



Parties 101

By W. Paul Lewis, Title Counsel, Pinehurst & Wilmington

Due to various phone calls on this issue, and to take a break from Best Practices and the new Disclosure form, we are going to talk about parties necessary to a real property conveyance. Every now and again it is beneficial to review basic conveyancing concepts. A valid conveyance of real property requires five elements: a grantor, a grantee, an ascertainable subject matter, operative words of conveyance and a proper execution and delivery. This article will review two of these five requirements, the parties to the deed.

Typically this discussion would begin with the grantor requirements, but I would prefer to begin with the grantee because the requirements to be a good grantee are less stringent than that of a grantor and because, generally, one is a grantee before they become a grantor.

Early Common Law recognized that a grantee could be a natural person. This expanded to include legal entities capable of holding title. While you will find no statute authorizing a natural person to hold title, you will find authorizing statutes for corporations, partnerships, LLCs, unincorporated associations and, more recently, trusts. Prior to this statutory authority, for a trust to hold title, the conveyance had to be to the trustee of the trust or the deed was void for lack of a grantee. Also, prior to this statute, older deeds in the chain of title, to a trust, which may have been previously void, are now good links in the chain of title.

For a person to be a grantee, they have to be in existence. This would include an unborn child so long as they are born within 280 days of the making of the deed. This does not, however, include a person who is dead at the time of the making of the deed. The grantee can be identified by their full name, partial name or nick name as long as the intent is certain as to their identity as a living person. A conveyance to a person's heirs conveys to that person's children; a conveyance to a person and his heirs, however, conveys nothing to the person's children as the concurrency of the grant is seen as words of limitation only.

A person cannot be a sole grantee when they are the sole grantor. While one may find it necessary to prepare such a deed to satisfy a government agency or other institution when the property owner had previously acquired title through devise, Court Order or operation of law, this deed is of no affect and is void.

While an unborn child, a minor and an incompetent person can hold title and thus be a grantee, they cannot be a grantor without proper safeguards. The difference is that a grantor must be capable of entering into an enforceable contract. A deed from a person adjudicated to be mentally incompetent is void. If this judicial declaration was entered after the execution of the deed, the deed is voidable. Although the law presumes competence, if it can be shown that the grantor neither understood the nature of the act nor the consequence of the act, the deed can be set aside whether the grantor lacked capacity naturally or as a result of extreme intoxication or undue influence.

A deed from a minor is also voidable. The minor can neither confirm nor deny the deed while they are still a minor, but once they attain the age of majority, they have three years to deny the deed. If they affirm the deed within this time by express words or the action of enjoying the benefits of the deed, the deed is no longer voidable but valid. Likewise, they can disaffirm the deed by express words or actions, i.e. a deed to another. If

the deed is disaffirmed, the consideration or its replacement property must be restored to the grantee. If the benefits of the deed are gone, a minor does not have to restore the consideration. The exception to all of this is if the minor sold property to provide for necessities. In that event the deed was valid all along. If the minor does not disaffirm the deed during the three years, the deed is considered affirmed.

If an owner of land is incompetent or a minor, thereby lacking the capacity to contract, the deed should be from a properly appointed guardian to enable the buyer to obtain good title.

Corporations are authorized to hold title to, and convey, real property pursuant to specific statutes. A deed from a corporation, in the ordinary course of its business, can be approved by the board of directors without shareholder approval. Also, when the deed appears to have been signed in the ordinary course of business by its chairman, president or CEO, the board of directors' authority is presumed unless something in the deed indicates otherwise or if the parties have actual knowledge of the board's lack of approval. If the corporate deed is from someone other than the above officials, a resolution is required showing the board of directors' approval. If the sale is outside the ordinary course of business, shareholder approval is required prior to the board of directors' authority to management.

Limited Liability Companies are also authorized to hold title. The statutes also give authority for an LLC to sell, convey and mortgage real property. The articles of organization or an operating agreement may show who has the authority to act for the LLC as its manager. Absent any indication to the contrary, every member of the LLC may act as the manager. The manager is the agent for the company and can execute documents on its behalf. A deed from the manager in the LLC's ordinary course of business is good without any other proof of authority. If the parties know there is a lack of authority, however, the conveyance is not good. If the deed is not in the ordinary course of business, approval of the members of the LLC is required.

Partnership authority to hold title and convey title has been the subject of an earlier article.

[Click HERE to read "Remembering Partnerships."](#)

The authority to be a grantor of property for any legal entity that is capable of holding title should be questioned. That analysis begins with whether the conveyance is within its ordinary course of business.

Now that our review of some basic conveyancing concepts is out of the way, the party break is over and we can start worrying about Best Practices and Disclosure forms again.