DEEDS & EASEMENTS

1. Deeds

Under the real property Statute of Frauds, every conveyance of real estate and every contract encumbering the real estate must be by a written deed, signed by the party to be bound and properly acknowledged. *See* RCW 64.04.010 and 64.04.020

In Washington, there are three general types of deeds, [Statutory] Warranty Deeds, Bargain and Sale Deeds and Quit Claim Deeds. RCW 64.04.030 defines and sets forth a form for the warranty deed. By statute, when duly executed, these deeds shall be deemed to convey real property in fee simple with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he/she was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he/she warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed.

As a step down from that deed, the Bargain and Sale Deed is described and its form is in RCW 64.04.040. These deeds convey property with the more limited covenant that the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, and grantees may [only] recover for any breaches of covenants expressly inserted in the deeds. The promise to defend the title is not automatically included, nor is the covenant regarding the right to convey.

Finally, without any covenants, the Quit Claim Deed is defined and its form is provided in RCW 64.04.050. These deeds convey, release and quitclaim any then existing legal and equitable rights the grantor may have in the premises, but shall not extend to the after acquired title unless words are added expressing such intention. By the same token, if no interest is owned, or if the interest is defective, that is all that is conveyed.

Insofar as cities convey and acquire property, the differences between these deeds may be important, although some of the differenced in covenants and warranties may be off-set by the purchase of title insurance.

Because the forms of these deeds are set forth in statute, their forms are not included herewith.

2. Easements and Licenses

Easements grant a lesser right to real property. The grantor would typically still own (hold fee title to) the land. Still lesser, licenses are "privileges" [to use land] not an interest in land. See *Bakke v. Columbia Valley Lumber Co.*, 49 Wn.2d 165, 298 P.2d 849 (1956). See also *Showalter v. City of Cheney*, 118 Wn. App. 543, 76 P.3d 782 (Div. 3, 2003).

The practical distinction between easements and licenses is that a license exists at the will of the landowner; it is permissive use, and therefore not wrongful, but it is revocable at will. An easement, on the other hand, is not revocable at will, though it may have a life that is limited to a stated time or to the duration of some purpose it serves. Because a license is not an interest in land, it may be created orally; the Statute of Frauds for deeds does not apply to it.

An easement is "appurtenant" when it serves or is used for the benefit of a parcel of land owned or possessed by the holder of the easement or profit. See *Brown v. Voss*, 105 Wn.2d 366, 715 P.2d 514 (1986), and *Roggow v. Haggerty*, 27 Wn. App. 908, 621 P.2d 195 (1980). This implies at least two parcels of land, one upon which the easement or profit exists and the other the parcel served.[1] These parcels must be in separate ownership; one person who owns two separate parcels of land cannot have an easement across one that serves the other. *Pioneer Sand & Gravel Co. v. Seattle Construction & Dry Dock Co.*, 102 Wash. 608, 173 P. 508 (1918). Usually the two parcels will be adjoining, though there seems no reason they might not be separated by intervening land. See *Kemery v. Mylroie*, 8 Wn. App. 344, 506 P.2d 319 (1973).]

When an easement is "in gross," it is a right personal to the person who holds it; it is not limited to serving any land that person may happen to own; so, there is no dominant tenement.

In practical usage, easements in gross are extremely common. Examples are street easements, easements for utility lines, etc. However, another use of an Easement in Gross may be to provide for public parking on private land, such as may be a condition or requirement for development. This may be a preferred method of assuring such use – over covenants by the owner/developer as it may be easier for the owner/developer or successor in interest to modify a restriction in or designated use of land if not subject of a right.

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[1]Note: In *Roggow v. Haggerty*, the court held that an easement was in gross, not appurtenant, when the holders of the easement did not own the land it served. However, it became appurtenant when they later got title to that land.