

# Recorder of Deeds

Serving Kent County with Pride by using property records industry standards and best practices to make transactions safer, faster, & more convenient for everyone.



Hon. Eugenia Thornton, Recorder



## Why Can't I Change my Deed?

**"Please change my deed"** is the most frequent request received in the Kent County Recorder of Deeds office.

Many people assume they can stop by our office and fill out a form to update a Deed after a life change event such as a name change, divorce, mutual agreement, or death--but that is not how it works.

Deeds are legal documents that cannot be updated, amended or erased. **The only way to "change" a Deed is to record a new one.**

Once recorded, Deeds remain in the "chain of title" forever. Our electronic, searchable database [uslandrecords.com](https://uslandrecords.com) has records dating back to 1874. Property record books in our Public Access Property Records Research Library go back to 1646. Not one of these Deeds was ever changed; it still exists in our records today as it was initially recorded.

The act of recording a real estate deed enters the deed into public record. Recording the Deed does not make it any more valid or enforceable<sup>1</sup>, but it does make it binding to third-parties. The day and time of recording is especially important (25 Del. C. §153)

A deed has priority from the time it is recorded without

respect to the time it was signed, sealed and delivered.<sup>2</sup> Delaware is a "pure race to the recorder's office" state, meaning the first to file a valid deed gains priority and title.

Now you know why you cannot "change" your Deed, let's talk about when new Deeds are required and when they are not.

### If you buy property:

- A Delaware attorney should be involved in transfer of realty and must be involved where Delaware realty is used as security, such as when there is a mortgage. A new Deed will be produced by that attorney.
- Under certain circumstances, there is an exception for home equity loans. However, we always recommend a Delaware attorney be involved for best practice.

### If you inherit property:

- Many people incorrectly assume that a new deed is created when property is inherited. Instead, Register of Wills filings reflect the new owner on county tax records. No new deed is created unless you create one.
- Should you want to borrow money on your inherited

property, the lender may require a new Deed. A mortgage means a Delaware attorney is involved. In this case, a new deed will be generated.

### When liens are involved:

- When there is unpaid debt, the court can "attach" a lien to the debtor's property. The lien will be linked to the Deed by annotation when recorded.
- People owed money take relative priorities for money received from the sale. Depending on circumstances, they might take possession of the property which will generate a new Deed.

### We recommend you consult a Delaware Attorney when you:

- Update title due to a life event (e.g., name change, divorce, mutual agreement, or death).
- Transfer title to realty via sale, purchase, gift, etc.
- Obtain a Deed for inherited property.
- A mortgage or lien is involved.

A Delaware lawyer must be involved to conduct a closing when buying, selling or encumbering property.

## Other Helpful Factsheets<sup>3</sup>:

[Explore Property Records from Anywhere—Free](#) will help you find what is already recorded in your name. You can download/print what you discover using [uslandrecords.com](https://uslandrecords.com). Searching is free, but there is a modest fee for downloading or printing.

[Why Register for Property Transaction Alerts?](#) explains why it is a good idea to sign up for the free property transaction alert software so you will know whenever anything changes. [Pfa.uslandrecords.com](https://pfa.uslandrecords.com) is the link to that.

[Who, Why, Where, How - Research Property fact sheet](#) with accompanying [Workbook](#) will help you delve into the history of your property and provides many useful historic links.

1. Delaware Deeds Outline by Edward A. Tarlov, Esquire, 2013.

2. 56 Delaware Laws, Ch. 318; N & W Development, Co. v. Harmon Carey, et. al., Del Ch., C. A. No. 6885, Hartnett v.c. (January 26, 1983).

3. Download free from our [website](#) or email us for a copy. Factsheets are not a substitute for legal advice.

# Lawful Delaware Deeds

A valid and enforceable Delaware deed must be in writing, specifically describe the property conveyed, specify the names of the grantor and grantee, be signed, sealed, acknowledged, and delivered. 25 Del. C. §121 requires specific language and content<sup>1</sup>:

- |   |                                   |                        |
|---|-----------------------------------|------------------------|
| 1. Names of the grantor and grantee         | 4. Legal description of premises  | 7. Date                |
| 2. Recital of the consideration             | 5. Recital of title               | 8. Delivery to grantee |
| 3. Words of conveyance "grants and conveys" | 6. Notarized signature of grantor |                        |

Before it can be recorded, the Deed must be acknowledged (25 Del. C. §154). The address of the grantee (25 Del. C. §133) will be attached on a New Property Owner Information Form from the Department of Finance. The Deed must also be accompanied by the appropriate state and local transfer taxes per 9 Del. C. §9605 (i). We will reject any documents that do not meet all the statutory requirements per 9 Del. C. §9605(g).

In addition to following statute (box at right), all three county Recorders of Deeds have their own recording fees (see Kent County Code, Chapter 128-44) and formats.

Kent County requires a tax parcel number for the property be put in the upper left, along with the name and address of the person who prepared the deed per 9 Del. C. §9605(h) plus the name and address of the person to which the deed is to be returned after recording. A self-addressed prepaid envelope is required if the document is to be returned by mail. The minimum formats are: Times New Roman, 10 point or equivalent; minimum line spacing of 9 lines per inch; 1.5 - 3.0" top margin on page 1; and 1" wide margins everywhere else.

We ensure lawful format and legibility before recording, but we do not confirm accuracy or legality. Responsibility for accuracy and legality lies elsewhere. We do not confirm or verify data because it would slow down the recording process, grind commerce to a halt, and put lenders at risk.

**This is why we recommend you register for our free Fraud Alert System** at <https://pfa.uslandrecords.com/Default.aspx> to be alerted anytime we record property records in your name.

Delaware's statutes define the ways in which two or more owners may hold title to property (25 Del. C. §311). There are two choices: tenancy in common and joint tenancy with the right of survivorship. Make this decision carefully -- both options have significant benefits and drawbacks. We recommend you seek the advice of a Delaware attorney.

Delaware allows any person of at least 18 years old to buy or sell real estate (25 Del. C. §312). There is no statutory residency restriction; anyone meeting the age requirement may buy and sell real property, regardless of domicile or citizenship.

As you learned on this factsheet's flipside, once recorded, Deeds stay in property records forever. New documents pertaining to the property are added to the "chain of title." **We recommend you always consult a Delaware Attorney when making a deed.**

## "§ 121. Form of deed; legal effect; other forms are valid..."

"This Deed made this

\_\_\_\_\_, day of \_\_\_\_\_, A.D.

"Between A. B., of

\_\_\_\_\_, party of the first part and C. D. of \_\_\_\_\_, party of the second part.

"Witnesseth, that the said party of the first part for and in consideration of the sum of \_\_\_\_\_, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part.

"ALL

"(Description of premises).

"(Recital of title).

In witness whereof, the said party of the first part hath hereunto set the party of the first part's hand and seal.

"Sealed and Delivered in \_\_\_\_\_ (Seal)

"The Presence of:

\_\_\_\_\_"

<sup>1</sup> Delaware Deeds Outline by Edward A. Tarlov, Esquire, 2013