

# DEEDS



## DEEDS AND OTHER TITLE DOCUMENTS IN CALIFORNIA



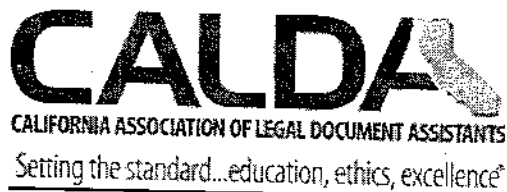
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*This guide will help you understand about California deeds, including the different types of deeds and available options, when transferring real property interests. We have tried to answer many of the most frequently asked questions about assignments of title in California, provide a basic understanding of simple terminology relating to real property, and explain the function of the most common deeds utilized by California real property owners.*

### **GRANT DEED**

The most commonly used type of deed, a Grant Deed, is a written instrument by which title to, or an interest in, real property is transferred from one person or legal entity (grantor) to another (grantee). A Grant Deed does not guarantee or warrant a good title in the grantor, although it does imply an absence of encumbrances on the estate conveyed. The term "encumbrances" includes taxes, assessments and all liens on real property; therefore, the accurate listing of all current encumbrances is a necessary protection for both parties, if the property is so encumbered.

### **QUITCLAIM DEED**

There is no warranty or implied covenants as to the title or as to the freedom from encumbrances. The Quitclaim Deed uses wording such as "...do hereby remise, release and forever quitclaim to..." rather than the unqualified "grant(s)" as used in the Grant Deed. The Quitclaim Deed is often used to clear a "cloud on the title," or to relinquish a possible legal interest held by the grantor. Make certain this is the right deed for what it is you wish to accomplish.

### **INTERSPOUSAL TRANSFER DEED**

This deed transfers an interest in real property between a husband and wife only (and former spouses). Interspousal Transfer Deeds are usually used in conjunction with the dissolution of a marriage, or upon marriage, or when adding a new spouse to one's title. This deed contains language regarding interspousal transfers under the Revenue and Taxation Code, and exclusion from reappraisal under Proposition 13.

### **TRUST TRANSFER DEED**

This deed is used to transfer property to a revocable trust; a short-term trust not exceeding twelve years; a trust where the trustor, or the trustor's spouse, is the sole beneficiary; a change to the trustee holding title, or a transfer from trust to trustor, or trustor's spouse, where the prior transfer to the trust was excluded from reappraisal and for a valuable consideration. This deed should also contain language citing the Revenue and Taxation Code, and exclusion from reappraisal under Proposition 13.

## ***DEED OF TRUST***

A Deed of Trust is utilized by a borrower (trustor) to convey “bare legal” title to the subject property to a neutral party (trustee), in order to secure an obligation (usually the payment of a promissory note) payable to a lender (beneficiary). The trustee (usually a corporation) gives instructions to issue a Deed of Reconveyance (when the obligation has been paid in full) or to begin foreclosure proceedings because the trustor is in default on the loan. The trustee is given a “power of sale” (non-judicial foreclosure) and proceeds from the trustee’s sale will apply as payment toward the defaulted obligation. These documents are also referred to as “mortgages” or “liens,” and are recorded in the county where the property is located.

## ***AFFIDAVIT—DEATH OF JOINT TENANT***

Upon the death of a person who was holding title to real property as a joint tenant, the surviving joint tenant(s) records this affidavit to vest the deceased tenant’s interest in the surviving joint tenants (as of the time of death of the deceased). A complete property description is required, as well as an attached certified copy of the death certificate of the decedent.

## ***AFFIDAVIT – DEATH OF SPOUSE, COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP***

This affidavit works similarly to an Affidavit – Death of Joint Tenant. The persons holding title to the property must have been married at the time of the first death, and the deed to the real property must show they hold title as “Community Property with Right of Survivorship.”

## ***AFFIDAVIT—DEATH OF SPOUSE SUCCEEDING TITLE TO COMMUNITY PROPERTY***

The persons holding title to the property must have been married at the time of the first death, and held title as “Community Property.” At least forty days have passed since the death, and no will was found for the deceased person. Note: If a will was found, or if you have to collect assets other than real property that are held only in the name of the deceased spouse, you may have to file a Spousal Property Petition instead. Consult CALDA’s Probate brochure to read about Spousal Property Petitions.

## ***AFFIDAVIT—DEATH OF TRUSTEE***

The person(s) holding title to the property owns the property as trustee of his or her living trust, and the successor trustee will sign the Affidavit of Death when succeeding to the role of trustee. This does not change the ownership of the property; it merely shows that a new trustee has taken over management of the trust and the property it owns.

### ***AFFIDAVIT—CHANGE OF TRUSTEE***

This process is outlined in Probate Code Section 18105, and is a more versatile document for recording the change of trustee of a living trust. In addition to being used when a trustee dies owning property, it can also be used if a trustee resigns or becomes incompetent because of dementia or another medical condition. You must state the reasons for the change of trustee, and attach supporting documentation, such as doctor's letters.

### ***MOBILE HOME TRANSFERS***

Only mobile homes that have been installed on a foundation are considered real property and, thus, can be transferred by deed. Mobile homes and manufactured houses that are not installed on a foundation approved by the California State Department of Housing and Community Development, are transferred by a title document similar to title to a car. When the mobile home is put on an approved foundation (building permit is required), a local agency issues a certificate of occupancy and records, with the county recorder, a document stating that a mobile home has been affixed to real estate. The Department of Housing cancels the registration, and the owner gives the certificate of title back to the Department. From then on, the mobile home is transferred by a deed to the land it is situated on.

For information on registration and titling of a mobile home, please go to to [www.hcd.ca.gov](http://www.hcd.ca.gov) .

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