

## Property Title Conveyance

### How Real Property is Conveyed:

- ◆ **Patent.** Prior to Colorado's statehood, all land in the State was owned by the Federal Government. The original conveyance from the United States Government into private ownership is by a document which is similar to a deed but which is called a United States Patent. Likewise, land belonging to the State of Colorado can be conveyed into private ownership by a patent from the State government.
  
- ◆ **Transfer by Judicial Proceedings**
  - Quiet Title Decrees** – Court order issued by a State or Federal District Court which determines title or other interests in real property. In order for a Quiet Title Decree to be effective, the individuals whose interests in the property are affected must be properly served.
  - Divorce Decrees** - District Court is empowered with the authority to both vest and divest title to real property in a divorce proceeding and may include language in the Divorce Decree which expressly vests title or the court may order litigants to execute such deeds or other conveyances as are necessary to convey title.
  - Adverse Possession** – Interests in real property can be conveyed under some circumstances, simply by possessing the property and claiming ownership. However, a recorded court decree is required to confirm title by adverse possession.
  - Accretion and Reliction** – Change in the location of a stream or river may result in the enlargement of an adjacent parcel of land through accretion or reliction. This will rarely result in a recorded document since the boundary changes with the change in the body of water. Chances are it will ultimately develop into a dispute that can only be settled by a boundary line agreement or a Quiet Title decree.
  - Bankruptcy** – An order of the bankruptcy court is required to approve any conveyance of property out of the bankruptcy estate.
  
- ◆ **Transfer by Government Action**
  - Condemnation** - Government has the authority under eminent domain to take or conscript private property for public use, however the government can take property only for a legislated public purpose and the owner of the property must be fairly compensated for the property. Can be done through agreement with the landowner or through condemnation proceedings in the court.
  - Escheat** – Property is abandoned or the owner dies without leaving heirs or other successors and no person or entity can be found to claim ownership. As a final resort, the title to such property passes to the State.
  - Dedication** – Found on a subdivision plat, dedication means that the owner of a property is conveying the property or a portion thereof to the public (government) for public use. The subdivision plat, when approved by the proper governmental authority constitutes acceptance of the dedicated property.

**Forfeiture or Seizure** – As a result of governmental tax enforcement and punishment for criminal activity, land is sometimes seized and sold by government agents to satisfy a tax liability or to recover funds acquired through criminal activity.

**Vacation** – Process by which a governmental entity conveys its interests in roads, streets and other public ways. Vacation is accomplished by resolution or ordinance enacted by the governing body to terminate the rights of the public in the ownership interest of the governmental entity in a street or road. The process of vacation is governed by CRS 43-2-303 and the effects of the vacation are governed by CRS 43-2-302.

- ◆ **Deeds.** A deed is the most common document used to convey real property. CRS 38-30-113 sets forth the basic language for deeds:
  1. Any document affecting title to real property **MUST** be in writing
  2. **MUST** include the name of the Grantor
  3. **MUST** include the name of the Grantee
  4. **MUST** include a statement of consideration
  5. **MUST** include legal words of conveyance. In Colorado, the statutory operative words of conveyance are “sell and convey” (CRS 38-20-113) although they will sometimes include more.
  6. **MUST** include a sufficient legal description. (A sufficient legal description must distinguish the property being conveyed from all other property in the world.)
  7. **MUST** be signed by the Grantor.
  8. **MUST** be delivered to grantee. Colorado law presumes delivery to the grantee on the date and time of recording.
  9. Should include a date but this is optional and does not invalidate a deed.
  10. May include covenants of warranty but not required for a deed to be valid.
  11. May be acknowledged, is not invalid if it is not.
  12. A deed is valid if it is not recorded, however delivery is not presumed and in order to establish its priority and for it to constitute notice to the world, a deed must be recorded in the county where the property is located. CRS 39-3-102 requires that the “ownership of real property shall be ascertained by the assessor from the records of the county Clerk and Recorder”. Subsequent court cases have determined that it is the **land records** of the Clerk and Recorder that will be used to determine real property ownership.

#### **Types of Deeds:**

**General Warranty Deed** – This type of deed contains the most extensive guarantees and covenants of any deed. Inclusion in the deed of the words “warrants the title” makes the deed a Warranty Deed. Use of these words implies the following covenants of warranty (CRS 38-20-113):

- As of the date of the deed, the grantor is the owner of the land being conveyed and has the right and full power to convey the land
- The property is free and clear of encumbrances unless excepted from the warranties
- Grantor guarantees quiet and peaceful use and possession of the property and will defend the title of the property against the claims of all persons

- Covenants of warranty will be binding on the grantor and his heirs, representatives and assigns.
- A Warranty Deed passes after-acquired title.

**Special Warranty Deed** – If a deed includes the words “warrants the title against all persons claiming by, through and under me”, or roughly equivalent language, it constitutes a Special Warranty Deed (CRS 38-30-115). This guarantees the property against claims in the property created by the grantor only and not against other claims. This deed also passes after-acquired title.

**Bargain and Sale Deed** – If a deed includes the conveyance language, “sell and convey”, but does not include any warranty of title, it is classified as a bargain and sale deed. This type of deed constitutes a bare conveyance of title without any covenants or warranties, but by law conveys after-acquired title.

**Quit Claim Deed** – A deed which does not include the words “sell and convey”, but does include the words “quit claim” as the language of conveyance is a Quit Claim Deed (CRS 38-30-116). This contains no covenants of warranty and by using the words “quit claim” the grantor is conveying only whatever interest he may have in the property IF ANY. This deed does not guarantee that the grantor has any interest in the property at all. It merely conveys whatever interest the grantor may have, if the grantor has any interest at the date of the deed. A quit claim deed does not pass after-acquired title.

**Other Conveyance Documents:**

Public Trustee’s Deed	Personal Representative’s Deed
Sheriff’s Deed	Conservator’s Deed
Treasurer’s Deed	Grant Deed

**Documents that do not convey title:**

Mortgage Deed	Lease
Deed of Trust	Affidavit
Correction Deed	Letters Testamentary
Marriage License or Certificate	

**Deed Name Variances:**

**Colorado law (CRS 38-35-116) Variances in names in instruments affecting the title to real property.**

- (1) (a) The middle name or the initial of a middle name appearing in a name contained in an instrument affecting the title to real property or in a signature or an acknowledgment shall be deemed prima facie to be a material part of such name.
- (b) One or more of the following variances between any two instruments affecting the title to the same real property shall not destroy or impair the presumption that the person so named is the same person in both instruments:

- (I) The full first name appearing in one and only the initial letter of that first name appearing in the other;
  - (II) A full middle name appearing in one and only the initial letter of that middle name appearing in the other;
  - (III) The initial letter of a middle name appearing in one and not appearing in the other; or
  - (IV) A full middle name appearing in one and not appearing in the other.
- (c) In spite of a variance described in paragraph (b) of this subsection (1), the person so named in both instruments shall be presumed to be the same person until such time as the contrary appears, and, until such time, such instruments, the record of such instruments, or a certified copy of the record of such instruments shall be admissible in evidence as though the names in the two instruments were identical.

The same name variance principles apply to mortgages, powers of attorney, death certificates, and any other document affecting title to real property.

**Assessor's Role:**

The primary duty of the Assessor's office is to determine, to the best of our ability, the STATUS of ownership to every parcel of land in the county. We are not concerned with the QUALITY of the title, however we do have a statutory obligation to be legally correct in the transfer and documentation affecting real property titles.