

Guidelines 3 - Interpreting Deeds

How To Interpret Deeds - A Simple Guide And Glossary

Deeds often seem difficult to interpret, even if you are only reading a catalogue of their contents. Interpretation is often easier if you understand their layout and know what some key words and phrases imply.

This summary is intended for anyone who feels the need for some help with understanding deeds. It discusses:

(1) The sort of document that is considered to be a deed and some documents that are often found in deed bundles but are not actually deeds

(2) The structure of a deed.

(3) These sections are followed by a **Glossary** of terms used in deeds and in summaries, catalogues and calendars. Words in **bold** appear in the **Glossary**.

The summary has been prepared by combining a guide to deed interpretation prepared by the staff of the Bedfordshire and Luton Archives and Records Service (available on-line at <http://www.bedfordshire.gov.uk> then to: *local services; records office; guides to collections; how to interpret deeds*) with the glossary included in N. W. Alcock, *Old Title Deeds: A guide for Family and Local Historians* (Phillimore, Chichester, 2nd ed., 2001).

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1. WHAT IS A DEED?

basically a deed is any document affecting **title**, that is to say proof of ownership, of the land in question. The land may have buildings upon it, or not. The following are the most usual **deed** types:

Conveyances: transfers of land from one **party** to another, usually for money (when you sell your house a **conveyance** is involved); early forms of **conveyance** included **feoffments, surrenders** and **admissions at manor courts** (if the property was **copyhold**), **final concords, common recoveries, bargains and sales** and **leases and releases**;

Mortgages: a person borrowing money on **security** of their house. before about the middle of the nineteenth century, most **mortgages** did not involve banks or building societies but were between individuals; the person lending the money usually charging about 5% interest. The lender was, in effect, investing his or her money at this rate.

Bonds: to further secure **conveyances, mortgages** etc., the person making the **bond** was 'bound over' to pay a certain amount which became forfeit if they did not do certain things (like repay a loan) or had not told the truth (such as selling land which did not belong to them when they **conveyed** it).

Grants of easements [qv] for example, allowing someone to have a right of way across the land;

Maps/Plans: These are often drawn in the margins of **conveyances** showing the land to be **conveyed, mortgaged** etc.

Wills and administrations: in which the land owner **devised** [i.e. willed] his/her land to others.

Other documents often found with deeds

Abstracts of title: shows how **title** to the land passed to the current owner; such an **abstract** may go back several hundred years or just a few months;

Epitomes of title: lists of previous **deeds** which form the **title** to a property

Parish register transcripts: to prove the status of individuals with claim to **title** to the land concerned, e.g. whether they were dead or married or had children

Sale particulars. Owners often kept a copy of the sale or estate agent's particulars with the title deeds.

2. THE STRUCTURE OF A DEED

Most deeds are broken down into a number of sections as follows:

Parties - simply the people involved in the deed; it is important to remember that the first party is usually the one instigating the action, i.e. they are the person borrowing money (if a mortgage), selling their property (if a conveyance) etc.

Recitals - these pieces of information tell you what has led up to the present deed, for example a person's will, previous conveyances and mortgages etc.

Consideration - how much money (or anything else) is involved.

Operative parts - what is actually happening, e.g. a conveyance from one party to another

Habendum - from the Latin phrase 'Habendum et Tenendum' meaning 'to have and to hold' this indicates the party who now has title to the land or any trustees who may hold it on his behalf

Uses - any conditions on the person who now possesses the land, e.g. who will inherit the title on the death of the current title holder

Covenants - what the parties promise to do now, e.g. produce earlier deeds as proof of title to the land if title is challenged

Witnesses - people witnessing the signatures of the parties

Endorsements - Things literally written on the back (dorse) of the deed (i.e. endorsed on it). These often include receipts for money paid, redemption of mortgages or subsequent sales of parts of the land. Less formally, deeds were often endorsed with a brief description of the deed itself.

3. GLOSSARY

ABSOLUTE SURRENDER: the method by which **copyhold** land was transferred from one **party** to another for good [i.e. with no conditions attached] - working like a **conveyance of freehold** land.

ABSTRACT OF TITLE: a summary of prior ownership drawn up by solicitors showing how **title** to the land devolved to the **party** currently possessing it; such an **abstract** may go back several hundred years or just a few months. They were usually drawn up just prior to a sale.

ABUTTAL: names of owners or tenants of property adjoining that involved in a deed, recorded as an aid to identification.

ADMINISTRATION: if a person died **intestate** their money, goods and possessions passed to their next of kin via an administration which had the same form in law as a will.

ADMISSION: a person or persons with **title** to a piece of **copyhold** land was admitted at a **Manorial Court** and this admission was taken as proof of their title to the land.

APPURTENANCES: other things belonging to the land such as, for example, yards, gardens and orchards or something intangible such as a **common right**.

ASSIGNMENT: transfer of a right, usually a lease, or a mortgage.

ASSIGNMENT TO ATTEND THE INHERITANCE: an assignment of the remaining term of years in a **mortgage by demise** to a **trustee** after the mortgage itself has been **redeemed**.

ATTORNEY, POWER OF: the power of one person to act for another if, typically, that person were out of the country or incapacitated. See also **Letter of Attorney**.

BARGAIN AND SALE: an early form of **conveyance** often used in the sixteenth century and by **executors** to **convey** land; the bargainee or person to whom the land was bargained and sold, became **seised** of the land. It was rendered valid by **Enrolment**.

BEERHOUSE: a licensed premises allowed to sell beer and/or cider but not spirits.

BENEFICIARY: a person benefiting from a bequest in a **will**.

BEQUEATH/bEQUEST: **personal estate** in a will is **bequeathed** i.e. transferred by the **testator** to the **beneficiaries**.

BOND (also **RECOGNISANCE**): agreement by the person giving it (called the obligor) to pay a financial penalty if specified conditions are not met (which might include the repayment of a sum of money). If the actions are not performed, the other **party** (called the obligee) is awarded a sum of money, the 'penal sum', which was generally twice the value of the property or sum involved. A

Recognisance in the nature of a Statute Staple was a strong form of bond that was normally cancelled by a separate deed, a **Defeasance**.

BURGAGE TENURE: type of tenure in a borough, similar in its rights to **Freehold**, often involving the payment of a uniform burgage rent for each plot.

CHANCERY/COURT OF CHANCERY: Formerly one of the King's courts, the powers of which are now vested in the High Court of Justice, which has a Chancery Division; cases were often brought to the court to settle ownership disputes; but beware, such cases do not always show existence of a real dispute, the case may be a legal fiction simply brought to prove good **title**.

CARTULARY: volume containing copies of deeds (often with other material), most often compiled by a monastery.

CHIROGRAPH: an old word for an indented **deed** often used in the expression '**Chirograph of a Fine**', i.e. one of the 'indentures of a fine'.

CLOSE: a piece of **inclosed** land or field.

COMMON RECOVERY: a process by which land was transferred instead of using a **conveyance**; a common recovery was a piece of legal fiction involving the **party** transferring the land, a notional tenant and the **party** acquiring the land; the tenant was ejected to effect the transfer.

COMMON RIGHT: some land had, as an **appurtenance** the right to graze a certain number of specified animals on the common land of the parish.

CONDITIONAL SURRENDER: the method by which **copyhold** land was temporarily transferred from one **party** to another usually as security for a **mortgage**.

CONSIDERATION: the thing for which land was transferred from one **party** to another, usually, of course, a sum of money, but not necessarily, a parent might **convey** land to a child 'in **consideration** of the natural love and affection etc.'.

CONVEYANCE: transfer of freehold land from one **party** to another. before the invention of the modern conveyance in the late nineteenth century, this was effected by such means as by **feoffment, lease and release, or bargain and sale**.

COPY OF COURT ROLL: copy of entry on roll of manor court proceedings, recording admission of a tenant to his holding, and serving as a title deed. See **Copyhold**.

COPYHOLD: land that belonged to a Manor and was, notionally, property of the Lord of the Manor. The Lord, through his steward, ratified any transfer of land by **surrender** of the transferring **party** at a **manorial court** and **admission** of the new owner. Gradually copyhold land was **enfranchised** until the Law of property Act 1922 abolished **copyhold** status, converting all such land into **freehold**.

COUNTERPART: the second half of an indenture, precisely matching the first part; usually used for the second copy of a lease, signed by the tenant and retained by the grantor.

COURT ROLL: a roll on which all the doings of a **manorial court** were recorded; so far as **deeds** are concerned, this means **admissions** to and **surrenders** of land and therefore proof of **title**.

COVENANT: an agreement entered into by one of the parties to a deed to another.

A COVENANT FOR PRODUCTION OF TITLE DEEDS is an agreement to produce deeds not being handed over to a purchaser.

COVENANT TO SURRENDER: an agreement to **surrender copyhold** land, this served, effectively, as a **conveyance** would serve if the land were **freehold**.

CURTILAGE: yard or court associated with a dwelling house.

DEFEASANCE: see **bond**.

DEFORCIANT: the defendant in a **final concord**, in other words, the person transferring the land.

DEVISE/DEVISING: **real estate** in a will is **devised** i.e. transferred by the **testator** to the **devisee/s**.

DEVISEE: someone receiving **real estate** from the **testator** in a **will**.

DOWER: a widow had a right to one third of her dead husband's property; **dower trustees** were often appointed in **deeds** to bar dower, that is to say, prevent the widow claiming it (because they held the property not the husband).

EASEMENT: classically defined as a privilege without profit; usually the owner of one piece of land (called the dominant **tenement**) will have an **easement** over a neighbouring piece of land (called the servient **tenement**) such as a **right of way**.

EASTER: one of the terms during which legal business was transacted, along with **Hilary** and **Michaelmas**.

ENFRANCHISEMENT: the process by which a **copyhold title** was changed to a **freehold**.

ENDORSEMENT: the writing on the back (dorse) of a deed.

ENROLMENT: the copy of a deed on a roll kept by a court as a permanent record.

ENTAIL: the settlement of property so that it must descend to the owner's heirs in a specified fashion, and not be sold or otherwise dispersed. The current owner of entailed property is then a **tenant for life** and his next heir is the **tenant in tail**.

EPITOME OF TITLE: a list of **deeds** comprising **title** to a piece of land.

EQUITABLE MORTGAGE: this may apply to a number of different **mortgage** processes but is most commonly encountered as the **mortgagor** simply depositing the **title deeds** to the land acting as security with the **mortgage** without any kind of written **mortgage deed**.

EQUITY OF REDEMPTION: the right of a mortgagor to redeem the property he has mortgaged, even if the due time for repayment has passed; this right could be granted to someone else.

EXECUTOR/EXECUTRIX: an **executor** is the person charged with **proving** a will; an **executrix** is a female **executor**.

EXEMPLIFICATION: Formal copy of a court record issued with the court's seal. The most common exemplifications are those of **Recoveries** (q.v.) but **Exemplifications of Fines** are sometimes found, as are exemplifications of Chancery decrees or proceedings.

FEE-FARM: see **Rent**.

FAMILY SETTLEMENT: settlement whereby land is set to descend within a family in a certain manner, i.e. setting up an **entail**.

FEE/FEE SIMPLE: **freehold** land is said to be land held in **fee simple**, absolute in possession and subject to no conditions or uses.

FEOFTEE: a **trustee** who holds land without specified conditions.

FEOFFMENT: an early form of **conveyance** involving a simple transfer of **freehold** land by deed followed by in a ceremony called livery of **seisin**.

FINAL CONCORD (or Fine): a fictitious legal case in which the **deforciant** was deprived of the land which was given to the **querent**; usually used as a way of further proving **title** of the purchaser. The record from the Court of Common pleas was provided as two matching copies (Left and Right-hand Indentures of Fine); the Foot of Fine is the third copy of the record, kept by the Court. The term comes from the Latin phrase which began the document 'hic est finalis concordia' or 'this is the final agreement'. A **Deed to Lead the Uses of a Fine** is an agreement to levy a **fine**, and to declare the uses for which the property is held. The deed will state that a fine is to be levied *sur conizance de droit come ceo* etc.

FINE: (a) Entry Fine: sum of money paid for the granting of a lease or for admission to a copyhold tenement; (b) **Final Concord** (q.v.).

FREEHOLD: tenure in **fee simple**, i.e. absolute and unlimited, though possibly paying a fixed rent (a chief rent or fee-farm rent).

GIFT: any transfer of **real estate** in the medieval period was described as a **gift** even if money changed hands.

GRANT: see **Gift, Reversion**.

HABENDUM: the clause of a **conveyance** etc. in which the ownership of the land is described along with any **trusteeships** etc., from the Latin phrase which began the clause 'Habendum et Tenendum' meaning 'to have and to hold'.

HEREDITAMENTS: every kind of property which can be inherited, hereditaments are, technically, of two types, corporeal hereditaments meaning anything that has a physical form (thus including all land) and incorporeal hereditaments which are insubstantial, such as a **common right**.

HERIOT: a fine paid on the death of a tenant (holding by copy or by three-life lease), either a sum of money (often a year's chief rent) or the best beast or best possession). For a freeholder, the

similar payment was known as a **Relief** (q.v.). **Heriots** were abolished by the Copyhold Acts 1852 and 1858.

HILARY: one of the terms during which legal business was transacted, along with **Easter** and **Michaelmas**.

INCLOSURE: in the Middle Ages parishes had one or more open fields in which land owners had strips of land. The process of inclosure saw these open fields divided into smaller fields and inclosed with hedges, walls or fences and owners of the old strips given a proportionate acreage of the new fields; bedfordshire saw a considerable number of parishes **inclosed** by parliamentary Inclosure, i.e. local Acts of parliament.

INDENTURE: a type of **deed**, one with an indented top, which could be joined to a copy or counterpart. One copy would be kept by one **party** to a deed and one by the other; the **counterpart** (second copy) was kept by the **landowner**, if a lease, or the person **conveying** the land, if a sale (though counterparts of sale deeds were only rarely made).

INTESTATE: someone who dies without making a will is said to die **intestate**.

KNIGHT SERVICE: the feudal tenure of a manor, by providing the service of a knight or part of one (or in the post-medieval period, by a payment in lieu of this).

LEASE: grant of property to a tenant for a specified period, usually a term of years, by the **lessor** to the **lessee**; types of lease include **life lease**: lease for the life of the tenant; **three-life lease**: lease until the deaths have occurred of three named people (with an upper limit of 99 years); **'perpetual' lease**: intended to continue indefinitely, granted for a very long period, e.g. 1,000 years; **building lease**: lease, generally for 99 years, including an agreement for the tenant to build a house. See **Reversion**; **Counterpart**.

LEASE and RELEASE: the most common method of **conveying freehold** property from the later seventeenth century onwards, before the introduction of the modern **conveyance** in the late nineteenth century. The **lease** was granted for a year (sometimes six months), then on the following day the **lessor** released their right of ownership in return for the **consideration**.

LEASEHOLD: land held by a **lessee** by **lease** from the **lessor**; **leasehold** land is not **conveyed**, it is **assigned**.

LESSEE: the **party** leasing land from the owner, or **lessor**.

LESSOR: the owner of land **leased** to a **lessee**.

LETTER OF ATTORNEY: deed establishing a substitute to act for one of the parties in a transaction (in the medieval period, usually to grant or receive Seizin).

LETTER PATENT: royal grant, enrolled on the patent Rolls.

LICENCE TO ALIENATE: royal permission, by Letters patent, to sell or dispose of a property obtained from the Crown and held by knight service.

MARRIAGE SETTLEMENT: a settlement made before a marriage (sometimes afterwards) involving land held by trustees for the benefit of husband, wife and children; often the longest and most complicated of **deeds**.

MANORIAL COURT: the court held by the Lord of the Manor through his steward and producing **court rolls** of business transacted.

MESSUAGE: a term for property, usually a dwelling house.

MICHAELMAS: one of the terms during which legal business was transacted, along with **Hilary** and **Easter**.

MOIETY: half a piece of land, property etc, often **undivided moiety**, when the shares of the two owners have not been separated or physically divided.

MORTGAGE: from the Latin 'dead pledge'; a loan secured by land which is temporarily transferred from the **mortgagor** to the **mortgagee**.

MORTGAGE BY DEMISE: the most common form of early mortgage in which the land acting as security was transferred to the **mortgage** by a perpetual **lease** for a term such as 500 or 1,000 years, on **redemption** the land was transferred back to the **mortgagor** and the remaining term of years **assigned** to a trustee.

MORTGAGEE: the **party** loaning money in a **mortgage**.

MORTGAGOR: the **party** borrowing money in a **mortgage**.

OPERATIVE PART: that part of a **conveyance, feoffment** etc. which describes what is happening.

PARTITION: division of a property between two or more interested parties.

PARTY: a person, group of people, company etc. fulfilling a particular role in a **deed** such as **mortgage, mortgagor, lessor, lessee, trustee**, seller, buyer etc.

PERSONAL ESTATE/PERSONALTY: those possessions which are not land or property such as money, shares, furniture etc.

PIGTLIE: a name for a small **close** or piece of land.

PRECIPE: see **Recovery**.

PRINCIPAL: the amount lent in a **mortgage**.

PROBATE/PROVING A WILL: the process of establishing the validity of a **will** (in a church court until 1858) , recorded in the **grant of probate**..

QUERENT: the plaintiff in a **final concord** or **common recovery**, i.e. the purchaser of the land.

QUITCLAIM: a deed renouncing any possible right to a property ['Quietus Clamatus' in Latin].

QUITRENT: rent payable to the Lord of the Manor, originally paid by a tenant of **copyhold** land to free him from the obligation of military service, later simply a way for the Lord of the Manor to make money from his position.

REAL ESTATE/REALTY: land and property owned by an individual.

RECITAL: rehearsal of prior event and deeds affecting a property being transferred.

RECOGNISANCE: see **bond**.

RECOVERY: collusive law suit in the Court of Common pleas, normally used to destroy (bar) or alter an entail; its result are recorded in an **Exemplification** of a (Common) Recovery; **a Deed to make a tenant to the precipe** precedes a Recovery, transferring the property involved to a trustee and declaring the uses for which it is held.

REDEMPTION/REDEEMED: when a **mortgage** is paid off it is said to be **redeemed**.

REGNAL YEAR: the current year of a king's reign, counting from his accession, used as the means of dating deeds until the mid-17th century.

RELEASE: the second part of a **LEASE AND RELEASE**.

RELIEF: manorial payment from a freeholding required for the heir to inherit or for the property to be sold.

REMAINDER: the word used to indicate that a person stands to inherit, thus in the expression to A, remainder to b, remainder to C, A is the current owner, on their death b inherits and on the death of b, C inherits.

RENT: payment due for use of property; **chief rent** or **quit rent**; a fixed rent due from a freehold property; a **fee-farm** or **reserved rent** is similar, set up on the sale of property by a grant in fee farm.

RESTRICTIVE COVENANT: an agreement against doing something, for example, extending a house beyond the building line, or using a dwelling house as a public house. See **covenant**.

REVERSION: The return of leased property to the original owner on expiry of a lease. A **Grant (or Lease) in reversion** started after the termination of a previous lease, or sometimes after some other specified time or event.

RIGHT OF WAY: the right of specified individuals to go from point A to point b over the land of another specified individual or individual.

SEIZIN/SEIZED (also seisin) : the possession of freehold property; **livery of seizin** is the ceremony of taking possession by physical transfer of a turf, key, etc.

SETTLEMENT: transfer of property to trustees, for a particular purpose; **marriage settlement:** settlement preceding (**pre-nuptial**) or occasionally following a marriage (**post-nuptial**), involving property held for the benefit of husband, wife and children; **family settlement:** settlement of property to descend to the owner's heir(s) and other children, i.e. establishing an **entail**.

STATUTE STAPLE: see **bond**.

SURRENDER: the return of property held by lease or by copyhold to the lessor or the lord of the manor. See **absolute surrender** and **conditional surrender**.

TAIL: see **entail**.

TENANT FOR LIFE and **TENANT IN TAIL:** see **Entail**.

TENEMENT: description of any type of property, but particularly of a building or part of one, thus a **messuage** might be a **tenement** or might be divided into two **tenements**.

TENURE: the form of right by which property is held. See also **burgage tenure**; **Copyhold**; **Freehold**; **Knight Service**; **Leasehold**.

TESTATOR/TESTATRIX: the person writing their **will**, a testatrix is a female testator.

TITLE: the right of ownership of land.

TRUSTEE: a person holding land on behalf of another for specified uses, such as barring **dower**, for example; see also **feoffee**.

USES: the purposes for which land is held by a **trustee**, in a marriage or family **Settlement**, etc.

VIRGAGTE: see **Yardland**.

WARRANTY: an undertaking by a grantor to support a new owner's title to a property.

YARDLAND or **Virgate:** an area of land (usually in common fields), conventionally of 32 acres, but in reality varying very much from place to place; holdings were often described by the number of yardlands they contained.

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Copies of this Guideline may be obtained from the British Records Association, c/o Finsbury Library, 245 St John Street, London EC1V 4Nb. It is issued free, but donations to help our work are greatly appreciated.