



**DEED TRANSFERS**  
**Drafting Basics**

*updated November 2019*

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## THE IMPACT OF HOMEOWNERSHIP ISSUES ON CLIENTS AND THE GREATER PHILADELPHIA COMMUNITY

Homeownership cases are also known as “tangled title” cases. Our clients have embraced this term, because it describes a variety of legal issues that create a problem with ownership of real estate or a “cloud” on title. Many homeowners first find out during a crisis that they do not have legal title to their homes.

Individuals who have a “tangled title” problem have a legal interest in their homes but are not the record (or legal) owner. There are many scenarios in which an individual may have a tangled title problem. Many individuals are living in a home titled in the name of a deceased relative whose estate was never probated. Others may have entered into a lease/purchase agreement (also known as rent-to-own agreements or installment land contracts), where they have paid all or most of the purchase price for their home to the owner but the owner has since died, disappeared, or refused to convey title. Some individuals may also be the victim of a fraudulent deed transfer, whereby someone forged their name on a deed and purported to transfer title of their home out of their name.

VIP probate clients typically live or need to live in a home of which a deceased relative is still the record owner. In some cases, there may be multiple generations that separate the client and deceased record owner. Usually, the decedent’s estate has never been probated, and his or her assets have never been formally distributed.

VIP clients are referred from other agencies, including: Community Legal Services, Philadelphia Legal Assistance, Homeless Advocacy Project, and the SeniorLAW Center.

### The Impact on Clients

Tangled title problems have serious consequences for low-income Philadelphians. Without legal title to their home, our clients may not be able to:

- obtain a grant or loan to make urgently needed repairs;
- enter into a payment plan for delinquent water/sewer or real estate tax bills, in order to avert a Sheriff’s sale of their home;
- negotiate with a mortgage company as to a delinquent mortgage;
- obtain homeowners’ insurance; *or*
- transfer or encumber title in the future

As a result, if tangled title issues are left unresolved, clients are often left with the nearly impossible choice of living in unsafe conditions or becoming homeless. Unresolved tangled titles may also eventually lead to foreclosures and Sheriff’s sales, if delinquent bills relating to the property cannot be negotiated. Because of these consequences, tangled title problems may ultimately deprive individuals of the only asset that could prevent them and their future generations of sinking more deeply into poverty.

It is notable that many Philadelphians without title to their homes are elderly. At least

5% of the elderly interviewed at senior centers describe themselves as homeowners but also say that their names are not on the deed to their property. Additionally, one-third of all properties in Philadelphia are owned by senior citizens. Thus, the impact of homeownership issues on the Philadelphia housing stock is significant due to its prevalence within the elderly population alone.

### The Impact on Homes and Neighborhoods in Philadelphia

The impact of tangled titles also extends far beyond the individuals whose homes are directly affected, reaching into the neighborhoods and the broader Philadelphia community in which these homes lie. When an individual with a tangled title problem is forced to leave a property due to her inability to repair it, the property is left abandoned and in significant disrepair. Vacant homes are prone to attracting criminal activity and also pose safety and fire dangers. Consequently, the City may board up or demolish such homes, which is done largely at taxpayers' expense due to the City's inability to collect the costs through the sale of a valueless property. Abandoned properties also decrease the value of other properties on the block by an average of \$7,000 and may prevent other homeowners who live within 50 feet from obtaining homeowners' insurance due to the heightened risks. Unresolved title problems also contribute to the occurrence of homelessness in the City, further straining very limited resources available to the approximately 2,500 Philadelphians who already sleep in shelters in the City every night.

### The Difference That Volunteer Attorneys Make

Solving homeownership issues and encouraging estate planning can preserve housing, stabilize neighborhoods, prevent homelessness, and strengthen the Philadelphia community's real estate tax base. Volunteer attorneys who assist clients in obtaining title to their homes greatly contribute to the Philadelphia community's ability to meet these goals. Volunteer attorneys also contribute by assisting clients in taking proactive, preventative steps to safeguard their ownership interests in their homes, such as by creating wills for their clients and helping clients to obtain title insurance. While homeownership issues among low-income clients can be difficult to prevent altogether, early intervention can help keep people in their homes and can decrease the prevalence and impact of homelessness and home vacancy on Philadelphia's citizenry and community.

## **HANDLING A PHILADELPHIA VIP LIMITED-REPRESENTATION DEED TRANSFER CASE: FAQs**

### **1. What are Philadelphia VIP Simple Deed Transfer Cases?**

Most of VIP's deed transfer clients need full title to their homes to prevent losing their properties at Sheriff's sales. Once the clients have full title, they are eligible for payment plans for delinquent real estate taxes or mortgage modifications, both of which stay the sale of their homes. Other clients need full title to qualify for City-run home repair programs. Volunteer attorneys limit their representation to providing deed transfers only.

### **2. How can a deed transfer case be limited representation? Don't I need a title report?**

VIP staff counsels the clients extensively before the cases are referred to volunteers to make it clear clients are taking title subject to any defects in title and outstanding liens. The specific topics covered in our counseling are:

- Title Report: What it is and the risks of not obtaining one. Clients are told they have the option to purchase the report.
- Title Insurance: What it is and the risks of not obtaining it. Clients are told they have the option to purchase title insurance.
- The importance of obtaining property (homeowner's) insurance and information on a how to obtain property insurance.
- If a transfer of title is from an estate to an individual, there is extensive counseling about the "at-risk" distribution, if applicable. This includes informing the client, who is also the personal representative of the estate, about the potential personal liability for not formally distributing estate assets. In the vast majority of our cases, the real property is the only estate asset.
- After clients are counseled on the above, they are asked if they still want to proceed with their cases. (Most do.) The advice is then confirmed by letter. Our referrals to volunteer attorneys include copies of these letters.

### **3. Does the client sign anything acknowledging the limited representation?**

Yes. Attorneys handling these cases are asked to execute limited-representation agreements with their clients, which VIP provides. The agreement details the risks of the transfer (again), and outlines the limited scope of the representation.

### **4. Does VIP provide malpractice insurance?**

Yes. VIP is the primary malpractice insurer for all VIP volunteer attorneys.

**5. Will I have to locate missing parties needed to sign the deed?**

No. All parties with a legal interest in the property have been ascertained and are willing to give their interest in the property to the client. If you learn otherwise once you accept the case, you do not have to proceed. "Missing party" cases are not simple deed transfers; they are handled as tangled title cases. (Should you have an interest in working on a tangled title case, please let VIP know. We have plenty.)

**6. When I take a simple deed transfer case, what will VIP send me?**

The client file will be emailed to you and will include the client contact information, case summary, and the last recorded deed. VIP has deed templates and all the necessary forms on our website under "Training Materials" found here: [www.phillyvip.org/content/training-materials](http://www.phillyvip.org/content/training-materials).

**7. If I have questions, whom do I contact at VIP?**

Each VIP case is assigned to a VIP staff member. Staff members are responsible for referring their cases to volunteers and providing volunteer support for duration of the case. If you have questions, you contact the staff member who sent you the case. (Occasionally, VIP switches case assignments internally and a new staff member will be assigned to your case. This should not impact the support you receive from VIP.)

**8. How does the deed get recorded?**

Department of Records Commissioner, Joan Decker, permits VIP clients' deeds to be recorded for free. Once the deed is complete, send the deed, the transfer tax forms, and attorney affidavit to your VIP contact and the deed will be submitted for recording. Once the deed is recorded, we return the original to you so that you can send it to your client along with a case closing letter.

**9. What about transfer tax?**

Our simple deed transfer cases are either exempt from transfer tax or the clients have the funds saved to pay for the tax.

**10. My office is in the suburbs. Can I meet with my client at VIP's Office in Philadelphia?**

Absolutely. VIP has private meeting areas for volunteers and their clients. The deed can be executed at VIP and notarized by our notary free of charge. Your VIP contact can reserve the meeting space and schedule the notary services. **Please remember and remind your client to bring a valid photo ID.**

## CONTACT INFORMATION

You can always contact VIP with any questions or concerns that you cannot otherwise resolve. We are always here to provide guidance or advice whenever we can.

**However, we ask that our volunteer attorneys use our training materials as a primary resource.** Our most current training materials, including sample forms, are available at <http://www.phillyvip.org/content/training-materials> (agree to the Terms of Use; then under the “Online Resource Library” on the left, click the “Homeownership” link), downloadable in both Word and PDF format. Our website also contains recent developments and updates that are relevant to all of our homeownership clients’ cases.

The VIP staff can be reached at 1500 Walnut Street, Fourth Floor, Philadelphia, PA, 19102, (215) 523-9550, fax (215) 564-0845. The following are staff members at VIP whom you may also contact directly:

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## TYPES OF TITLE AND WAYS TITLE CAN BE HELD<sup>1</sup>

The substance of this section of the materials largely relies upon Friedman, Ronald M., Ladner, *Pennsylvania Real Estate Law* (5th ed., Bixel 2006 & Supp. 2012-2013)

### I. The Most Common Estates in Land

#### A. FEE SIMPLE

##### 1. Fee Simple Absolute

Complete ownership of the property for an unlimited duration. This is the largest estate by which an owner can hold title. The owner has the right to sell, transfer, and devise the property. Use and transfer of the property is only limited by restrictions within the deed itself and local, state, and federal law.

The words necessary to grant fee simple title: “‘grant and convey,’ or either one of said words . . .” (21 P.S. § 2)

##### 2. Defeasible Fees

Defeasible fees are fee simple estates that can be terminated upon a stated event. Fee simple determinable, fee simple subject to a condition subsequent, fee simple subject to a condition precedent, and fee simple subject to an executory interest are common forms of defeasible fees. Defeasible fees are uncommon modern times and disfavored because they cloud the chain of title.

Defeasible fees will not be covered further in this training. For a thorough discussion of defeasible fees, see the Restatement (First) of Property, §§ 45-58 (1936).

#### B. LIFE ESTATES

A life estate is created when the property is transferred to a grantee for the duration of a person’s life. The grantee of a life estate is called the life tenant. Upon the death of the life tenant, the property vests in the remainderman, who, unless stated otherwise, owns the property in fee simple absolute. The life tenant has a duty to the remainderman to maintain the property during his or her lifetime.

Frequently the life tenant and the grantee are the same person; however, a life estate may be measured by the life of a person other than the grantee. This is known as a life estate

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<sup>1</sup> These materials are not intended to be a comprehensive course on title to real property. The purpose of this guide is to help VIP volunteer attorneys with their VIP cases, and the content is limited accordingly.

*pur aytre vie* (life of another).

The life tenant may sell, transfer, or lease his or her life tenancy freely. The recipient, however, must recognize that his or her rights to the property only last as long as the life by which the life tenancy is measured.

No specific language is necessary to create a life estate. See *In re Appeal of Bd. of Dir. of Owen J. Roberts Sch. Dist.*, 500 Pa. 465, 470 (Pa. 1983). As shown in the examples below, a life estate may be reserved by noting it along with the party names and adding language to the encumbrance clause of a deed. (See the section “The Deed Map Defined” for more information about the naming of the parties and the encumbrance clause.)

Identify the life estate along with the names of the parties:

[GRANTEES], with [GRANTOR RETAINING A LIFE ESTATE], individually,  
reserving unto [HIM/HER]self a life estate

Describe in the life estate in the encumbrance clause:

SUBJECT TO a life estate reserved to [NAME OF GRANTOR RETAINING A  
LIFE ESTATE], individually

## C. JOINT ESTATES

A joint estate exists when two or more people own a property concurrently. There are three common types of joint estates: tenancy in common, joint tenancy (with the right of survivorship), and tenancy by the entireties.

### 1. Tenancy in Common

Each owner, or cotenant, has an equal, undivided interest in the property. Cotenants have equal rights to possession. A cotenant may sell or transfer her interest in the property without the permission of the other owner(s). Upon the death of a cotenant, her interest in the property passes to her heirs and not to the surviving co-tenant(s).

Tenancy in common is the legal presumption of ownership unless there is language in the deed stating otherwise. *Estate of Bruce*, 372 Pa.Super. 16, 23 (Pa. Super. Ct. 1988).

### 2. Joint Tenancy

Joint tenants have an equal, partial-interest in a property with the right of survivorship. When a joint tenant dies, the surviving joint tenant becomes the sole owner by operation of law. This right of survivorship trumps the rights of the deceased joint tenant’s heirs. For example, a

surviving joint tenant is the sole owner of the property even if the deceased joint tenant left a will devising his interest in the property to his son.

The creation of a joint tenancy requires four unities. Joint tenants must receive: 1) equal interests in the property, 2) at the same time, 3) via the same conveyance, 4) with equal rights of possession. *Sheridan v. Lucey*, 149 A.2d 444, 445-446 (Pa. 1959). If a joint tenant severs one of the four unities, a tenancy in common is created.

No specific or statutory language is needed to create a joint tenancy; however, the deed must make the right of survivorship explicit. Often deeds state the property is conveyed to the grantees as "joint tenants with the right of survivorship, and not as tenants in common."

### 3. Tenancy by the Entirety

A tenancy by the entirety may only exist between legally married couples. Tenants by the entirety have a right of survivorship; upon the death of a spouse, the surviving spouse becomes the sole owner of the property by operation of law. Tenancy by the entirety is further defined by the legal fiction that each partner in the marriage has a full interest in the property simultaneously. Such ownership provides protection from creditors not available to joint tenants.

If a couple is legally married, unless the deed indicates otherwise, they are presumed to hold title as tenants by the entirety even if the deed does not specifically state "tenants by the entirety".

A deed may erroneously grant title to an unmarried couple as tenants by the entirety. Such an error is interpreted in the following way. If a deed states "Joe and Anna Smith, his wife" and later defines the title as "tenants by the entirety," a joint tenancy with right of survivorship is established. See *Maxwell v. Saylor*, 58 A.2d 355 (Pa. 1948). If the deed merely grants title to "Joe and Anna Smith, his wife," with *no other reference* to how they're taking title, a tenancy in common results. See *Teacher v. Kijurina*, 76 A.2d 197 (Pa. 1950).

## THE PARTS OF A DEED

The substance of this section of the materials largely relies upon Friedman, Ronald M., Ladner, *Pennsylvania Real Estate Law* (5th ed., Bixel 2006 & Supp. 2012-2013)

### A. THREE MAJOR COMPONENTS OF A DEED

**For examples of the deed elements described below, please refer to the deed map in the Appendix.**

#### 1. The Premises

The premises contains the majority of the deed's text and is the portion of the deed that most is specifically tailored to each transfer.

##### *a. Date*

A date is not necessary for a deed to be valid, but it is evidence of the date of execution and is required by the Philadelphia Commissioner of Records for recording. Note that delivery, rather than execution, transfers title.

★ **Drafting Tip:** If there are multiple grantors and they do not sign the deed on the same day, the deed should be given the same date as the day the first grantor signs.

##### *b. Names of Parties*

Parties should be identified with their full names. Careful attention should be given to spelling and correctness. Simple typos can have big consequences and cloud the chain of title.

##### *c. Consideration*

Consideration is the amount paid by the grantee for the property. If no actual consideration was given, a nominal amount, usually \$1.00 is listed. A deed is considered valid once recorded even if consideration is not listed. 21 P.S. § 471. However, it is good practice to include the amount of consideration to avoid later disputes over purchase price. Consideration language is required by the Philadelphia Commissioner of Records for recording.

##### *d. Granting Clause*

The granting clause identifies the type of estate being conveyed. 21 P.S. § 2 provides, "unless expressly limited to a lesser estate, the words 'grant and convey', or either one of said words, shall be effective to pass to the grantee or grantees named therein a fee simple title to the premises conveyed, if the grantor or grantors possessed such a title . . ." (emphasis added).

*e. Legal Description*

The legal description identifies the property being transferred. While it does not have to be technically exact, it should be defined well enough for a surveyor to identify the property. *Dickenson v. Pennsylvania Power & Light Co.*, 423 A.2d 711, 712, 13 (Pa. Super. Ct. 1980).

- ★ **Drafting Tip:** For VIP cases, the property description should never be changed. Carefully transcribe the property description from the prior deed to the new deed, archaic language and all. If possible, double check the property description against the past two deeds to ensure complete correctness.

*f. Recital*

The deed's recital explains the chain of title. The deed should identify how the grantors took title, how they held title, and by which deed.

- ★ **Drafting Tip:** In Philadelphia, **deed books names** are generated from the initials of the Commissioner of Records at the time the deed was executed. For instance, a deed recorded in 1997 will have the deed book name J.T.D for Commissioner Joan Decker. SEE "List of Deed Book Names" in Appendix/ Resource Library.

As of December 6, 1999, the Philadelphia Department of Records moved to a new recording system whereby each deed is electronically issued a document ID number. This document ID number is now used in lieu of the deed book name, number, and page number.

*g. Encumbrance Clause*

Not all deeds have an encumbrance clause. If applicable, the encumbrance clause includes any restrictions of record or easements.

*h. Appurtenance Clause*

Any buildings or improvements on the property and rights of way, such as driveways, are transferred via the appurtenance clause.

- ★ **Drafting Tip:** For VIP cases, the appurtenance clause never changes, with the exception of changing "grantor" to "grantors" or vice versa.

2. The Habendum

The habendum clause describes the extent of the estate conveyed, any restrictions in its use, and warranty language.

a. *To Have and to Hold Clause*

The have and to hold clause is also specifically known as the habendum clause. It is another part of the deed that identifies the estate being conveyed, such as joint tenants with the right of survivorship or tenants by the entirety.

b. *Covenants*

A detailed discussion of covenants is beyond the scope of this training. Generally, covenants are promises made in the deed requiring the land owner to do, or not to do, something with the land. Other covenants are promises made by the grantor guaranteeing that the property is free of encumbrances.

21 P.S. § 4 dictates that if a deed contains the “words ‘grant and convey’, or either one of said words,” the deed covenants the following, as long as the deed does not expressly state otherwise:

1. the grantor owned the property in fee simple,
2. the grantor has the right to convey the property,
3. the property is free from any encumbrances created by the grantor, and
4. quiet enjoyment, whereby no other will claim superior title

★ **Drafting Tip:** For VIP cases, the appurtenance clause never changes, with the exception of changing “grantor” to “grantors” or vice versa.

c. *Warranties*

Deed warranties are either special or general. A **special warranty** is a covenant by the grantor that he will defend the grantee against any claims against the property as a result of his actions while the owner. (21 P.S. § 6) A general warranty is a covenant by the grantor whereby he will defend against any and all claims against the property. (21 P.S. § 5) Warranty is discussed below in the section “Deed Types Based on Warranty Language”.

3. The Conclusion

The conclusion of the deed includes the execution clause, acknowledgment, receipt and certification of address. The language in the conclusion of the deed is largely boilerplate; it may be copied directly from the prior deed.

a. *Execution*

The deed only needs to be signed by the grantor; the grantee does not sign. Witness are not a legal requirement but may serve as extra protection against fraud.

- ★ **Drafting Tip:** The grantor's name must be exactly as it appears in the "Names of Parties" at the beginning of a deed.

*b. Acknowledgment*

21 P.S. § 291.7 lists all of the forms of acknowledgement. A notary acknowledgement is used in most VIP cases, and the appropriate language can be found in the "Deed Map" section above.

- ★ **Drafting Tip:** The deed can be executed at VIP and notarized by our notary free of charge. Your VIP contact can reserve the meeting space and schedule the notary services. **Please remember and remind your client to bring a valid photo ID.**

*c. Certification of Grantee's Address*

The certification of grantee's address is required by 16 P.S. § 9781. This is billing address used by the property tax assessors.

## TYPES OF DEEDS

For explanatory purposes, is easiest to group the differences among deeds into two categories: types of warranty language or lack thereof (special warranty, general warranty, and quit claim) and purpose of conveyance (corrective deed, transfer from an estate, addition/removal of an owner). *It is important to note that some of these deed types may be combined. For instance, a deed of correction may contain a special warranty.*

### I. Deed Types Based on Warranty Language

The following deeds all differ in what they do or do not warrant to the grantee. Each may be drafted by modifying the warranty clause in the habendum.

#### A. SPECIAL WARRANTY

Special warranty is the most commonly used warranty language in deeds. As mentioned in the section “Deed Map Defined”, a special warranty is a covenant by the grantor that he will defend the grantee against any claims against the property as a result of his actions while the owner. (21 P.S. § 6)

Below is warranty clause that contains a special warranty; the special warranty language is bold.

#### Special Warranty Language

**AND** the said Grantor, for [HIS/HER]self, heirs, executors and administrators do covenant, promise and agree, to and with the said Grantees and the survivor of them, and the heirs and assigns of such survivor, by these presents, that they, the said Grantor and [HIS/HER] heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Grantees and the survivor of them, and the heirs and assigns of such survivor, against them, the said Grantor and [HIS/HER] heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, **by from or under him, her, them, or any of them**, shall and will SUBJECT as aforesaid, WARRANT and forever DEFEND.

#### B. GENERAL WARRANTY

As mentioned in the section “Deed Map Defined”, a general warranty deed is a covenant by the grantor whereby he will defend against any and all claims against the property. (21 P.S. § 5). The grantor is essentially promising a grant of perfect title. Given the weight and legal implications of such a promise, general warranty deeds are rarely used.

A general warranty clause is created by omitting the “by from or under him, her, them, or any of them” language that is used to create a special warranty.

#### General Warranty Language

**AND** the said Grantor, for [HIS/HER]self, heirs, executors and administrators do covenant, promise and agree, to and with the said Grantees and the survivor of them, and the heirs and assigns of such survivor, by these presents, that they, the said Grantor and [HIS/HER] heirs, all and singular the hereditaments and premises hereby granted or mentioned and intended so to be, with the appurtenances, unto the said Grantees and the survivor of them, and the heirs and assigns of such survivor, against them, the said Grantor and [HIS/HER] heirs, and against all and every person and persons whomsoever lawfully claiming or to claim the same or any part thereof, shall and will SUBJECT as aforesaid, WARRANT and forever DEFEND.

#### C. QUIT CLAIM

A quit claim deed transfers the grantor’s interest in a property, whatever it may be, to the grantee; it does not transfer the property itself. Quit claim deeds contain no warranties of title. For these reasons, it is the least advantageous form of title for a grantee.

For a deed to be considered a quit claim, it need only contain the words “release and quit claim” (21 P.S. § 7). Typically quit claims deeds are given the title “quit claim” and often quit-claim language is included in the premises portion of the deed where the grant of title is made.

#### Quit-Claim Language

WITNESSETH: That the said Grantor, for and in consideration of the sum of [AMOUNT OF MONEY PAID, IN WORDS] Dollars (\$[AMOUNT OF MONEY PAID, IN NUMBERS]) lawful money of the United States of America, unto [him/her] well and truly paid by the said Grantee, at or before the sealing and delivery hereof, the receipt whereof in full is hereby acknowledged, does hereby **release and quit-claim** any and all right, title and interest which said Grantor may have in and to the hereinafter described property unto the said Grantee, [his/her] personal representatives, heirs and assigns, forever,

## II. Deed Types Based on Purpose of Conveyance

### A. DEED OF CORRECTION AND DEED OF CONFIRMATION

The purpose of deeds of correction and confirmation are to clarify the chain of title. There is no new transfer of title.

#### 1. Deed of Correction

Deeds of correction correct mistakes in a prior deed. Often these deeds are used to correct the spelling of a party's name. Please see the appendix for a sample Deed of Correction.

- **EXAMPLE: Allison Crowley** is the record owner of her property. She wants to apply for a low-income payment plan for her water bill. To be eligible for best payment plan, she must prove she is the owner of the property. Allison submits her application and a copy of her deed to the water department. Her application is rejected because the representative determines that she does not own her house. The rejection notice states the property belongs to Allison Crawley, not Allison Crowley. Sure enough, when Alison looks at her deed, she sees that her last name is misspelled as Crawley. Alison's case is referred to Philadelphia VIP for a volunteer to prepare a corrective deed so that she may enter a low-income payment plan for water.

**The Solution for Allison:** Allison needs a deed correcting the spelling of her name. Since Allison already owns the property, she is the grantor and the grantee. The **party names** will look like this:

**BETWEEN Allison Crowley**

(hereinafter called the Grantor of the one part), and

**Allison Crowley**

(hereinafter called the Grantee of the other part)

The nature of the mistake is explained in the **Recital**:

**AND WHEREAS** the name of grantee Allison Crowley was misspelled as "Allison Crawley" in the aforementioned Deed dated September 13, 1999, and the correct spelling of said grantee's name is "Allison Crowley".

## 2. Deed of Confirmation

Deeds of confirmation are used to make explicit a grantee's interest in a property. A deed of confirmation may be recorded along with a court order granting title to a defendant to clarify the chain of title and nature of the lawsuit. These deeds may also be used to confirm ownership that changed by operation law. For instance, if three parties owned a property as joint tenants, and one of the joint tenants dies, the parties may desire a deed of confirmation to make it clear the property has only has two owners.

At Philadelphia VIP, a deed of confirmation is used when a deed contains a South Philly Trust. A South Philly Trust deed contains quasi-trust language putting the property in trust for the life of the grantor (usually a parent) and vesting in remainderman (usually the grantor's children) at his or her death. See the Appendix for a South Philly Trust Deed and Deed of Confirmation.

The South Philly Trust is a quasi-trust, in part, because the grantor is also the trustee and he or she retains full control over the property during his or her lifetime, including the powers to sell and mortgage the property. The South Philly Trust is not a life estate because the grantor/trustee has the power to sell and encumber the property at-will and has no duty to the remainderman to maintain the property. These deeds were designed as an estate planning tool to avoid probate. They essentially serve as will substitutes.

- **EXAMPLE: Alec Saunders** is living in a property that his mother, Tara Saunders, now deceased, held for him in a South Philly Trust. When Alec got behind on the real estate taxes, he went to the Department of Revenue to enter a financial hardship payment agreement for the delinquent taxes. Alec showed the Revenue representative the deed and pointed out that his name was on it. The Revenue representative said he was not eligible for a financial hardship plan because he is not the owner of the property. Alec's case was referred to VIP for help clarifying his ownership of the property.

**The Solution for Robert:** Alec needs a deed confirming his legal interest in the property. The drafting and structure of the deed is very similar to the deed of correction. Since Alec already has a legal interest in the property and no property interest is being transferred to him, he will be the grantor and grantee. See the "Deed of Correction" section for an example.

Alec's legal interest in the property is explained in the **Recital** with a brief summary. For example,

**AND WHEREAS** under said Indenture, Tara Saunders held title in trust for Alec Saunders, the Remainderman, and upon the death of Tara Saunders, said premises was to vest in the possession of the Remainderman, his heirs and assigns,

**AND WHEREAS** Tara Saunders died on May 18, 2002, without having sold, conveyed, or otherwise transferred said premises during her lifetime, and fee simple ownership of said premises was then vested in Alec Saunders,

#### B. DEED TRANSFERRING PROPERTY FROM AN ESTATE AND ALL HEIRS TO HEIR OBTAINING TITLE

Many of our clients receive title to real property from the estate of a deceased relative. For a property to be transferred from an estate, the estate must be probated. Through the probate process, a Personal Representative (Executor or Administrator) of the estate is appointed. The Personal Representative has the legal authority to execute a deed transferring the property from the estate to the heirs.

Often in such cases, the client is one of several heirs with a legal interest in the property. For the client to be the sole owner, all of the heirs must be willing to give the client their interest in the property. If all of the heirs are willing, the property needs to be transferred from the estate to the heirs and then from the heirs to the client. These two transfers can be made via two separate deeds – a deed from the estate to the heirs, then a second deed from all of the heirs to the client individually. Or, the transfers can be combined into one deed. We recommend drafting a single deed that contains both transfers because it is less cumbersome administratively. See the Appendix for a sample deed by a personal representative and all heirs to heir(s) obtaining title.

A deed by a personal representative and all heirs to heir(s) obtaining title must include all grantors and grantees. The grantors of the deed should be listed as (1) the Personal Representative of the estate of the decedent, (2) your client individually, if also the Personal Representative, and (3) all other heirs. The grantees should be listed as your client and any other heir(s) retaining an interest in the property.

- **EXAMPLE: Dana Allen** is living in a property titled in the name of her deceased father, Joseph Allen. She has two brothers and one sister. Each of her siblings own their own homes and consider their Dad's house to be Dana's house. Dana maintains the property the best she can on her fixed income from Social Security. After a recent storm, she noticed a leak in the ceiling of her upstairs bedroom. She had the roof inspected and learned that she needs a new roof. She's distressed because she cannot afford a new roof. Her neighbor tells her that the City will give her a new roof for free because she is low income.

Dana completes the City application to have her roof repaired or replaced. She noted in the application that her deceased father owned the property, but that she was one of his heirs. She included the Letters of Administration naming her as the Personal Representative of her father's estate and a copy of the deed with the application. She noted in the application that her family considers the house hers, but after paying the probate fees to open her father's estate, she did not have enough money to pay for a deed transfer.

Dana's application was rejected because she is not the record owner of the property. Her case was referred to VIP to have her title put in her name so that she will be eligible for the City-run home repair programs.

**The Solution for Dana:** Dana needs a deed transferring the property from her father's estate to her siblings and her to just her as the grantee. Her brothers and sister are willing to transfer to her their interest in the house.

When drafting the deed, several **party names** must be listed:

BETWEEN Dana Allen, acting as the Personal Representative of the Estate of Joseph Allen; Dana Allen, individually; and Mark Allen, Todd Allen, and Elizabeth Allen-Garo,

(hereinafter called the Grantors of the one part), and

Dana Allen

(hereinafter called the Grantee of the other part)

The heirs' inheritance of the property is explained in several **Recitals**. For instance,

**WHEREAS** Joseph Allen died intestate on June 9, 2012.

**AND WHEREAS** the Register of Wills of Philadelphia County granted Letters of Administration on the Estate of Joseph Allen to Dana Allen on September 13, 2012, under Estate No. A8675 - 12,

**AND WHEREAS** Dana Allen, Mark Allen, Todd Allen, and Elizabeth Allen-Garo are the heirs of the Estate of Joseph Allen, according to the Pennsylvania Laws of Intestacy.

When the deed is executed, **Dana will have to sign twice** – as the personal representative of the Estate and as an individual heir. Her siblings will only sign once.

# PREPARING THE DEED FOR RECORDING: TRANSFER TAX FORMS, ATTORNEY AFFIDAVIT, AND SUBMITTING FOR RECORDING

## I. Transfer Tax Forms

### A. COMPLETING THE FORMS

The following points should be considered when completing the transfer tax forms:

- VIP suggests listing the client, rather than yourself or a paralegal, as the “Correspondent.”
- You do not need to list a tax parcel number in Section C.
- In completing the “Valuation Data” section on the forms:
  - You must state the actual consideration that the grantee paid for the property, if any.
  - The “County Assessed Value” can be found on the Office of Property Assessment (OPA) website. (property.phila.gov.) Be sure to use the OPA’s market value for the property.
  - The Common Level Ratio Factor (CLRF) is now 1.01, as of July 2019. **Changes in the CLRF generally occur every July 1.** Current and historic factors can be found on PA Revenue’s website:  
[www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Realty%20Transfer%20Tax/Common%20Level%20Ratios.aspx#.WcE6ANOGPeQ](http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Realty%20Transfer%20Tax/Common%20Level%20Ratios.aspx#.WcE6ANOGPeQ).
  - See the instruction pages that accompany the transfer tax forms for additional information on completing the forms.
- *Note:* You must always submit transfer tax forms with any deed that is being recorded, even if the transfer is excluded from transfer tax.

## B. PAYMENT OF AND EXCLUSION FROM TRANSFER TAX

Title transfers may be subject to transfer taxes. However, they will be excluded from transfer tax in the following situations:

- if the client is obtaining title to the property through testate or intestate succession;
- if the client is obtaining title to the property from certain family or household members (see immediately below);
  - Transfers between the following familial relationships are excluded from transfer tax:
    - Spouses
    - Divorced couple if the property was acquired before the divorce decree was issued
    - Parent and child
    - Parent and child's spouse
    - Siblings
    - A sibling and his or her sibling's spouse
    - Grandparent and grandchild
    - Grandparent and spouse of grandchild
  - Transfers between the following familial relationships are not excluded from transfer tax
    - Aunt/Uncle and niece/nephew
    - Grandparent and great-grandchild
  - Stepparents and Stepchildren: The transfer from a stepparent to stepchild or the stepchild's spouse is exempt from Pennsylvania transfer tax, but it is not exempt from Philadelphia transfer tax.
  - *Note:* In November of 2007, the City amended the Philadelphia Code to exempt from Philadelphia real estate transfer tax "financially interdependent persons" (FIPs). FIPs are defined in Phila. Code § 19-1402 as "persons who live together as a single household and who, for at least six months, have agreed to share the common necessities of life and to be responsible for each other's common welfare."

In order to claim this exemption, you should explain your client's status as an FIP in relation to the grantor on the city transfer tax form. Note that this exemption applies only to Philadelphia, and not Pennsylvania, transfer tax.

- if the client is recording a deed of correction, to correct an error on the last recorded deed but not otherwise changing title to the property; *or*
- if the client is recording a deed of confirmation, to confirm that s/he is now the owner of the property (e.g., pursuant to a South Philly Trust where the trustee is now deceased, or due to a joint tenant with right of survivorship having passed away).

See 72 PA. C.S. § 8102-C.3, and Phila. Code §§ 19-1402 and 19-1405, or Appendix to determine if your client's title transfer is excluded from transfer tax. If you are unsure as to whether your client's title transfer is subject to transfer tax, you should contact the staff at Philadelphia VIP. (See "Helpful Resources and Contact Information" for our contact information.)

*If the transfer is subject to transfer tax, you must submit payment for the transfer tax along with the deed and transfer tax forms:*

- Transfer tax is a percentage of one of the two following values:
  - *If your client obtained title through a bona fide arm's length sale for actual monetary worth, then it is a percentage of the total consideration paid.*
  - *If your client instead obtained title by inheritance, by gift, or for consideration less than the actual monetary worth of the real estate, then it is a percentage of the "fair market value." The "fair market value" is the OPA market value as of the date of recording multiplied by the Common Level Ratio Factor.*
  - See Appendix for the Pennsylvania statute and Philadelphia Code section that further explain how to use these values to calculate the transfer tax owed.
- Philadelphia transfer tax is 3.278% of the value as determined above. Checks or money orders should be made out to "City of Philadelphia."
- Pennsylvania transfer tax is 1% of the value as determined above. Checks or money orders should be made out to "Commonwealth of Pennsylvania."
- Transfer tax can be paid for by the Tangled Title Fund. See: [tangledtitlefund.weebly.com](http://tangledtitlefund.weebly.com).

## II. Completing an Attorney Affidavit

Effective November 3, 2008, attorneys must now submit a notarized Affidavit in order to record a deed without the Department of Records having to run a possibly time-consuming "deed name match." ([www.phillyvip.org/resources](http://www.phillyvip.org/resources) for a type-in version.)

- ★ **Drafting Tip:** The attorney affidavit can be executed at VIP and notarized by our notary free of charge. **Please remember to bring a valid photo ID.**

City Council Bill No. 080424-A amended Title 2 of the Philadelphia Code by creating new requirements for all deed documents submitted for recording. (See Philadelphia Code ch. 2-200 (2008).) The new ordinance requires the Department of Records to perform a "name match" of the grantor's name on the new deed and the grantee's name on the prior deed, which can be time-consuming if the last recorded deed has not been electronically indexed. However, the ordinance exempts the Department from having to run a name match if an attorney or title company submits the deed for recording. Thus, the Department of Records now requires attorneys and title companies to submit an Affidavit affirming their status and the validity of the new deed, so that they can be exempt from the name-match process.

### III. Recording the Documents

Once you have prepared the documents as explained above and are ready to record them, **they should be sent to VIP by certified mail, hand-delivery, or some other type of delivery that can be tracked (since the original, executed deed is being transmitted), so that VIP can record it with the Recorder of Deeds with a waiver of the usual recording fee.**

- *Important*

**All** documents should be given to VIP to be recorded, because James Leonard, Commissioner of the Department of Records, has generously agreed to record documents for VIP clients with a **waiver of the typical recording fee**. **Due to this arrangement, please note that neither VIP nor the Tangled Title Fund will reimburse volunteer attorneys, their firms, or our clients for recording fees.**

If you are sending a Deed to VIP for recording, please be sure to include all of the following documents that are required by the Philadelphia Department of Records:

- the executed Deed
- 2 copies of the Philadelphia Real Estate Transfer Tax Certification and 1 copy of the Pennsylvania Realty Transfer Tax, Statement of Value
- *if the transfer is subject to transfer taxes, payment for Philadelphia and Pennsylvania transfer taxes*
- a notarized Attorney Affidavit
- a certified copy of the court's order, if applicable

The Recorder of Deeds will record the document and return the original recorded document to VIP. **VIP will then return the original recorded document to you, so that you can then transmit it to your client.**