

Deeds

Mortgage.

When's it OK to Re-record a Deed?

To err is human. Even careful people sometimes make mistakes. When deeds contain errors, correction and re-recording may be an acceptable remedy. But what kinds of corrections are acceptable? Who may make the corrections? And, how should the corrections be made? This article answers these questions.

What kinds of errors may be corrected?

When dealing with an erroneous deed, the first question to ask is whether the deed effectively transferred title of the intended property to the intended grantee. If the deed transferred the right property to the right grantee (and, in the case of co-owners, stated the right tenancy), the deed may be re-recorded to correct an obvious typographical error or other minor mistake. In other situations, a new deed may be required. The different treatment of minor mistakes and material errors flows from the very nature of a deed.



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writing must manifest intent to transfer property.³ The writing must be delivered to the grantee or his agent.⁴

All this seems simple. To transfer title, a deed must:

- be in writing;
- express the grantor's intent to transfer property;
- be signed by the grantor;
- identify the grantee;
- identify the land conveyed; and
- be delivered.

If a writing fails to satisfy these requirements, the document is not a valid deed. Such a document does not transfer title to real estate. To convey the title, the grantor must execute a new deed or re-execute

the defective writing after correcting it. The signature requirement is strict. An unsigned memorandum attached to a deed after the signatures but prior to the acknowledgment is ineffective to alter the deed.⁵

After a valid deed has been delivered, it cannot be cancelled, even if both parties consent.⁶ Even if the deed is lost or purposely destroyed by the grantor, delivery passes title.⁷ The grantor's title would not be restored even if the grantee re-delivered the deed to the grantor.⁸

A grantee's unilateral alteration of a deed after delivery cannot alter the estate conveyed.⁹ For example, when a married grantee altered a deed in an effort to create a tenancy by the entirety, the alteration was ineffective to change the separate tenancies specified when the deed was delivered.¹⁰

After the grantor has delivered a valid deed to a grantee, the grantor has no further interest in the property. Therefore, any subsequent change to the title must be made by the grantee. For example, suppose a seller owns two parcels of land, Blackacre and Whiteacre. He contracts to sell Blackacre, but his deed inadvertently conveys both Blackacre and Whiteacre. In that situation, the seller could not retrieve the title to Whiteacre by recording a "corrective" deed. There would be only two ways for the seller to get Whiteacre back: (1) obtain a deed from the buyer reconveying Whiteacre; or (2) sue the buyer to cancel the deed as to Whiteacre.

2. Errors correctable without a new deed.

As a general rule, if an error in a deed does not affect the passage of title or the tenancy created, the error may be corrected. Correctable errors include:

- the grantor's name is misspelled
- the grantee's name is misspelled
- the legal description of the property contains a minor typographical error
- the deed's derivation clause makes an incorrect deed reference

5 *Allen v. Parkey*, 154 Va. 739, 746-7 (1929).

6 *Brooks v. Clintsman*, 124 Va. 736, 739 (1919).

7 *Capozzella*, 213 Va. at 823.

8 23 Am. Jr. 2d, *Deeds* §291.

9 *In re Scialdone*, 197 B.R. 225, 227 (E.D. Va. 1995).

10 *Id.*

1 Va. Code § 55-2

2 *Lim v. Soo Myung Choi*, 256 Va. 167, 171 (1998).

3 *Id.*

4 *Capozzella v. Capozzella*, 213 Va. 820, 823 (1973)

- the tax parcel identification number on the deed is incorrect (if the body of the deed contains other information that sufficiently identifies the land conveyed)¹¹

A deed's legal description need not in and of itself identify the land conveyed, but must be sufficient "to afford the means, with the aid of extrinsic evidence, of ascertaining with accuracy what is conveyed and where it is."¹² Therefore, it is usually permissible to correct a minor error in a deed's description of the property. However, some description errors are beyond correction, as when a deed lacks any legal description or describes the wrong land. In such cases, a new deed is required.

3. Examples

The Fairfax County Clerk's FAQ page illustrates correctable and non-correctable errors in deeds. Questions 12 and 21 concern correctable errors.

12. What should I do when my deed has been recorded but a page is missing?

You will need to re-record your deed (or a certified copy of your deed) with the missing page attached.

21. What do I do when the names of the borrowers on a recorded deed of trust are incorrect?

You will need to re-record the deed with the correct spelling of the borrower's names...

Question 23, in contrast, concerns an error that probably is not correctable.

23. How do I add, change or remove a name from a deed?

You may need to prepare a new deed and record it in the appropriate counties...¹³

4. Material Alterations

A correction to a deed must be distinguished from a material alteration. Material alterations do not destroy a deed or impair its legal effect.¹⁴ However, they may cloud the title by casting doubt on what the parties intended when the deed was delivered.

Examples of material alterations include adding property not originally included in the deed, removing property from the grant, or supplying a legal description where the deed contained none.¹⁵ Changing the name of the grantee is a material alteration, as the Virginia Supreme Court held in *Brooks v. Clintsman*.¹⁶ In *Brooks*, a widow's son (a very bad boy indeed) altered a deed by changing the name of the grantee from his mother to himself prior to recording the deed. The Virginia Supreme Court held that the alteration did not affect the validity of the deed, which had conveyed good title to the mother when delivered.

5. Recordation

Recordation of a deed is not necessary for the deed to transfer title as between the parties.¹⁷ However, the Virginia Code declares an unrecorded deed "void" as to purchasers not parties to the deed and lien creditors.¹⁸ Therefore, a grantee must record his deed to prevent the grantor from

¹¹ *Walker v. Independence Fed. Sav. & Loan*, 555 A.2d 1019 (D.C. 1989).

¹² *Firebaugh v. Whitehead*, 263 Va. 398, 403 (2002).

¹³ www.fairfaxcounty.gov/courts/circuit/pdf/fairfax-circuit-court-land-records-faqs.pdf (visited Nov. 26, 2013). The answer to FAQ 12 assumes that the missing page was attached to the deed when it was delivered. If the missing page contained an essential element of the deed and was never attached, a new deed would be required. The answer to FAQ 21 assumes that the borrowers' names' were misspelled.

¹⁴ *Evans v. Bottomlee*, 148 S.E.2d 712, 719 (W. Va. 1966).

¹⁵ *Walker*, 555 A.2d at 1022, n.8.

¹⁶ 124 Va. 736 (1919).

¹⁷ *Capozzella*, 213 Va. at 823.

¹⁸ Virginia Code §55-96.

subsequently transferring the property to a good faith purchaser and to prevent the grantor's subsequent creditors from putting judgment liens on the property. To qualify a deed for recordation, the grantor must acknowledge the deed before a notary public. Therefore, if a deed is re-executed by the grantor, the re-executed deed will not qualify for recordation unless the grantor acknowledges his re-executed signature before a notary.

Who may correct a deed?

If a deed has not been acknowledged and delivered, the parties themselves should correct any errors and initial any interlined changes prior to acknowledgment and delivery.

After a deed has been delivered, minor corrections that do not affect the title may still be made. But who may make the corrections? Theoretically, the corrections could be made by anyone because correcting a misspelling, typographical error or other minor problem does not alter the deed's legal effect. However, having just anyone make the corrections is not the best practice.

The ideal person to make a correction should: (1) know what the parties intended; and (2) have the ability to express that intention. The best practice is to have all of the parties to the deed agree to a correction. A correction by less than all of the parties leaves open the question of whether the correction accurately expressed the intent of all. If a correction is technical, the parties should seek a lawyer's help to assure that proper language is used.

A settlement agent may also have the knowledge and skill required to correct a deed. In most closings, the settlement agent requires the parties to sign a limited power of attorney that authorizes the settlement agent to correct typographical errors or immaterial mistakes. A settlement agent acting under such a power of attorney would be well advised to follow Davy Crockett's rule, "Be always sure you're right – then go ahead!" Crockett emphasized "then go ahead," but settlement agents should focus on "be always sure you're right."

Why make corrections?

If a minor correction does not alter a deed's legal effect, why should people make corrections? The answer is to protect the land records. Correcting a deed makes it easier for title examiners to understand what the parties intended. This not only helps title examiners do their jobs, but also helps potential buyers and mortgage lenders understand the quality of the title. Correcting a deed may protect a current property owner by removing a potential cloud on his or her title. A proper correction of a deed error is a public service.

How should corrections be made?

A common way to correct deeds is to re-record a copy of a deed with interlined corrections. The Clerk of the Fairfax County Circuit Court requires anyone who re-records: (1) to write the reason for the re-recording on the first page of the re-recorded instrument; and (2) to attach a new cover sheet on top of the original cover sheet. Although other clerks may not impose such requirements, the best practice for anyone correcting a deed is to identify the correction and to state the reason for it.

The District of Columbia Recorder of Deeds goes further by requiring the person re-recording an instrument to identify himself or herself and to state, under oath, the reason for the re-recording. Although Virginia does not require a person who re-records a deed to state his or her identity, a correction will be more credible if the person making the correction is identified as someone with a relationship to the transaction. 

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