

Deed Summary

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Please Note: This document is intended to provide general information regarding Stevens-Ness deed forms. While it might seem a simple matter to add or remove a name on a title to real property, the fact is that each form of deed in Oregon contains subtleties that require the careful application of common law, statute and Oregon case law to your specific situation. As a result, it would be impossible for this summary to explain completely everything that these deed forms do.

This document is not intended to provide legal opinions or offer advice, nor to serve as a substitute for the counsel of a licensed legal professional. Stevens-Ness cannot give legal advice, cannot tell you which deed form to purchase, and does not warrant that the information in this document is complete or accurate. Below you will find general, non-technical descriptions of the various deed forms. These descriptions are intended to inform you of major differences; please note that there are often more subtle distinctions between forms which are beyond the scope of this document.

Using a deed form incorrectly can result in unintended income or gift taxes, generation-skipping taxes, or problems with lenders who have not released a borrower whose name has been removed from the title. In addition, laws change frequently, and the interpretations of those laws can change as well. In light of this, it is your responsibility to decide if the information in this summary is applicable to your situation, and to seek legal, tax or other counsel if necessary.

(Note that these form descriptions use "grantor" and "grantee" to describe the parties involved because that is the language contained in Oregon's laws. Usually, "grantor" can be read as the "owner/seller" and "grantee" as the "buyer.")

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BARGAIN AND SALE DEEDS – NO WARRANTIES BY GRANTOR

Form No. 723 – Bargain and Sale Deed. While a bargain and sale deed passes a title owned by the grantor to the grantee, it does so without any warranties against encumbrances – in other words, the grantor makes no promises that the title is sound and not subject to an underlying mortgage, trust deed, unpaid taxes or other complicating factor. This deed is sometimes used when no consideration is given, i.e., the grantee is not giving something of value to the grantor in exchange for the transfer of title. Common uses are to add a name to a title or to remove a name following a divorce; both are situations where a grantor's warranties are not necessary. A bargain and sale deed should not be used indiscriminately, however, because title insurance companies may be unwilling to insure a title that lacks grantor's warranties, potentially putting the grantee at a disadvantage. It is best to use this deed only when advised by an attorney or title company.

Form No. 1342 – Bargain and Sale Deed to Self and Other(s) Creating Tenancy in Common. This deed can be used by the owner(s) of a property to create a tenancy in common in that property with one or more others. A tenancy in common generally gives each owner an equal interest in the property, but the grantor can create unequal interests by explicitly stating the amount of each grantee's interest. If the deed states that the tenancy is created "with right of survivorship," then when any one owner dies the ownership of the entire property will ordinarily shift to the other owner(s) without the need for probate. Creating multiple owners in a property can be complicated; including or leaving out particular phrases can have important consequences, and you must proceed carefully to avoid unexpected outcomes. For these reasons, Stevens-Ness advises that you should not use this deed without the advice of an attorney.

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Form No. 1343 – Bargain and Sale Deed Reserving Life Estate. This deed conveys property to one or more designated grantees while reserving a life estate in the property to the grantor(s). The grantor retains full ownership rights while he or she is alive and bears responsibility for the payment of taxes, insurance, etc. Upon the death of the person holding the life estate, or upon the death of the last person if more than one, the property will ordinarily pass to the designated grantees without the need for probate. A common use of this deed is when parents want to grant a property to their children but also want to remain in the property during their lifetimes.

WARRANTY DEEDS – GRANTOR GIVES FULL OR SPECIAL WARRANTIES OF TITLE

Form No. 633 – Warranty Deed. Typically, a warranty deed is used when the transaction is for full consideration – something of value to the grantor and grantee – between strangers. This deed states that the grantor is selling good, clear title to the property. It promises that the grantor has all necessary rights to sell the property and guarantees the grantee will have peaceful possession, that there are no liens or other title encumbrances other than the ones listed in the deed, and that the grantor will pay to defend the grantee against any other person's claims to possession with the exception of any that are listed in the deed. This deed is used for most sale transactions, including sales secured by trust deeds.

Form No. 703 – Warranty Deed. Same as Form No. 633, but with four times the space for property and encumbrance descriptions.

Form No. 762 – Special Warranty Deed. This deed is similar to Form No. 633, except that the grantor's warranties (promises) and agreement to defend against the claims of others apply only to claims and encumbrances created or caused by the grantor, and not those created or caused by any previous owners of the property.

Form No. 690 – Warranty Deed, Survivorship. This deed is similar to Form No. 633, except that it creates survivorship rights among the grantees. If a grantee dies, his or her interest in the property automatically passes to the surviving grantee(s).

Form No. 716 – Warranty Deed, Tenants by Entirety. This deed is similar to Form No. 690, except that there are always exactly two grantees, and they are husband and wife. When one spouse dies, his or her interest in the property automatically passes to the surviving spouse. (While same-sex marriages in Oregon are now legal, the statute governing the creation of tenancy by the entirety uses the specific wording "husband and wife." Stevens-Ness suggests same-sex couples consult an attorney in deciding whether to use this form, or Form No. 1342, which creates a tenancy in common with a right of survivorship.)

Form No. 1341 – Warranty Deed in Fulfillment of Contract. When property is sold on a real estate contract and that contract is paid off, the seller can provide this warranty deed to the buyer. It is similar to Form No. 762 in that it expressly excludes certain encumbrances – in this case, encumbrances occurring after the date of the contract, or encumbrances that were accepted by the buyer at the time the contract was executed.

QUITCLAIM DEEDS – A GRANT OF WHATEVER INTEREST THE GRANTOR MAY OWN

Form No. 721 – Quitclaim Deed. This deed conveys any title, interest or claim held by the grantor for the specified property at the time the deed is executed. It does not guarantee that the title is valid or how much of the property the grantor actually owns, and contains no warranties or covenants of title. In other words, this deed places the responsibility on the grantee of determining the exact nature of the ownership being conveyed. While a quitclaim deed is the simplest kind of deed, it also carries the greatest potential for future headaches since title insurance companies are often reluctant to insure a title that has been passed by a deed whose intent is unclear – because it includes no warranties and shows no indication of a bargain and sale, a quitclaim deed may be perceived as hiding the reason for the transfer of the property interest. For these reasons, it may be best to use a quitclaim deed only when advised by an attorney or title company.

OTHER DEEDS

Form No. 166 – Deed Creating Estate by the Entirety (Husband to Wife or Wife to Husband). This deed is used by an individual who owns property in his or her name alone to convey a survivorship interest in that property to his or her spouse. When one spouse dies, his or her interest in the property automatically passes to the surviving spouse. (While same-sex marriages in Oregon are now legal, the statute governing the creation of tenancy by the entirety uses the specific wording "husband and wife." Stevens-Ness suggests same-sex couples consult an attorney in deciding whether to use this form, or Form No. 1342, which creates a tenancy in common with a right of survivorship.)

Form No. 1336 – Transfer on Death Deed. This deed does not pass an interest in the property until the grantor's death (or the death of the last surviving grantor, if there are joint owners of the property). Even after it is executed it does not affect the grantor's interest in the property during the grantor's lifetime (meaning the grantor retains ownership of the property), and it is revocable at any time prior to death. The deed can pass property to one or more recipients. However, it can only pass along equal interests to multiple grantees, and it cannot create a right of survivorship in the grantees. One advantage of this deed is it may allow people with a very simple estate to avoid the expense of probate. Because this deed has not been accepted in Oregon for long, Stevens-Ness advises that you should not use it without the advice of an attorney.

Form No. 1456 – Personal Representative's Deed. With the same effect as a bargain and sale deed, this form is used by the personal representative of an estate to convey real property from that estate to an heir or devisee of the estate, or to a third-party buyer.

Form No. 1457 – Affiant’s Deed. This deed is similar to Form No. 1456. It is used to convey real property on behalf of a small estate which the affiant is administering.

Form No. 1485 – Fiduciary’s Deed. This deed is used by a fiduciary, who legally represents a protected person, to convey property owned by that person to a third party.

Form No. 240 – Estoppel Deed, Mortgage or Trust Deed (in lieu of foreclosure). This deed is used by a borrower to surrender property to a lender when the borrower is unable to make payments or otherwise comply with the terms of the note and mortgage or trust deed executed in connection with the original sale. It also states that the lender accepts the property in lieu of any further payment or obligation by the borrower, releasing the borrower from any remaining debt.

Form No. 683 – Estoppel Deed, Real Estate Contract (in lieu of foreclosure). This form is similar to Form No. 240. It is used when the original transaction was represented by a contract for the sale of real estate, and not a note and mortgage or trust deed.

TRUST DEEDS

Form No. 881 – Trust Deed (Assignment Restricted). A trust deed takes the place of and generally serves as a mortgage, although the manner of foreclosure is different. Its entry in the records of the county where the property is located creates a secured interest in favor of a lender (beneficiary) who is entitled to demand foreclosure of the trust deed if its terms, or the terms of the note it secures, are not met by the borrower (grantor). Trust deeds are used when purchasing a property using a “promissory note and trust deed” form of borrowing, rather than a mortgage. It is a specialized deed prepared by the lender for the borrower’s signature. It requires specialized knowledge to prepare correctly and must be used in conformance with Oregon law. Any assignment by the grantor must be approved by the beneficiary.

Form No. 881.1 – Trust Deed (No Restriction on Assignment). Same as Form No. 881, but there is no restriction on the deed’s assignment.

Form No. 887 – Deed of Reconveyance. When a borrower fully pays off a promissory note secured by a trust deed, the trustee uses this deed to “reconvey” the trust deed to the borrower, releasing the lien created by the trust deed and giving the borrower free and clear title to the property.

Form No. 1175 – Trustee’s Deed. This form is used by a trustee, in connection with a trust deed foreclosure, to convey property to a party who purchases the property at a foreclosure sale.

STATUTORY DEEDS

Stevens-Ness also sells the following statutory deeds. These deeds follow certain statutory requirements (see ORS 93.850, 93.855, 93.860 and 93.865) and are essentially shorthand for – and comparable to – the deeds above of the same title. Statutory deeds are most often used by attorneys and title companies.

Form No. 961 – Bargain and Sale Deed.

Form No. 969 – Quitclaim Deed.

Form No. 967 – Special Warranty Deed.

Form No. 963 – Warranty Deed.

Form No. 966 – Warranty Deed, Survivorship.

Form No. 965 – Warranty Deed, Tenants by Entirety.

FREQUENTLY ASKED QUESTIONS

Note: The information in this section consists of factual statements regarding the transfer of real property. It is not legal advice; if you have further questions, you should seek the advice of an attorney.

Q What deed form do I use to add someone else to my deed?

A The answer to this question depends on your circumstances, and you should always consult a lawyer for advice. Almost any deed could be used to add an ownership interest, but the nature of the ownership interest dictates which form you should use. For example, only spouses can hold property as “tenants by the entirety,” for which a Deed Creating Estate by the Entirety or a Warranty Deed – Tenants by the Entirety (Form No. 166 or 716) might be used; to add a friend as an owner, with or without a right of survivorship, you might use the Bargain and Sale Deed to Self and Other(s) Creating Tenancy in Common (Form No. 1342); but if the friend were paying you for the privilege, you might need to offer certain warranties, which are found in a Warranty Deed or Warranty Deed – Survivorship (Form No. 633 or 690). This is a complex question that only an attorney can answer fully.

Q I legally changed my name and need to update the name on my deed. Which one should I use?

A Typically, if you are transferring property to yourself, as the recipient you aren’t worried about particular warranties or promises as part of the transaction. So using a basic Bargain and Sale Deed or Quitclaim Deed (Form No. 723 or 721) may be appropriate.

Q How do I remove a name from a deed after a divorce?

A It is common in this situation for the spouse removing his or her name to use a Quitclaim Deed (Form No. 721).

Q My spouse passed away. How do I remove his/her name from the deed?

A If you and your spouse were legally married and held the property as spouses (as “tenants by the entirety” or as “spouses”), recording your spouse’s death record in the county where the real property is located usually will clear his or her name from the property record. If that does not work, you will need to consult an attorney.

Q I would like to add my daughter to my deed, but continue to live in my house. Which deed form should I use?

A It depends on what you want to accomplish. If you want to make an outright gift, effective immediately, a Bargain and Sale Deed or Quitclaim Deed (Form No. 723 or 721) may be appropriate. However, if you are going to continue to live in the home and be responsible for its maintenance and taxes, you may want to use a Bargain and Sale Deed Reserving Life Estate (Form No. 1343). Or you may want to document the gift while retaining ownership of the house, in which case you may use a Transfer on Death Deed (Form No. 1336).

Q Which deed form do I use to gift my home to my son?

A The form of deed you use depends on your circumstances. If all you have in this world is your house, and you want to leave it to your only son, the Transfer on Death Deed (Form No. 1336) might work; if you wish to give the house outright to your son, perhaps the Bargain and Sale Deed (Form No. 723) could work; however, if you wish to continue living in the house until you die, but then pass it to your son upon your death, perhaps the Bargain and Sale Deed Reserving a Life Estate (Form No. 1343) might work. While the outcome you have in mind may seem simple to you, the complexities of your individual situation prevent Stevens-Ness from being able to advise you on which form to use.

Q What deed do I use to transfer real property into or out of a trust?

A Moving real property into or out of a trust is a job for an expert; while many of our deeds could be modified to do this, any such modifications would require the advice of an attorney.

GLOSSARY

Deed – A document that transfers ownership of real estate and is recorded in the local public land records. The recording of deeds generally establishes the priority of ownership interests in real property.

Life Estate – Ownership of real property that ends when the owner dies; during his or her life, the owner has all the rights and obligations of a full owner. At death, the ownership passes to the person or persons designated in the deed that grants the life estate.

Right of Survivorship – The right of a surviving co-owner to take ownership of a deceased owner’s share of the property.

Tenants by the Entirety – A form of joint tenancy for husbands and wives which specifies that when one spouse passes away, the property passes to the other. Married couples who do not want this to occur should hold title in a different form, such as tenants in common, or as a life estate.

Tenancy in Common – A tenancy in common results when two or more people share interests in the same property. Multiple owners of the same property may have equal or unequal interests, depending on the language creating their interests. Tenants in common own an “undivided” partial interest in the property – that is, they can claim a portion of the benefits from the property, but they don’t own a particular section of the property. The interest can be sold, transferred, inherited, or otherwise encumbered without the consent of the other tenants.

Tenancy in Common with Right of Survivorship – A tenancy in common with the right of survivorship is created when property is transferred to two or more people and the transferring instrument explicitly states that the transferees have a “right of survivorship.” This means that the transferees have a tenancy in common during their lifetimes, but when one of the transferees dies, his or her interest automatically transfers to the other transferee(s), rather than being considered a part of the transferee’s estate. The right of survivorship will limit the ability to sell or encumber the interest, since the transferee’s interest may belong to the other tenant(s) in common if the transferee does not survive them.