

# Understanding deeds and misdeeds



By Joseph F. Verser, Heath, Old & Verser, PLC

I receive phone calls several times a year from people who begin: “I bought a house last year with my girlfriend; we broke up, and now I need to take her name off the deed.” How quaint. If only it were that simple. Let’s discuss the legal implications of having someone’s name on a deed.

A deed is the legal document used to memorialize ownership to real estate. The deed is recorded in the clerk’s office at the courthouse in the land records. Once a deed has been received by the clerk and recorded in the deed book, it cannot be “unrecorded”—it’s there forever. When a potential client calls me and wants to remove someone from a deed, it will require another deed, or a court order, to be recorded

to effectuate the change in ownership.

Most of the time, there is also a deed of trust (mortgage), recorded on the property. The worst of all worlds occurs when someone graciously puts a boyfriend or girlfriend on the deed, but leaves only themselves as the borrower on the mortgage documents. In other words, both people own the property but only one of them has the financial burden. Bad decision. To get out of that mess, one party will need to refinance the loan and buyout the other person’s ownership interest. That is, if the girlfriend (or the boyfriend) is not willing to sign a deed conveying ownership back to you after the break-up.

Another option, and more expensive, is to file suit, asking the court to

partition the property. A partition suit asks the court to physically cut the property in half (known as partition in-kind). This works if you own undeveloped land. If the property is a single-family house, this will not work. In that case, you would be seeking partition by allotment or partition by sale. Partition by allotment is when one party asks the court to “allot” the property to themselves and that person pays each remaining owner the fair market value of his or her ownership interest. So, if I own property with three other people, I would essentially be buying out the ownership interest of the other three. Most people opt for partition by sale. This is where the court sells the property and divides the proceeds. The court can appoint a special commissioner (usually a local lawyer) to engage a realtor, list the property, get it sold and report to the court on how the proceeds were divided.

It is also worth mentioning how property is titled in Virginia. This is the language that appears in the deed. This is a situation where words matter, so let’s look at the three main ways you can hold title to real estate:

**Joint Tenants with Rights of Survivorship.** This means that each person owns the entire property. “Survivorship” means that if one person dies, his or her interest automatically transfers to the other person or persons. If you hold real estate this way, you better be sure that if you die tomorrow, you are fine and dandy with the other person or persons on the deed taking over your ownership. If Mr. Smith and Mr. Jones own property this way and Mr. Smith dies, Mr. Jones

becomes the owner of the entire property, lock, stock and barrel.

**Tenants in Common.** In this scenario, each person has the right to live on, enjoy and use the entire property. But there is no survivorship clause which means that if one owner dies, then his or her interest passes under their estate to his or her heirs or beneficiaries in the will. Therefore, if Mr. Smith and Mr. Jones own property as tenants in common and Mr. Smith dies leaving two children, Mr. Smith’s one-half ownership interest passes 25 percent each to Mr. Smith’s children.

**Tenants by the Entirety.** Title can only be held this way by a legally married couple. When one dies, the property automatically becomes the sole property of the surviving spouse. If the couple divorces, title reverts to tenants in common (see above). Tenants by the entirety is different from joint tenants with rights of survivorship because a sale or conveyance will require the signature of both parties. Also, a lien or a judgment does not attach to the property unless the debt is against both husband and wife.

And so, words matter. Especially on a deed. And think twice before adding that boyfriend or girlfriend on the title when he or she has not contributed a penny toward the purchase price. Undoing a deed can be aggravating and expensive. ◀

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