

Delaware Deeds

Outline by Edward A. Tarlov, Esquire

I. Conveying the Real Property – The Deed

A. Types of Deeds

1. Quit Claim Deed.

- i. The quit claim deed passes to the grantee all right, title and interest of the grantor, if any, to the property described in the deed.
- ii. The deed contains no implied warranties of title.

2. Special Warranty Deed.

- i. The special warranty deed contains warranties of title against the grantor and his heirs and all person claiming under him or them. It contains no warranty against the claim of paramount title by a person who did not obtain the title by, through or under the grantor. Indian Harbor, Inc. v. Sea Land Pines, Inc., Del. Super., Chandler J. (June 10, 1987).
- ii. The special warranty deed passes to the grantee the fee simple title or the interest which the grantor could lawfully convey.
- iii. The words “grant and convey” are construed to pass such title. 25 Del. C. §121.
- iv. 25 Del. C. §121 contains a form for a valid special warranty deed. The deed in the form indicated by 12 Del. C. §121

passes to the grantee the fee title to the property described therein together with all “tenements, hereditaments, franchises and appurtenances thereunto belonging; and the reversions and remainders, rents, issues and profits thereof.”

3. General Warranty Deed.

- i. The general warranty deed contains warranty of title against all persons whomsoever.

4. Legal Requirements of the Deed

- i. In order for a deed to be valid and enforceable, it must be in writing; describe with specificity the property conveyed; specify the names of the grantor and grantee; be signed; be sealed; be acknowledged; and be delivered.
- ii. The recording of the deed is not essential to its validity and enforceability. However, a deed has priority from the time that it is recorded in the proper office without respect to the time it was signed, sealed and delivered. 56 Delaware Laws, Ch. 318; N & W Development, Co. v. Harmon Carey, et. al., Del Ch., C. A. No. 6885, Hartnett v.c. (January 26, 1983). The statute is a “pure race to the recorder’s office” statute; that is, the first to file a valid deed gains priority and title. Id. Under this view, as between two grantees, both of whom gave a valuable consideration, a subsequent purchaser possessing knowledge of an unrecorded interest

in the property would still take superior interest in the property if he recorded his deed first. Id. See also, 66 Am.Jur. 2nd Records and Recording Law §186.

5. Requirements for Recording Deeds

i. The Deed should be in the form prescribed by 25 Del. C.

§121. The statutory form of deed requires the following:

1. Names of the grantor and grantee
2. Recital of the consideration
3. Words of conveyance “grants and conveys”
4. Description of premises
5. Recital of title
6. Signature and seal of grantor
7. Date
8. Delivery to grantee.

ii. In addition to being in proper statutory form, it is necessary that the deed be acknowledged before it can be recorded. 25 Del. C. §154. Further, the deed should have the address of the grantee noted thereon. 25 Del. C. §133.

iii. Also, in order to be recorded, the deed must be accompanied by the appropriate state and local transfer tax returns.

iv. In addition to the above statutory requirements, each of the Recorder of Deeds for the various counties in Delaware

(New Castle, Kent and Sussex) have their own recording requirements. Each requires that the tax parcel number for the property be set forth in the upper right hand corner of the deed, along with the name and address of the person who prepared the deed and the name and address of the person to which the deed is to be returned after recording.