Lender may direct the Trustee to move forth with foreclosing on the property. The Trustee will post a Notice of Sale in the county in which the subject property is located. Note that foreclosure auctions usually take place on the first Tuesday of each month (if the first Tuesday falls on a National Holiday, the foreclosure auction is moved to the following Tuesday).

At the conclusion of the nonjudicial foreclosure auction, the Trustee delivers the deed to the highest bidder at the sale. (Be aware that the Lender may place a credit-bid and purchase the property at the foreclosure auction.)

The Trustee’s deed usually identifies three primary parties: the grantor (the Trustee within the deed of trust) the beneficiary (the lender and grantor in the deed of trust) and the buyer (Grantee and purchaser of the property at the foreclosure sale).

In addition to meeting the format and content requirements for a standard deed, the trustee’s deed recites that all conditions in connection with the foreclosure and sale were satisfied, identifies the foreclosing entity, purchaser, sale price, and sale date and time. It must be signed by the trustee and notarized before it is recorded and filed in the county where the property is located.

Texas law stipulates that the buyer at a foreclosure sale “acquires the foreclosed property ‘as is’ without any expressed or implied warranties, except as to any warranties of title, and at the purchaser’s own risk.”

**What is a Deed-in-Lieu of Foreclosure?**

A deed-in-lieu of foreclosure is a means for a borrower and/or owner of a property to convey the property directly to a lender that holds a deed of trust or mortgage (or perhaps directly to a special purpose entity or government-sponsored enterprise affiliated with the lender), rather than process a foreclosure of that lien.

A deed-in-lieu of foreclosure does not cut off inferior or subordinate liens. Since the conveyance is voluntary, all subordinate or inferior liens remain attached to the property and must be released or exceptions made for such liens in any title policy issued.

Deeds-in-lieu of foreclosure commonly preserve the underlying lien so title does not merge in the grantee lender. This distinction allows the lender to foreclose the lien in the event that process is deemed preferable to relying solely upon the deed-in-lieu of foreclosure, such as when a subordinate lien has attached to the property. However, the preservation of the lien in the deed-in-lieu of foreclosure also necessitates that the underlying lien be reflected on any title commitment issued and a release obtained unless the lien was actually later foreclosed.

When a borrower and lender agree to a deed-in-lieu of foreclosure, two documents are customarily executed by the borrower:

1. A deed that transfers ownership of the property to the lender, and
2. An estoppel affidavit. (Sometimes there may be a separate deed in lieu agreement.)

The estoppel affidavit is executed and acknowledged by the grantor (borrower), attesting to the fairness of the transaction, the value of the property, the consideration paid, or other factors showing the intention to make a genuine transfer. Unlike the actual deed-in-lieu of foreclosure, the estoppel
affidavit is not an instrument of conveyance and is not recorded in the real property records.

Most major mortgage lenders, servicers, and investors have standard form deeds-in-lieu that are required to be used in each particular state but differ little in content. All deeds-in-lieu of foreclosure recite the granting party’s (the borrower) information, to whom the grantor is conveying title to the property (the lender), the terms of the original loan, and the consideration given by the parties. The deed-in-lieu of foreclosure is executed by the borrower, notarized, and recorded in the real property records for the county of which the property is located.

**What are Deed Restrictions?**

Deed restrictions are a form of private land use regulation (as opposed to public/government land use regulations). Deed restrictions may also be referred to as “restrictive covenants.” Such restrictions are placed on real property by the owner for the benefit of the property or perhaps the owner’s adjacent property. The owner’s intent may be to enhance the property’s value, or to comply with a condition to approval for development. The subject matter of the restrictions for private land use is practically unlimited, whereas public land use regulation is limited to issues related to health, safety, and public welfare.

Originally, such restrictions were contained in individual deeds; the modern approach typically involves a separate document entitled the “Declaration of Covenants, Conditions, and Restrictions,” or something similar. Some of the more common restrictions include design and construction standards, permitted use limitations, and mandatory membership in an owners’ association.

To be enforceable against a landowner, the landowner must have notice of the restriction. A landowner is deemed to have notice of all recorded restrictions. Enforcement of restrictions may be waived under certain circumstances, and a four-year statute of limitation applies.

**Must a Deed be Filed or Recorded with the County?**

Although the validity of the deed is unaffected if the deed is not filed or recorded with the county (a transfer on death deed being an exception), it is recommended that the deed be filed in the county property records in which the property is located. (Note that if the property is located within more than one county, then the deed should be filed in each county in which the property is located.) The purpose of filing the deed in the county property records is to place the public on notice that a conveyance has occurred and that there is a new owner of the conveyed property. Failing to file/record the deed in the county property records may pose a risk of loss to the new owner because a subsequent bona fide purchaser of the property (individual/entity paying value for the property and having no knowledge of the new owner’s interest in the property) may have a stronger claim to the title of the property.

Filing the deed in the county property records as soon as feasibly possible creates constructive notice to the public of one’s ownership to a property and helps mitigate the risk of another claiming superior ownership. To file a deed or any instrument relating to real property, contact the county clerk for the county in which the property is located. There is usually a fee associated when filing/recording documents with the county clerk, and the county clerk will only file/record original documents (copies of originals will not be recorded unless it is a certified copy).

**Can I Prepare a Deed Myself?**

Yes, but proceed with caution! As previously mentioned, Texas deeds must satisfy certain requirements to be valid. Section 5.022 of the Texas Property Code provides a form of deed for fee simple conveyances that satisfies all of the required elements. However, the particular circumstances of
any conveyance may also necessitate additional concepts that are critical to the parties. The deed is perhaps the most fundamentally important document in any real estate transaction. While you could prepare your own deed, it is best left in the hands of a licensed Texas attorney.

A Note on Purchasing Property from a City:

*Is There Anything Extra I Need to Do If I Want to Purchase Real Property from a City?*

Many people believe that they can simply purchase property from a city in the same way they can do so from any private seller. This is especially true of private party tenants who hold long-term ground leases with landlord cities on which the tenant has constructed buildings and infrastructure, and who believe they can simply purchase the land on which they have leased and improved.

However, with a few exceptions, a city may not directly sell property to a private party without the city undertaking extra steps that are required by state law. For example, if the property of interest is being used by the city as a park, a city may need to hold an election of city voters before the land may be sold, as well as meet other requirements such as making findings and holding public hearings.

For other city properties, arguably the most common ways for a city to sell property to a private individual would either be to (1) sell it through a public auction, or (2) list the property with a broker for thirty days, after which a city may sell the property to a “ready, willing, and able buyer.”

*What Are the Exceptions to Those Extra Steps?*

There are a few major exceptions. First, a city may sell real property it owns directly to certain nonprofit or religious organizations who will use the property for certain public interest purposes—including low-income housing or rental, and general revitalization. Next, a city may also sell directly to certain nonprofit organizations that will use the property for public purposes. If the nonprofit fails to use the property in such a manner, the property would immediately revert back to the city. Finally, a city with a population of 20,000 or less may sell its property to an economic development corporation, which must use the property for a public purpose, and just like with the nonprofits, the property would revert back to the city if the economic development corporation failed to do so.

Other exceptions to the extra steps involve property that is part of an island, flooded or submerged land; property to be used by a juvenile board of a county; narrow strips of land; land inaccessible to public roads; streets and alleys to be abandoned; and land the city wants to have developed by an independent foundation.

Again, buyers should enquire with the city that owns the property to learn what steps the city—and, in some circumstances, the buyer—may need to take in the event of a sale.

**Conclusion**

Real property conveyancing does not have to be confusing—it just requires a bit of caution and consideration. While the different types and purposes for which deeds exist may seem perplexing, an experienced real estate attorney can help you sort out the relevant matters and guide you towards the best path to take when buying or selling real property. Nevertheless, it does not hurt to have a bit of education on these matters yourself—it can only help you better understand the transaction you are aiming to undertake, and even help you communicate better with your attorney.

Some main points to consider in real property conveyances:

1. **As a seller, what do I intend to convey**—is it the entirety of the real property, or do I want to
reserve the mineral or other interests? Do I want to retain a life estate? Are there any restrictions to the property use by the buyer I might wish to implement via restrictive covenants?

(2) **When and to whom do I intend to convey it?** Is this a conveyance which I want to have happen immediately, or do I want my property to convey upon my death? Which party or entity is the intended grantee?

(3) **How much protection do I want to give or accept from the other party**—am I comfortable making such broad warranties to title as in a general warranty deed, or would I rather limit my warranties to the time I held an interest in the property—thus, implicating a special warranty deed? Maybe I do not want to warrant title at all and use a no warranty deed? Or, do I want to just use a quitclaim deed and potentially convey no interest at all? What warranties do I absolutely need as the buyer of a real property interest? Will I accept a quitclaim deed? (Generally speaking, it is not advisable to accept a quitclaim deed as the grantee receiving the real property interest, especially if there are no title issues preventing the grantor from making warranties.)

As stated in the introduction, the intent of this article is to give a basic overview and general guidance on the questions and issues arising regarding conveyances, deeds, and land ownership in Texas. It is not to be considered legal advice upon which anyone may rely; it is advisable to retain your own legal counsel before undertaking any sort of real property transaction. It is our hope that this article will provide you with at least a general education—or “road map” —of sorts which will better assist you in decision-making down the road in regards to your real property conveyancing transactions.

*Good luck!*