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A Paralegal's Guide to Deed Drafting

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A Paralegal's Guide to Deed Drafting



Kevin Knight

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A Paralegal's Guide to Deed Preparation

This seminar is a short introduction to what could be a multi-day seminar! It's not comprehensive but should be enough to trigger or prompt key questions and answers needed to successfully navigate deeds and property transfers.



I. Deeds – What They Are and Who Needs Them

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- Starting off, let's sort out the differences between titles and deeds.
- They're closely aligned but not identical
- A person "takes title" to a property through the use of a deed.
- A deed is a document.
- What is needed to confirm "I deed you the property at 110 Jones Street, Happyville, Ohio?"

A. What's the Alternative to a Deed?

- In a word, none.
- The only real alternative to a deed is a "sovereign takeover" in countries other than the US of A.
- Court orders can force the transfer of property?
- What about a divorce? What about eminent domain?
- What about adverse possession?

B. Does One Size Fit All?

- Not state to state and sometimes not region to region within a state.
- Different states have different requirements
- Different forums have different requirements
- Different scenarios can create different requirements

C. What Questions Need to Be Asked and What Answers Need to Be Given to Prepare a Deed?

- Who owns the property
- Who has the right the convey the property
- Who is to receive the property
- Who is going to use the property
- How is the property going to be used
- Who has the legal description for the property
- Has the legal description been fully and completely vetted and what are the multiple ways that the description has been determined
- When is the property to be conveyed

C. What Questions Need to Be Asked and What Answers Need to Be Given to Prepare a Deed? (Continued)

- Is there a “hook” for when and why the property is being conveyed
- Are all parties on each side (grantor, grantee, related persons and entities) “willing” “sound” and “ready”
- How is the closing being handled
- Who is going to “clean up the mess” and “close the deal”
- Are everyone’s eyes wide open as to what’s being given and received and is there anyone that might be surprised after the transaction occurs
- What is everyone trying to accomplish and what is their agenda



II. Types of Deeds

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- Since we agree that there's no "one size fits all", let's talk about some specific deed variations and what might be needed under a particular set of facts

A. Quitclaim Deeds

- Quitclaim deeds are like opinions-everybody has them and is likely willing to offer them up for a fee.
- When a person signs a quitclaim deed, they're surrendering their interest in a property.
- Sometimes they're used to clear title
- Sometimes they're used to make a point
- Good examples are the London Bridge and the Eiffel Tower for which I'm willing to execute a quitclaim deed in your favor for a small fee.

B. Special Warranty Deed

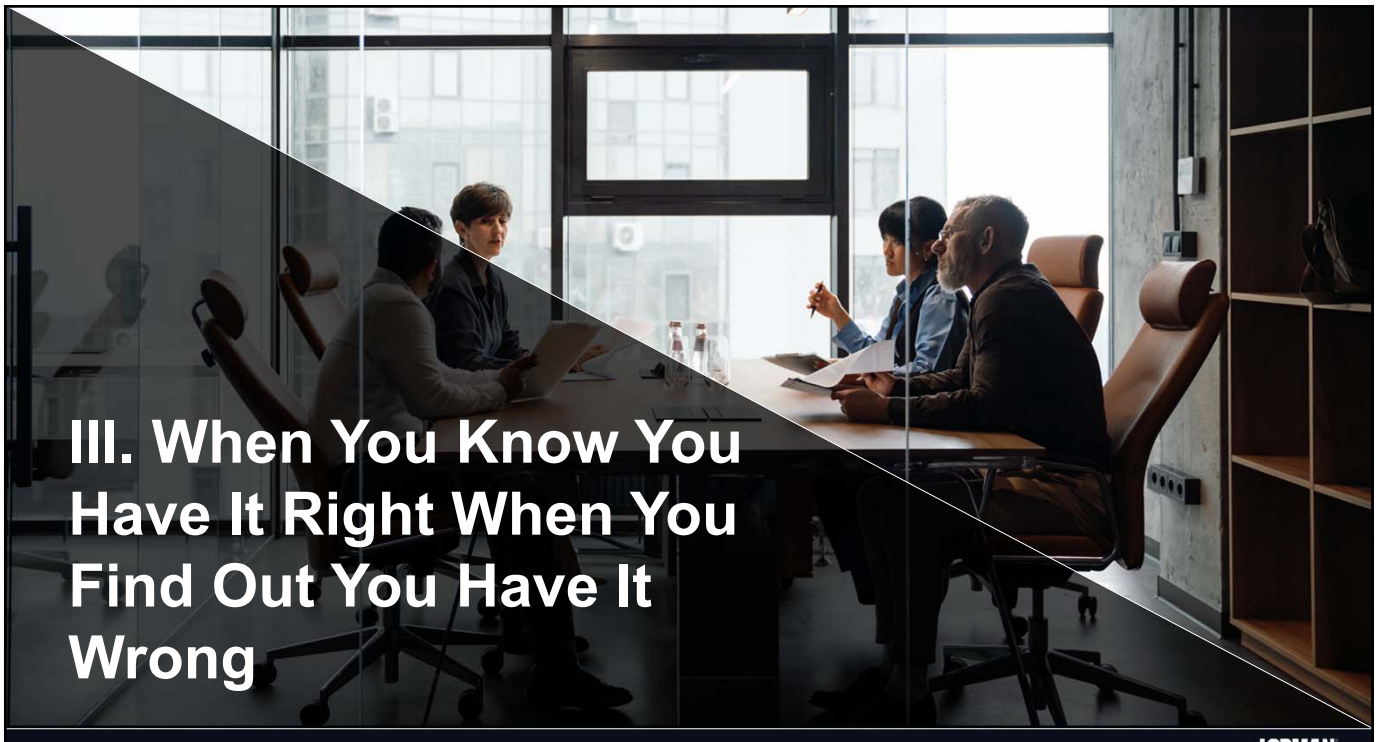
- Grantor only warrants that during his/her/its ownership, the grantor has done nothing to disturb the title to the property.
- Grantor is making no promises regarding clouds on the title before the Grantor took ownership.

C. General Warranty Deed

- Seller/grantor commits/guarantees that he/she/it: (1) holds clear, unencumbered legal title to the property; and (2) will pay or defend against any liens/claims against the property.
- This is a deed that makes the Seller “sweat about the details.”
- Keep in mind that as with any promise in life, it’s only as against as the person behind the promise. Sigh.

D. Bargain and Sale Deed

- Seller/grant represents that he/she it has title but doesn't guarantee that there aren't any claims to the property.
- It's better than a quit claim deed but not as good as a general warranty deed.
- These types of deeds are used with foreclosures, bankruptcies, tax deed sales, and the like.



III. When You Know You Have It Right When You Find Out You Have It Wrong

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- Sometimes, even when you do everything right in preparing a deed, there's still a detail or an issue that arises.
- The sooner the issue arises, the better the chance that the issue can be handled without a lot of effort.
- Once the ink is dry on the deed, the deed is recorded and someone takes occupancy or gives a loan associated with the purchase, the harder it is to resolve issues.
- Very seldom do people want to put more effort into fixing what went wrong unless they're required to fix the issue by the agreement, the deed warranties or the desire to avoid litigation.

A. Starting Out On the Wrong Foot

- Going too fast is always a problem.
- Failing to understand what the parties are trying to accomplish and what their real agenda is can be problematic
- Failing to troubleshoot the details that might create transaction issues from the outset
- Not having the real parties in interest dialed in from the outset creates later headaches.

B. Muddling in the Middle

- Failing to set aside enough time to unravel the prickly parts can cause a transaction to bog down.
- Do you have the right entities and person to sign the documents
- Do you have a good legal description
- If the property has been the subject of legal proceedings are the proper documents obtainable and do they need to be recorded

C. Completing the “Error of Your Ways”

- Some legal matters are worthy and ripe of “do overs” or “almosts”
- Deeds are not. If you don’t get it right, it might just be too late or it might just be uber expensive.
- Paralegals can NOT dispense legal advice but they do (whisper, whisper “but you’d have to ask the attorney to be sure”).
- The best paralegals are the ones who ask questions and create uncomfortable pauses where the attorney has to pay attention and make command decisions.
- There shouldn’t be a “we’ll just push through the problem” and it will turn out alright.



IV. People and “Things” That Own Property

IV. People and “Things” That Own Property

- On a basic level, it would appear that anyone and everything can be an owner and a grantee of a deed that transfers property.
- This is wrong. Completely wrong. And so we move forward discussing the “nots”

A. Who Can Be a Seller/Transferor? Who Can Be a Buyer/Transferee?

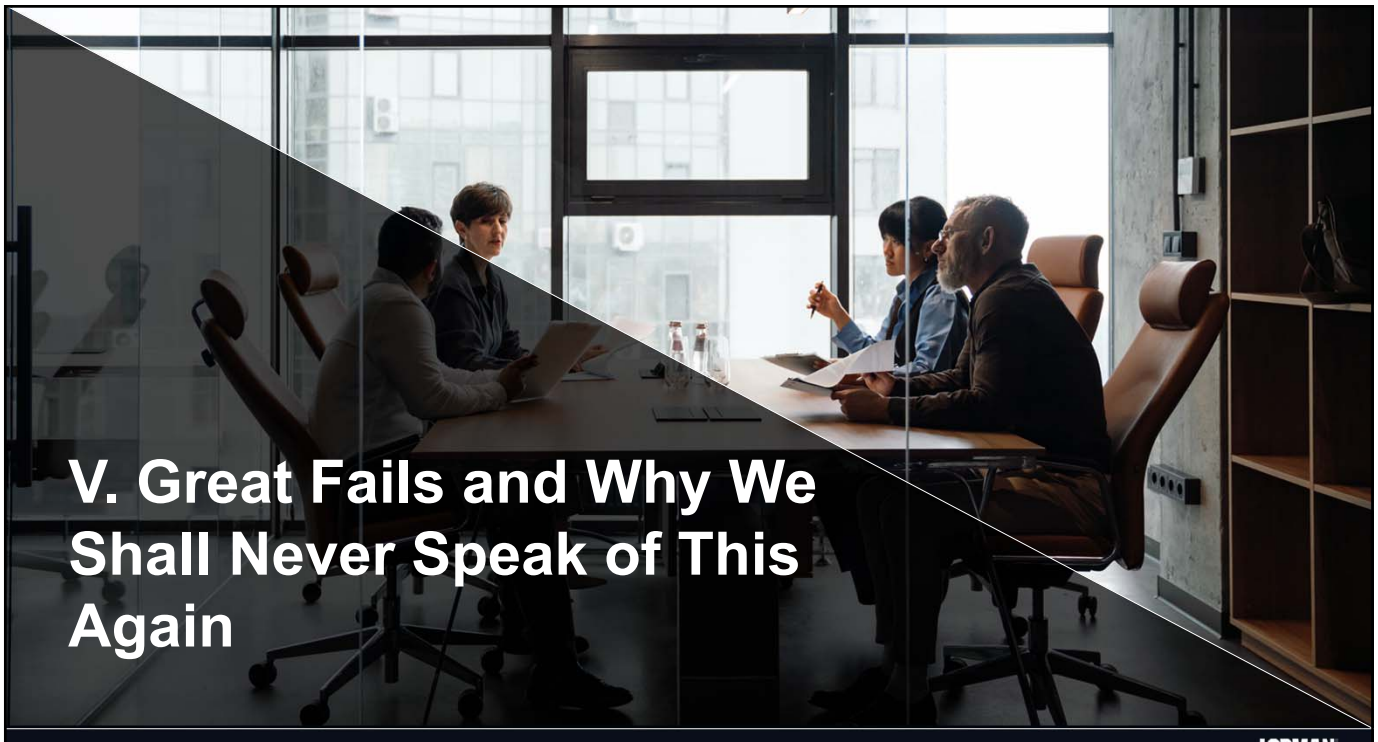
- The person transferring and receiving must be of sound mental capacity and “of capacity.”
- Minors are “sticky parts”
- People who have mental issues are even “stickier” than minors
- Fictional entities are cloudy with a chance of rain and you are guaranteed not to have the proper legal raincoat!
- People and entities that don’t want what you’re peddling aren’t good/proper grantees.

B. What Happens When You Get the Names Wrong?

- As an initial observation, it’s not horseshoes or hand grenades so it’s more likely “close but no cigar.”
- Idem sonans is more than just a clever Latin phrase but shouldn’t be counted on as being “universal cure” or panacea
- Common is not special when it comes to names even if it works with the “Name Game”

C. What Happens When the Names Change?

- Recitations don’t create the DNA ----heck, even the DNA doesn’t create the DNA needed sometimes.
- Invest in the B-attitudes: Be alert, be aware, be certain



V. Great Fails and Why We Shall Never Speak of This Again

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- Sometimes the best way to learn how to do something is to learn how not to do it…or least first learn what can go wrong.
- That's "reverse engineering" that works as well in products liability as it does in deed preparation.

A. Buying Swamp Land

- This is a true story that happened to a "friend." So starts the great fails when people talk about things that went wrong.
- In fact, there are law firms that specialize in clearing title. Why do you think that is? Clearly, someone saw a "need" and "filled it" when others cleared the path….
- The best story (or the worst depending on your perspective) is about thinking that you've bought something and ended up buying something else. Where's the Amazon of the realty world that assures if you hit the wrong button when you purchased it online or it's the wrong size or not what you thought it was when you agreed to purchase it, you can "send it back" and get that "credit?" The simple answer is that it doesn't exist. Yet. (Read the 2nd paragraph above and get busy!).

B. It's All In the Follow Through If You're Not Passing By……

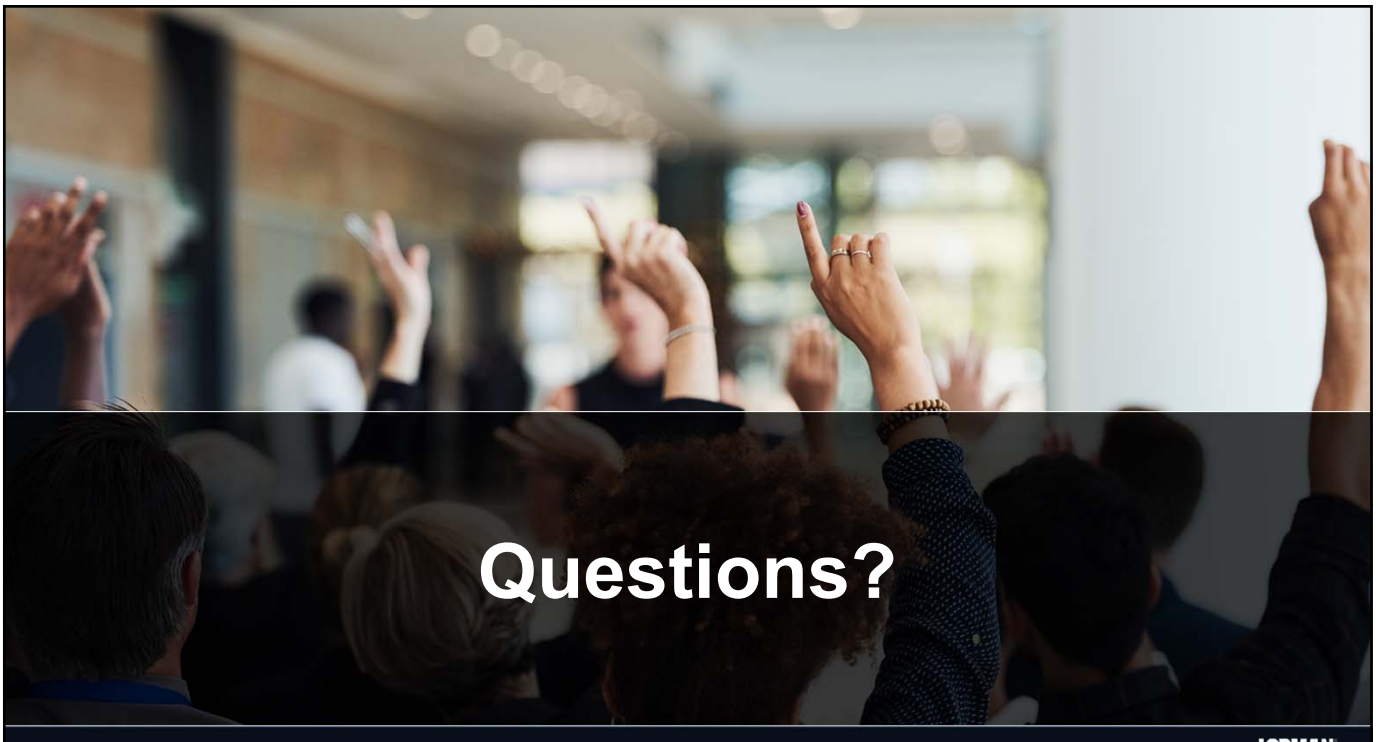
- Who meets
- Who gathers
- Who prepares
- Who officiates at the closing
- Who makes sure the deed is properly recorded
- These are just a few of the "whos" and the "whosits" to make sure that your follow through matches your swing (ask Tiger Woods about why he gets to wear the Green Jacket all the time and he'll explain this to you).

C. Six Eyes and Three Mouths Makes for a Happy Deed Monster

- In a phrase, "don't be lonely."
- Don't be known as the "Lone Ranger of deed preparation"
- Have at least 2 people watch every part of the deed process from cradle to grave and you stand a "better than average" chance of getting it right. Every time.
- This doesn't mean that 3 people do the same tasks. It means that 3 people are sensitive to the blueprint and check list of what is involved in the process of preparing a deed and closing the transaction to transfer title.

Mr. and Miss Bad Examples

- If you grew up in the 60s and the 70s and liked music, you know that some of the best albums had hidden tracks that weren't listed on the album cover but would "magically appear" at the end.
- So it is with these Mr. and Miss Bad Examples-these are just a few of the cases out there which cover some of the topics in this seminar.
- *McCreary v Lake Blvd. Sponge*, 133 Fla. 740 (1938)(compelling the removal of a home constructed on the wrong lot).
- *Jim Walter Corp. v Bracht*, 239 So.2d 643 (Fla. 1st DCA 1970)(home built on wrong lot and request to remove the home from the lot).
- Other cases to be discussed….



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