



Dirty Deeds Done Dirt Cheap
By Benjamin Ipock, Title Counsel

Not too long ago, I was cruising down US Highway 1 headed out of Wake County, listening to my favorite classic rock channel on XM radio. Some days you just need to roll the windows down and turn up the music! With my foot on the accelerator as I was headed south the famed AC/DC classic “Dirty Deeds Done Dirt Cheap” blared throughout the car and I couldn’t help but think about some of the dirty deeds I have seen in the dirt law business as both a practicing attorney and a title attorney. Most of the time these dirty deeds, both old and new, are non-attorney drafted, cheap templates pulled off the shelf at the local office supply store or downloaded from the internet, most have been improperly completed and executed by the parties themselves. Anyone who practices real estate law is bound to have made the occasional drafting error, after all we are human.

Some of the frequent questions we receive at Attorneys Title are about the validity of an already recorded deed or an assessment of a proposed deed for an upcoming transaction. We are happy to review these on a case-by-case basis and offer our opinion and as to the insurability of a deed when requested. Every situation is truly unique based on the specific facts. While the “requirements” for a deed are very slim, there is a big difference between a dirty deed, an acceptable deed or a perfect deed. We see all sorts of forms, templates, and pattern deeds ranging from highly formatted custom documents generated from fancy title and settlement software packages, to the ole’ standby North Carolina Bar Association Form No. 3 General Warranty Deed completed on a typewriter, handwritten deeds downloaded from the internet and occasionally what could likely pass as a deed and/ or cocktail napkin with a only parcel identifier number (PIN) and a signature that somehow was accepted for recording. My hope for this article is to provide an easy to use resource and reference in the form of a chart consisting of the basic deed requirements, formatting requirements, helpful hints and suggestions, statutory references and other information that will aid you and your staff in the preparation and review of deeds going forward. The chart generally follows the flow and format of the standard North Carolina Bar Association General Warranty Deed, with additional items, information and comments added where appropriate.

While history may say that no good deed goes unpunished, I think it can also be said that dirty deeds do not go unnoticed in the index!

Common Types of Deeds in North Carolina	
	<p>The title of the instrument should be clearly stated on the first page of the deed. Some Register of Deeds offices may reject a deed if the title of the instrument is not stated. The following is a list of the most common types of deeds that are encountered in North Carolina:</p> <ul style="list-style-type: none"> • General Warranty Deed • Special Warranty Deed • Quitclaim Deed • Trustee’s Deed • Substitute Trustee’s Deed • Commissioner’s Deed • Executor/ Administrator’s Deed • Guardian’s Deed • Receiver’s Deed • Judicial Deed • Gift Deed • Deed in Lieu of Foreclosure • Sheriff’s Deed • Corrective Deed • Any many others
Basic Deed Requirements	
	<p>The “requirements” for a valid deed between the parties are very simple. However, the basic requirements will not get you very far when it comes to getting a deed recorded. The following are the historic requirements for a valid deed.</p> <ul style="list-style-type: none"> • Competent Grantor • Identify legally existing Grantee capable of holding title • Words of conveyance • Adequate legal description of the property to be conveyed • Signed by the Grantor or his/ her agent • Proper delivery and acceptance
Formatting Requirements (for recording)	
	<p>Formatting requirements for recording can be found in NCGS 161-14(b):</p> <ul style="list-style-type: none"> • 8.5”x11” (Letter) or 8.5”x14” (Legal) • 3” top margin on page 1 • ¼” for all other margins • White Paper

	<ul style="list-style-type: none"> • A legible font of black text no smaller than 9 point • 1 sided printing • Instrument Name noted at top <p>Additional Notes:</p> <ul style="list-style-type: none"> • Non-conforming documents are assessed an additional \$25.00 “nonstandard document” fee pursuant to 161-10(18)(a) • 8.5”x14” documents are indexed in an 8.5”x11” format. Make sure your font size is still legible after a reduction
Excise Tax	
	<p>A person who presents an instrument for registration must report to the Register of Deeds office the amount of excise tax due. It is the duty of the person presenting the instrument for registration to report the correct amount of tax due. NCGS 105-228.32</p> <ul style="list-style-type: none"> • 105-228.30(a) – amount of excise tax is \$1/ \$500 of the consideration paid or value of the interest conveyed • § 105-228.37 Refund of overpayment of tax • 105-228.28 and 105-228.29 – Exemptions from Excise Tax • For deeds with property lying in two or more counties see NCGS 47-20.1 <p><i>see below for Land Transfer Tax on Conveyances</i></p>
Land Transfer Tax on Conveyances	
	<p>Seven counties in North Carolina require an additional 1% Land Transfer Tax to be collected in addition to the Excise Tax. The applicable counties are:</p> <ul style="list-style-type: none"> • Camden - S.L 1985-954 • Chowan - S.L. 1985-881 • Currituck - S.L. 1985-670 • Dare - S.L. 1985-525 • Pasquotank - S.L. 1989-393 • Perquimans - S.L. 1989-393 • Washington County - S.L. 1989 <p>Please check with the Register of Deeds for these counties if you conduct recordings there for any applicable requirements and procedures, including forms and affidavits.</p> <p>Just as the Excise Tax amount is noted on the face of the deed, it is helpful to the county and other ROD users if the transfer tax amount is noted as well. Some Counties, such as Dare, may require a Land Transfer Tax ID and amount be listed on the deed as well prior to recording</p> <p>Sample documents and information for Dare County can be found HERE.</p>

Parcel Identifier Number and/or Tax Lot Number	
	The Parcel Identifier Number (or PIN) is a vital piece of information. Counties are authorized by 161-30(b) to require the inclusion of the PIN on deeds before acceptance by the county. The most common location, as seen on the GWD, is immediately below the Excise Tax. Depending on the County, the PIN may also be referred to as a Real Estate ID (REID), Parcel Number or other name. PIN numbers have largely replaced "tax lot" numbers which used to be more common on deeds. However, certain a Tax Lot Number could still be required depending on the county of recording.
Tax Certification	
	<p>Pursuant to NCGS 161-31, counties may impose a requirement that the Register of Deeds not accept a deed for recording unless it includes a certification from the tax office, there are no delinquent taxes against the parcel.</p> <p>Most counties in North Carolina are authorized to impose this requirement, but to do so the Board of Commissioners must approve the measure by resolution.</p> <p>If the measure is adopted, the certification requirement may also be met by the inclusion of the following statement on the deed: "This instrument prepared by: _____, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds." See NCGS 161-31(a1). See also NCGS § 105-303.</p>
Return to and Grantee Address	
	NCGS 161-30 (a)(1) allows a County to require the Register of Deeds to reject a deed or other instrument if a name and return to address is not provided. This name and address could be the Grantee, but could also be an attorney, or other named person so designated.
Drafters Name	
	<p>Under NCGS 47-17.1, the Register of Deeds shall not accept an instrument for recording unless it contains the name of either the person or law firm preparing the instrument.</p> <p>It may also be helpful to put your firm's file number reference on the deed.</p> <p>Many attorneys often also include a simple statement of whether a title examination was conducted or not (or tax advice given or not) in connection with the preparation. While liability limitation of this note is unknown, it is a helpful clue to a title examiner of whether a prior title policy may or may not be available as part of the transaction.</p> <p>Note: The preparation of a deed or deed trust (or other legal instrument) is considered the practice of law in North Carolina pursuant to NCGS 84-2.1. Only the parties themselves, a licensed North Carolina attorney, or someone acting under the supervision of a North Carolina attorney may prepare a legal document. See also NCGS 84-5.</p>
Brief Description	
	While not a required element, most attorneys, title searchers and Register of Deeds staff appreciate the brief description. A short description aids the indexing staff and the next title searcher in the chain scrolling through the index.

Title Insurance Company Detail	A few drafters have started notating which title company or agency provided title insurance for the transaction. Some go as far as including a commitment number. This is an extremely helpful tip to a title examiner in tracking down a prior title policy.
Date of Deed	<p>Contrary to popular belief and practice, the date of the deed is not a requirement, nor does it affect validity. The date of the deed merely creates a presumption of execution and delivery on that date.</p> <p>However, the date of the deed could be extremely important in certain circumstances, including:</p> <ul style="list-style-type: none"> • Evaluating whether a gift deed is void based on the date of execution and recording. NCGS 47-26 • Where a bankruptcy is an issue for the Grantor • When determining capacity, authority or legality of Grantor or Grantee based around the date of execution
Parties	<p>Two of the most important parts of the deed are the Grantor and Grantee names. Often, if there is a mistake in the deed it has to do with a misspelling of a name, which usually carries forward to the deed being mis-indexed under an incorrect name. However, along with correctly spelled names, there are a few other factors that should be considered and double checked prior to execution and recording. Consider the following:</p> <ul style="list-style-type: none"> • Correctly spelled names, whether individuals or entities, including the entity type if applicable. <ul style="list-style-type: none"> ○ Consider having an initial block next to the names and have each party initial that it is shown correctly • Grantor names should match the name shown on the vesting deed, or at least refer to the former or alternative name as an a/k/a or f/k/a. • If Grantor is acting as a personal representative of an estate, a guardian, trustee or in some other official capacity, it should be clearly stated. • Grantee should can hold legal title. • Any entity Grantee should be properly formed and legally in existence • The marital status, if applicable, should be listed for all Grantors and Grantees • A valid mailing address for the Grantors and Grantees should be given in accordance with NCGS 105-317.2. • Party names should match the names listed in the signature block. • While an incompetent or minor can be a valid Grantee, it is generally not advisable to convey property to them. • If a form of concurrent ownership is to be created in the Grantees, it should be clearly stated. <ul style="list-style-type: none"> ○ Tenants by the Entireties ○ Joint Tenants with Right of Survivorship ○ Tenancy in Common • NOTE: NCGS 161-10(a)(1), which assesses an additional \$2.00 for each additional name in an instrument with 20 or more party names.
Consideration	The recitation of the amount of consideration in a deed is not required for a deed to be valid. However, it does commonly appear in verbiage such as “Grantor, for valuable consideration paid by the Grantee, the receipt of which is hereby

	acknowledged”. The amount of consideration is also reflected in the Excise Tax amount mentioned above.
Words of Conveyance & Estate	
	Perhaps the most important sentence in a deed is in the granting clause. Without such a clause there would not be a deed of conveyance. The most traditional clause is “Grantor does grant, bargain, sell and convey unto the Grantee in fee simple.” Generally, the estate being transferred is “fee simple.” However, if a lesser estate or interest, such as life estate, easement or license is being conveyed, it should clearly be identified in the deed.
Legal Description	
	For a deed to be an effective conveyance, it must contain an accurate legal description of the property being intended to be conveyed. The legal description can take many forms, but the most common descriptions are metes and bounds or reference to a platted lot on a recorded subdivision plat or map. As a rule of thumb, it is a good idea to describe the property at least three ways in every deed. For example, there might be a PIN number, a lot/block number and a prior deed reference. The point being that if one piece of information is incorrect, the intent of the grantor might still be discerned from the second and third descriptors. In addition to the above, consider incorporating one or more of the following into you deeds and descriptions: PIN, Tax Lot #, property address, reference to a Grantor’s deed or prior instrument, brief description, current survey or map.
Grantor’s Primary Residence Statement	
	NCGS 105-317.2 requires that deeds contain a statement of whether the property being conveyed is Grantor’s primary residence or not. The purpose behind this requirement is to aid the county in the appraisal and listing of property for tax purposes.
Prior Conveyance or Derivation Clause	
	While not required, a reference to the Grantor’s source of title in the form of a derivation clause is extremely helpful. Often references to the prior deed can salvage an otherwise flawed or defective legal description. It is also extremely helpful to make reference to any applicable estate files, special proceedings, judicial proceedings or other estate files that appear in the chain of title.
Map Book Reference	
	A reference to a recorded plat, if applicable, identifying the property should be included in the deed if it is not already included in the legal description. If the property is composed of a description other than a lot on a recorded plat, but there are applicable plats, then such plats and/or plat revisions should be included.
Habendum Clause	
	This is the “to have and to hold clause” that generally follows that of the legal description. The most common verbiage is “TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.” It is important that this clause be consistent with the granting clause.

Warranties of Title	<p>One of the primary differences in the various types of deeds are the warranties of title, or limitation or lack thereof, given by the Grantor. Most residential contracts call for a standard General Warranty Deed which includes the following warranties of title:</p> <ul style="list-style-type: none"> • Seizin and Right to Convey • Marketable title & free from encumbrances • Warranty of quiet enjoyment • Defense and assurance of title <p>If you have a transaction that calls for something other than a General Warranty Deed, a thorough review of the proposed deed warranties is advised.</p>
Exceptions to Warranties	<p>While the warranties of title referenced above afford the protection to the Grantee, the warranties can be dramatically limited based on any specific or generic exceptions. Depending on who drafted the instrument the exceptions could favor the Grantor over the Grantee or vice versa. Generally, exceptions to be overly broad and address taxes for the current year, restrictions of record and other recorded matters. In commercial transactions it is not uncommon to see an Exhibit attached to the deed of “permitted encumbrances” like the Schedule B exceptions in a title commitment or policy.</p>
Signatures of Grantors	<p>The North Carolina Statute of Frauds (NCGS 22-2) requires that instruments conveying an interest in real estate be in writing and signed by the Grantor or his/ her agent. However, documents need not be executed under SEAL. NCGS 39-6.5 removed the requirement that instruments be executed under SEAL. However, the practice remains due to statute of limitation concerns and as a presumption of corporate authority. The Grantor’s name on the face of the deed should match the name appearing below the signature line and in the notary acknowledgment. If the Grantor’s signature is being executed by an Agent or Attorney in Fact, the signature line should clearly identify the principal and agent.</p>
Acknowledgments	<p>Proper notary acknowledgments for individuals, trustees, legal entities, personal representatives, fiduciaries, officers, agents under a power of attorney and others should be made in compliance with NCGS Chapters 10B, 47 and 161.</p>
Exhibits (if applicable)	<p>At times it may be appropriate to incorporate additional exhibits or information into your deed to provide clarity on the transaction and to help piece together the details in the chain of title for the next searcher. Possible additional Exhibit pages may include:</p> <ul style="list-style-type: none"> • Corporate Resolutions • Unrecorded Surveys or Maps • Powers of Attorney • Legal Descriptions – when not included in the body of the deed • Permitted Encumbrances • Deed Restrictions (e.g. Habitat for Humanity or Preservation NC) • Family tree information or intestacy affidavits

	<ul style="list-style-type: none"> • Affidavits and Estopples • Copies of other recorded instruments or judicial orders • Certificates of Trust
Misc. Items and Practice Pointers	
	<p>Every deed is as unique as the property it describes. If you have a transaction that is a bit out of the ordinary or that raises questions, consider including additional provisions, clauses or statements. These will bring more clarity and lessen the chance of questions when the deed is evaluated in a subsequent title examination. The following are examples where additional details and information may be helpful:</p> <ul style="list-style-type: none"> • The “winding up” of a business entity • Estate proceedings • Churches & Non-profits • Judicial proceedings • Special proceedings • Martial rights waivers and releases • Life Estates • Powers of Attorney • Certificates of Trust • Reservation of easement or other rights • Chain of title information • Resolutions and authority of officials