



Paralegal Division of the State Bar of New Mexico

Brown Bag Discussion Group

Deeds:

- Requirements
- Execution
- Types
- Recording

Requirements:

- Determined by the statutory forms NMSA 1978 47-1-44
 - Grantor
 - Grantee
 - Grantee address
 - Location (County)
 - Legal Description

Legal Description:

- Property Tax Bill Legal Description is NOT the full legal description

S: 03 T: 20N R: 8E

Lot numbered Twenty-seven (27) of _____ SUBDIVISION, an Addition to the City of Albuquerque, Bernalillo County, New Mexico, Section 03, Tract 20N, Range 8E. N.M.P.M., as the same is shown and designated on the Plat of said Addition, filed in the Office of the County Clerk of County, New Mexico, on (Date) in Volume _____, folio _____.

WARRANTY DEED

..., for consideration paid, grantto, whose address is,
the following described real estate in county, New Mexico:

(description)

with warranty covenants.

Witness my hand and seal this day of, 19 ...
..... (Seal)

Acknowledgment

WARRANTY DEED (**JOINT TENANTS**)

..., for consideration paid, grant to ..., whose address is ..., and
.., whose address is..., as joint tenants the following described
real estate in ... county, New Mexico:

(description)

with warranty covenants.

Witness my hand and seal this day of, 19 ...
..... (Seal)

Acknowledgment

Execution:

- Any person or persons, ..., holding, ***or who may hold***, any right or title to real estate in this state, ..., may convey the same NMSA 1978 47-1-4 also 47-1-4.1 (Representatives of businesses)
- Must be signed NMSA 1978 47-1-5
- A court has authority to enter a decree which shall operate as conveyance of real estate NMSA 1978 47-1-12
- A court may appoint a special master to make a conveyance NMSA 1978 47-1-12

Execution:

Pursuant to a Power of Attorney:

All powers of attorney or other writings containing authority to convey real estate, as agent or attorney of the owner of the same, or to execute, as agent for another, any conveyance of real estate, or by which real estate may be affected in law, or equity, shall be acknowledged, certified, filed and recorded, as other writings conveying or affecting real estate are required to be acknowledged. NMSA 1978 47-1-7

All conveyances of real estate, affecting the title to real estate, subscribed and executed by duly authorized agent under a duly executed and acknowledged power of attorney, shall have the same force and effect as though actually subscribed by the owner or owners thereof. NMSA 1978 47-1-11

An agent under a power of attorney may create of change rights of survivorship or create or change beneficiary designations on behalf of the principal or with the principal's property **only if the power of attorney expressly grants the agent the authority and exercise** of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject. NMSA 1978 45-5B-201

Execution

Pursuant to a Power of Attorney (Cont.)

NMSA 1978 45-5B-301:

NEW MEXICO

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent, you may name a co-agent in the Special Instructions. Co-agents are not required to act together unless you include that requirement in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I,(Your Name),

name the following person as my agent:

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects, you may initial "All Preceding Subjects" instead of initialing each subject.)

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke or terminate an inter vivos trust
- Make a gift, subject to the limitations of Section 217 of the Uniform Power of Attorney Act and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

Common Tenancy Presumed:

All interest in any real estate, either granted or bequeathed to two or more persons other than executors or trustees, shall be held in common, unless it be **clearly expressed** in said grant or bequest that it shall be held by both parties. NMSA 1978 47-1-15

Joint Tenancy: in real property is one owned by two or more persons, each owning the whole and an equal undivided share, by a title created by a single devise or conveyance, when expressly declared in the will or conveyance to be a joint tenancy, or by conveyance from a sole owner to himself and others, or from tenants in common to themselves, or to themselves and others, or from husband and wife when holding as community property or otherwise to themselves or to themselves and others, when expressly declared in the conveyance to be a joint tenancy, or when granted or devised to executors or trustees. NMSA 47-1-36

Joint Tenancy:

in real **property** is one **owned by two or more** persons, **each owning** the whole and **an equal undivided share**, by a title created by a single devise or conveyance, when **expressly declared** in the will or conveyance **to be a joint tenancy**, or by conveyance from a sole owner to himself and others, or from tenants in common to themselves, or to themselves and others, or from husband and wife when holding as community property or otherwise to themselves or to themselves and others, when expressly declared in the conveyance to be a joint tenancy, or when granted or devised to executors or trustees. NMSA 47-1-36

Warranty:

In a conveyance of real estate the words, "**warranty covenants**" shall have the full force, meaning and effect of the following words: "the grantor for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns, that **he is lawfully seized in fee simple of the granted premises**; that they are **free from all former and other grants, bargains, sales, taxes, assessments and encumbrances of what kind and nature soever**; that he has good **right to sell and convey the same**; and that **he will**, and his heirs, executors, administrators and successors shall warrant and **defend the same** to the grantee and his heirs, successors and assigns forever against the lawful claims and demands of all persons." NMSA 47-1-37

Breach of Warranty: entitled to recover damages for the lost value of the forfeited land, interest on this lost value, and attorney's fees for services in connection with claimant's defense

Special Warranty Deed:

In a conveyance of real estate the words "**special warranty covenants**" shall have the full force, meaning and effect of the following words: "the grantor for himself, his heirs, executors, administrators and successors, covenants with the grantee, his heirs, successors and assigns that **the granted premises are free from all encumbrances [encumbrances] made by the grantor**, and that he will, and his heirs, executors, administrators and successors **shall warrant and defend the same** to the grantee and his heirs, successors and assigns forever **against the lawful claims** and demands of all persons claiming by, **through or under the grantor, but against none other.**" NMSA 1978 47-1-38

Quitclaim Deed:

A deed in substance following the form entitled "quitclaim deed" shall, when duly executed, have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use of any interest the grantor owns in the premises, without warranty. NMSA 1978 47-1-30

Transfer on Death Deed

A transfer on death deed shall:

- A. contain the essential elements and formalities of a properly recordable inter vivos deed;
- B. state that the transfer to the designated beneficiary is to occur at the transferor's death; and
- C. be recorded before the transferor's death in the public records in the office of the county clerk for the county where the property is located.

NMSA 1978 45-6-409

Personal Representative's Deed

Until termination of a personal representative's appointment, **a personal representative** has the **same power** over the title to property of the estate **that an absolute owner would have**, in trust however, for the benefit of creditors whose claims have been allowed and others interested in the estate. This power may be exercised without notice, hearing or order of court. NMSA 45-3-711

.... a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as he may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

- (a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; ...

(6) acquire or dispose of an asset, including land.....

NMSA 1978 45-3-715

Transfer by a Trustee:

A. A trustee, without authorization by the court, may exercise:

- (1) powers conferred by the terms of the trust; and
- (2) except as limited by the terms of the trust:

(a) all powers over the trust property that an unmarried competent owner has over individually owned property;

(b) any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(c) any other powers conferred by the Uniform Trust Code [[46A-1-101](#) NMSA 1978].

NMSA 1978 46A-8-815

Without limiting the authority conferred by Section 8-815, a trustee may:

A. collect trust property and accept or reject additions to the trust property from a settlor or any other person;

B. acquire or sell property, for cash or on credit, at public or private sale;

NMSA 1978 46A-8-816

Corrections:

- Quiet Title NMSA 1978 46-6-1, et. Seq.

An action **to determine and quiet the title** of real property may be brought by anyone having or claiming an interest therein, or by the holder of any mortgage, mortgage deed, trust deed or any other written instrument which may operate as a mortgage, in an action brought to foreclose the said mortgage, mortgage deed, trust deed or such other written instrument, whether in or out of possession of the same, against any person or persons, claiming title thereto, or parcel or portion thereof, or lien thereon, whether such lien be a mortgage or otherwise. Any number of tracts of land may be embraced in the same action, whether claimed by different persons or not; and in instances where a tract of land title to which is sought to be quieted lies within more than one county such action may be brought in any county in which part of said tract lies. **Title may be quieted against the owner or holder of any mortgage, claim of lien or other encumbrance**, where the owner or holder of such mortgage, lien or encumbrance has permitted same to become barred by statute of limitations, and where the record or documentary evidence reflects that the required time to bar such mortgage or other lien has elapsed, the same **shall constitute prima facie evidence that the debt or obligation and lien securing same is barred**, and **the owner or holder** of such mortgage, lien or claim **shall be estopped from asserting any rights thereunder** in such suit.

Corrections (Cont):

Best Practices:

Simple Typo: Do NOT change

- Want to maintain the priority

More Significant Error: Record a corrective deed

- Title it properly i.e. Corrective Warranty Deed
- Include a statement the deed is being recorded for corrective purposes only and does not change the priority
- Include only the correct language

Priority:

1. Recorded Deed
2. Transfer on Death Deed
3. Transfer from Trust
4. Last Will and Testament

Records Affecting Real Property:

All **deeds**, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings **affecting the title to real estate** shall be **recorded in the office of the county clerk** of the county or counties in which the real estate affected thereby is situated. NMSA 1978 14-9-1

Although acknowledgment is not essential to validity of conveyance as between parties, without it the instrument may not be admitted to record. *Kitchen v. Canavan*, [1932-NMSC-037](#), [36 N.M. 273](#), 13 P.2d 877.

No time requirement for recording instruments. — There is no requirement that an instrument be recorded within a particular period of time; the order in which deeds appear on the record is not important in a notice jurisdiction. *Angle v. Slayton*, [1985-NMSC-032](#), [102 N.M. 521](#), [697 P.2d 940](#).

No deed, mortgage or other instrument in writing not recorded in accordance with Section [14-9-1](#) NMSA 1978 shall affect the title or rights to, in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such unrecorded instruments. **Possession alone** based on an unrecorded executory real estate contract **shall not be construed** against any subsequent purchaser, mortgagee in good faith or judgment lien creditor either to impute knowledge of or **to impose the duty to inquire about the possession or the provisions of the instruments**. NMSA 1978 14-9-3

Effect of failure to record. — A deed of land, though not recorded, is good between grantor and grantee, and divests the title of the former, so that it does not pass to a subsequent grantee, or mortgagee, who takes only the estate which belongs to the grantor at the time. *Ames v. Robert*, [1913-NMSC-021](#), [17 N.M. 609](#), [131 P. 994](#).