

REQUIREMENTS FOR DEEDS AND CONVEYANCES OF REAL PROPERTY

A. In Writing and Signed

In Arizona, a deed or conveyance of real property or an interest in real property must be in writing and be signed by the grantor. A.R.S. § 33-401(B).¹

A deed must also name an actual grantee (whether person(s) or entities). A deed to or from a fictitious person is void and transfers no legal title. Melni v. Custer, 162 Ariz. 153, 781 P.2d 631 (App. 1989). It is common, however, to see grants of easements name the general public as grantee (typically for roadways), which is a valid dedication to the public of the easement.

B. Acknowledgment (Notarization)

Along with being in writing and signed by the grantor, a deed or conveyance of real property must be “duly acknowledged before some officer authorized to take acknowledgments.” A.R.S. § 33-401(B). Under this statute, a deed does not convey title until duly acknowledged (i.e. with a valid notarization) by the grantor, even where it has been executed and is otherwise proper. See Lewis v. Herrera, 10 Ariz. 74, 77, 85 P. 245, 246 (Terr. Ariz. 1906), aff’d, 208 U.S. 309 (1908); Bank of Ariz. v. Harrington, 74 Ariz. 297, 300, 248 P.2d 859, 862 (1952). In most other states, the deed is valid but unrecordable.

In Lewis v. Herrera, the Supreme Court of the Territory of Arizona construed the predecessor statute to section 33-401. In this case, a grantor made two deeds giving his property to his wife, but before they were both acknowledged the grantor became indebted to a bank which obtained judgment on the obligation and then sued to set aside the deeds and levy execution on the property. The court held that the deeds did not become effective until the date of acknowledgment, and as a result, the bank's rights were prior to those of the grantee. Lewis v. Herrera, 10 Ariz. at 77, 85 P. at 246; accord Harrington, 74 Ariz. at 300, 248 P.2d at 862.

C. Description of the Property and the Grantee

¹ This article discusses requirements for express conveyances of real property by deed. There are other ways to acquire an interest in real property without receiving a deed, such as adverse possession, oral agreements for real property where performance has been given, and other examples. They are beyond the scope of this article.

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A deed must contain a sufficient description of the real property being conveyed, referred to as a “legal description.” The description may be by reference to a plat or survey (e.g., “Lot 1 of the Sunshine Estates Plat, recorded at . . .”). It may be by use of the government rectangular survey system and/or aliquot description (e.g., the north half of the southwest quarter of Section 1, Township 2 North, Range 5 East, of the G&SRB&M, in “X” county). It may be by use of metes and bounds description (e.g., “from the point of beginning, North 25.55 degrees West a distance of 25 feet. . .”).

A simple street address does not suffice, and arguably a tax parcel number is not sufficient. However, Arizona courts have held that a conveyance of “20 acres [otherwise unidentified] out of” a larger parcel conveys an undivided fractional share of the larger parcel. Mounce v. Coleman, 133 Ariz. 251, 650 P.2d 1236 (App. 1982) (citing 23 Am.Jur.2d Deeds § 165). This is consistent with the modern rule, under which such a conveyance operates to give the grantee an undivided interest in the land as a tenant in common. See Seguin v. Maloney, 253 P.2d 252, 35 A.L.R.2d 1412 (Or. 1953).

Also, there is a line of Arizona cases involving deeds of trust (which convey a security interest in real property) that appears to relax the description requirement depending on the circumstances. E.g., 3502 Lending, LLC v. CTC Real Estate Serv., 224 Ariz. 274, 229 P.3d 1016 (App. 2010) (finding recorded deed of trust valid and having priority over a junior deed of trust even where it lacked any legal description, but correctly identified the address and tax parcel number of the property; and where the purchaser of the junior deed of trust had purchased it after being advised of two existing deeds of trust and that it was purchasing the junior deed of trust as a “third position lien”).

D. Delivery

In a typical real estate transaction an escrow agent is employed. Title is conveyed to the buyer at closing of the transaction when the escrow agent has confirmed that all conditions and requirements for closing have been met, including deposit in escrow of all executed conveyance documents and affidavits, and the closing funds. The escrow agent proceeds to record the deed, by which the seller conveys title and ownership of the real property to the buyer. Upon recordation, the escrow is deemed “closed” and the deed (and ownership of the real property) is deemed “delivered” to the buyer.

In many other circumstances, however, one party will sign and give a deed to real property to another party, without an escrow agent, and without recording the deed. Certainly not “best practice,” but such situations do occur. The issue may arise whether title has actually been conveyed, depending on whether the deed has been “delivered.”

“Under Arizona law, a deed to real property does not vest legal title in the grantee until it is delivered and accepted.” Morelos v. Morelos, 129 Ariz. 354, 356 (App. 1981); Robinson v. Herring, 75 Ariz. 166, 253 P.2d 347 (1953); Parker v. Gentry, 62 Ariz. 115, 154 P.2d 517 (1944); A.R.S. § 33-401. Execution of the deed without delivery is legally insufficient to transfer title. Roosevelt Sav. Bank of City of New York v. State Farm Fire & Cas. Co., 27 Ariz.App. 522, 524, 556 P.2d 823, 825 (1976) (holding that delivery and acceptance by HUD did not occur until the deed was recorded by title company).

Whether delivery has occurred involves a fact-specific² inquiry. Robinson v. Herring, 75 Ariz. 166, 169 (1953) (looking to surrounding circumstances, and emphasizing grantor’s intent). Delivery may consist of any action or conduct that “clearly manifests the intention of the grantor and the person to whom it is delivered that the deed shall presently become operative and effectual, and that the grantor loses all control over it, and that by it the grantee is to become possessed of the estate.” Pass v. Stephens, 22 Ariz. 461, 468 (1921) (citation omitted).

So, the intent of the grantor must be established, along with the physical act. Simply “placing a deed in the hands of a grantee” by itself, without intent that the deed become effective immediately, does not constitute a delivery. See Parker v. Gentry, 62 Ariz. 115, 120 (1944) (holding that, absent such intent, “placing a deed in the hands of a grantee does not constitute delivery”). Generally, “[t]he intention to pass immediate and irrevocable title to the property interest is the essential fact for consideration” on the question of delivery. Robinson, 75 Ariz. at 170 (citation omitted).

However, “[t]he unconditional delivery of a deed or grant of property to a third person to take effect at the time of the donor’s death, if there is no intention to revoke or actual revocation, is effective and valid as of the time of delivery, though the enjoyment thereof may be postponed.” Morelos, 129 Ariz. at 356 (emphasizing that the grantor must “put the deed out of her control”); accord Hutton v. Cramer, 10 Ariz. 110, 115-16 (1906) (finding delivery where grantor placed deed in grantee’s bank box, which grantor could access only with grantee’s permission).

However, the recording of a deed raises a presumption of delivery. This has been noted in Roosevelt cited above, and other caselaw. Recording also appears to raise a

² “Fact-specific” usually means that a trial on the merits will be necessary for the court to decide the issue, as opposed to being decided as a matter of law without requiring a trial.

presumption of acceptance. Shipp v. Ericson, 80 Ariz. 1098, 110, 293 P.2d 443, 445 (1955).

E. Recordation

It is often assumed that recordation is a requirement for a deed or conveyance of an interest in real property to be valid. This is not the case, though recordation is important for a different reason. Recordation (separate from creating a presumption of delivery and acceptance as noted above) serves the function of “perfecting” a conveyance of an interest (whether ownership, easement, security interest, or other interest). Perfection means that the conveyance is enforceable as against any subsequent interest holders who do not have actual knowledge of the conveyance. A.R.S. § 33-411(A) states, “No instrument affecting real property gives notice of its contents to subsequent purchasers or encumbrance holders for valuable consideration without notice, unless recorded as provided by law in the office of the county recorder of the county in which the property is located.” Id.; see also Phipps v. CW Leasing, Inc., 186 Ariz. 397, 399-401, 923 P.2d 863, 865-67 (App. 1996).