Real Estate Document and Deed Drafting
TIPS FOR DRAFTING AND AVOIDING DISPUTES IN PURCHASE AGREEMENTS AND OTHER DOCUMENTS

A LOOK AT WAYS TO IMPROVE YOUR DRAFTING OF LEASES, PURCHASE AGREEMENTS, AND OTHER REAL ESTATE DOCUMENTS

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I. INTRODUCTION.

We all can improve our day-to-day drafting skills. The goal of this session is to cause you to focus when drafting, not only on documenting the parties’ agreements, but also on anticipating how disputes might arise in the future and drafting to avoid those disputes. This presentation will include some general drafting tips, as well as some examples of disputes that could have perhaps been avoided by more careful drafting. With proper attention to the twelve matters discussed below, each of us can draft better and more effective real estate documents for our clients.

II. SELECT AND USE FORMS CAREFULLY.

A. We all use forms. Attorneys can save significant time (and, as a result, clients save considerable money) through the appropriate use of forms. Indeed, it is safe to say that it is the exception, rather than the rule, for attorneys to start from scratch when drafting most real estate documents.

B. As efficient and helpful as it may be for attorneys to use forms, disastrous outcomes can occur when forms are not used carefully or when forms are not tailored to fit the specifics of each transaction.


1. **Background.** The borrower closed on two loans with the lender, each secured by separate parcels of real property. However, the legal descriptions were transposed on the mortgages and ultimately filed in the wrong counties. One of the mortgages was later satisfied erroneously. The lender requested the satisfied mortgage be reinstated because it claimed that the satisfaction arose from a mutual mistake involving the legal descriptions. The borrower contested whether there was a mutual mistake. The court found that there was a mutual mistake and reformed the documents in order to reflect what it believed was the parties’ intent.

2. **Lesson Learned.** The lender likely had a form mortgage that it utilized for various transactions, but in this case the wrong legal description was inserted in the forms. A simple check of the legal descriptions prior to the closing could have eliminated this issue, but for whatever reason this error was not discovered. A more careful use of the mortgage forms would have likely avoided this litigation.

D. **Key Drafting Tips.**

1. Be careful when using form documents to be sure that you do not overlook boilerplate language in the form documents (i.e., notice clauses, choice of law clauses, waivers of damages, remedies provisions, etc.).

2. Make certain that all of the provisions in a form document are appropriate for your transaction.
3. Make sure that all of the provisions in a form document reflect the latest developments in the law.

4. If the form includes blanks, make certain that all blanks are filled in completely and correctly.

III. DON’T CUT CORNERS IN THE EDITING PROCESS.

A. Many of us spend countless hours editing (and re-editing) real estate documents for the transactions we are handling. Through the editing process documents often change dramatically from their first draft until they are circulated for signatures.

B. The revision process is a frequent source of many mistakes. Countless lawsuits have resulted from sloppy editing, poor proofreading, and blatant errors in the creation and revision of drafts of real estate documents. Fortunately, nearly all of these mistakes may be avoided.


1. **Background.** Travelers’ Insurance Contract contained a Special Endorsement stating that:

   The Company’s obligation under the policy shall be limited to reimbursement of the insured: …

   For all reasonable expense incurred in connection with the investigation, settlement, or defense of such claims or suits and the Company’s reimbursement obligation for the settlement of all damages imposed on and expenses incurred by the insured shall be limited to the amount stated in the policy as the applicable limit of the Company’s Liability for damages that the Company may, at its discretion, participate, in, in the defense or settlement of such claim or suit.

   The court interpreting this provision determined that, as written, it was “gibberish.” However, it found that if the sentence had stopped after the word liability, the sentence would make sense. Accordingly, the court found that the remaining “meaningless” part of the provision should be disregarded. It seems likely that this provision resulted from an editing error, rather than from a conscious drafting decision.

2. **Lesson Learned.** The exact cause of the problems with this document is unknown, but it is virtually certain that this agreement did not read like the drafting attorneys intended or expected. Attorneys should always review documents after their

¹ This case doesn’t deal with standard real estate documents, but is notable for the court’s interesting rebuke of the drafted language.
edits have been made and again before a document is deemed “final” and circulated for execution.

D. Key Drafting Tips.

1. Always communicate your revisions clearly to the other side. Never assume that a verbal discussion concerning a concept has been captured accurately in writing.

2. Always be sure that any revisions you propose to the other side are actually made and are in the correct location in the document. Do not accept at face value the common assurance that “we made all of your changes.”

3. Similarly, if you are revising a document, take care to be certain that your revisions are made correctly – be especially careful copying and pasting.

4. Once all revisions are made and a document is believed to be final, read the document one last time from cover-to-cover.

5. Maintain copies of the various versions of documents (either electronically or in hard copy) to provide a paper trail in the event a dispute arises about the meaning of a provision.

IV. USE DEFINED TERMS EARLY AND OFTEN.

A. Almost all real estate documents use defined terms for certain key terms and concepts, such as the names of the parties, the property involved, etc. When using definitions for these key concepts it is critical to make certain that the definitions assigned to these terms are precise and tailored specifically for each transaction.

B. Although defined terms are used regularly for key terms that are standard in most deals, parties often leave certain deal-specific terms undefined. Because so much of a document’s meaning and value can hinge upon the meanings assigned to various terms and concepts, you should consider using defined terms for nearly all terms and concepts where you believe there is any room for future debate concerning the parties’ intent.


1. Background. In this case, the Eighth Circuit applied Minnesota law to a dispute involving a number of Best Buy’s commercial leases. The leases at issue contained different terms, but all provided that the respective landlords would maintain property and liability insurance for the common areas of the shopping centers in which Best Buy’s stores were located. Each of the properties at issue was managed by the same property manager. Under the property manager’s arrangement with the landlords, the property manager was responsible for maintaining the required insurance for these properties. To provide such coverage, the property manager created two captive insurance companies and set up a program under which the property manager self-funded
a significant portion of any claims. The property manager, in turn, billed the landlord “premiums” for this coverage, which cost the landlords passed through to Best Buy. Best Buy sued the landlords for breach of contract claiming that the landlords had not obtained “insurance” as required by the leases. The landlords argued that the term “insurance” was ambiguous and a reasonable jury could find that the program provided by the property manager constituted “insurance.” The court ultimately determined that the coverage provided by the property manager did not constitute “insurance,” and found the landlords in breach, although it remanded the case to consider the landlords’ equitable defenses.

2. **Lesson Learned.** If the property manager and/or the landlords had anticipated implementing a non-traditional insurance program, they could have potentially avoided the dispute merely by defining the term “insurance” to expressly include such a program. Indeed, if the attorneys preparing the lease had known more about the parties’ plans, the addition of just a few words to the lease could have kept the parties out of this dispute entirely.

D. **Key Drafting Tips.**

1. Make certain that the documents you draft state clearly the intended meaning of the terms you use in such documents.

2. Use defined terms consistently. Always review your documents carefully to make certain that you have carried defined terms throughout an agreement.

3. Consider using defined terms to simplify your drafting and to eliminate the need to repeat lengthy phrases repeatedly in your documents.

4. Understand that, if you do not define a term, you place yourself at the mercy of a court’s view of the common meaning of the term or the court’s application of one or more commonly used rules of construction, including the following:

   a. Ordinary and popular meaning;

   b. *Expressio unius est 4xclusion alterius* (exclusion of things not expressed);

   c. *Ejusdem generis* (particular over general);

   d. Local usage;

   e. *Noscitur a sociis* (meaning of accompanying words);

   f. Substance controls over form;

   g. Course of dealing; and
h. Resolution of ambiguities against the drafter.

5. When you believe there is any real doubt about how parties may interpret a given term or concept, use a definition!

V. GO THE EXTRA MILE WHEN DESCRIBING REAL PROPERTY.

A. Virtually all real estate documents, including leases, mortgages, purchase agreements, easements, etc., include descriptions of the real estate involved in the transaction. For many of the documents we draft (or revise) on a daily basis, the description of the real estate involved is one of the core terms that we must draft correctly.

B. Despite this fact, vague, ambiguous, and/or erroneous descriptions of real estate are one of the most frequent causes of litigation arising from real estate transactions. Thus, special attention always needs to be paid to making sure that this key component of each transaction is handled correctly.


1. **Background.** A purchase agreement for certain real property described the real property as approximately 60 acres, bounded on the east by a certain tree line. Further investigation revealed that using the tree line border resulted in a parcel of land that consisted of only 54 acres. The purchaser argued that the purchase agreement was for 60 acres of land, despite the reference to the tree line. The seller argued that none of the land past the tree line border was included in the purchase agreement. The court found that there was no valid agreement, because it was not possible for the land described in the purchase agreement to exist.

2. **Lesson Learned.** Whenever possible and practical, try to avoid using references to physical monuments, natural features, man-made improvements, etc. when describing real property.

D. **Key Drafting Tips.**

1. **Take the time to adequately describe the real estate involved in your transaction.** Building addresses, suite numbers, and other descriptions may be helpful as abbreviated references, but are often insufficient to adequately describe the real property in full.

2. **Make certain to include (as appropriate) descriptions of parking spaces, storage spaces, break rooms, bathrooms, etc. that are intended to be included in the real estate described in an agreement.**

3. **Read the description of the real property from the other party’s perspective and attempt to discern whether it can be construed in different ways.**

4. **Review legal descriptions carefully and confirm that they are error free.**
5. When appropriate, include references to maps, surveys, plats, etc. to buttress your textual description. Be careful, though, to review these graphic descriptions carefully because they too can be ambiguous. In particular, if exhibits contain colors or shading they may not show up properly on copies of documents and lead to later disputes, despite the initial clarity.

VI. AVOID EASY MISTAKES WHEN USING EXHIBITS.

A. Exhibits are often invaluable when creating real estate documents. They are frequently used to show graphic representations of real property (as discussed above). In addition, they may contain large lists, plans and specifications, or other types of information that would clutter the body of the document and decrease its readability.

B. Exhibits, when used effectively, can help clarify terms in a document and add other important information. When used poorly, however, exhibits can create substantial flaws in real estate documents and be the source of substantial disagreement between the parties.

C. Key Drafting Tips.

1. Ensure that all exhibits are clear and legible, especially when exhibits are photocopied or transmitted electronically.

2. If copies of plans or drawings are attached to a real estate document, make certain that the documents are not reduced to such a degree that it is impossible for the human eye to decipher what they say. Also, always confirm before an agreement is finalized that everyone is looking at and working from the same versions of plans of drawings.

3. Remember to physically attach all exhibits.

4. Confirm that all references to exhibits in the document are correct, especially if the order of the exhibits was changed during the drafting process.

5. Use precise language if you attach another document by reference, without physically attaching the document. Some courts have held that stating that a contract is “subject to” the terms in another document does not sufficiently show that the parties intended to be bound by the other document. See Affinity Internet, Inc. v. Consolidated Credit Counseling Services, Inc., 920 So. 2d 1286 (Fla. Dist. Ct. App. 2006).

6. Carefully scrutinize all exhibits and attachments when reviewing documents. Some parties may intentionally place contentious terms into exhibits in the hopes that the terms will go unnoticed – don’t be a victim of this dubious practice.

VII. PROCEED WITH CAUTION WHEN USING DATES, TIMES, AND NUMBERS.

A. Virtually all real estate documents contain both dates and numbers. Indeed, often times some of the most important terms in a real estate document (i.e., purchase price, rental rate, lease term, etc.) are expressed numerically.
B. Perhaps to a greater degree than any other mistake that can occur when drafting real estate documents, imprecise drafting involving dates and numbers cause disputes. Even worse, these kinds of mistakes often cost our clients money, which ultimately leads to unhappy clients (which can quickly become former clients).

C. Key Drafting Tips.

1. Consider whether you want to express dates, times, and numbers using words, numerals or both. If you choose to use both, always make clear that the words and numerals match – especially when terms have been modified during the drafting process.

2. If you are using times, remember to specify whether a time is A.M. or P.M. and the applicable time zone. Be especially careful with noon and midnight.

3. Consider whether “before” or “on or before” is appropriate for dates and times.

4. Double-check details regarding important dates:
   a. If there is an important deadline – consider whether it falls on a weekend or a holiday.
   b. Make sure you know how many days are in each month.
   c. Don’t forget about leap years!

5. Does your document involve lease years, calendar years, or both? Consider defining these terms.

6. Make formulas clear:
   a. Specify the order of operations.
   b. Consider including examples/tables.

7. Consider how “rounding” may impact the results of formulas.

8. Be especially careful proofreading all key economic terms!

VIII. CRAFT CONTINGENCIES THAT GET THE DEAL DONE.

A. Contingencies are a key component of many real estate transactions, and often times are some of the most highly negotiated provisions in these transactions.

B. Unfortunately, despite the energy that often goes into the negotiation of the terms of contingencies, contingency provisions many times leave much to be desired when drafted. Indeed, it is common for questions about contingencies to arise after agreements are executed,
such as whether a contingency has been satisfied or whether a contract has terminated as a result of a failure of a contingency.


1. **Background.** The seller and buyer entered into a purchase agreement under which the buyer agreed to purchase certain property that was part of a larger parcel owned by the seller. The purchase agreement contained a financing contingency. The buyer applied and qualified for a loan, except that the lender required the seller and buyer to negotiate an easement agreement that would permit the buyer to cross the remaining portion of the seller’s property for access to the property being sold. The seller and buyer entered into negotiations regarding this easement, but after nearly two months, were unable to reach an agreement. Ultimately, after no agreement had been reached, the buyer’s lender would not finance the acquisition of the property. Subsequently, the buyer informed the seller that the agreement had terminated as a result of the failure of the financing contingency.

The seller commenced an action against the buyer for specific performance. The buyer argued that its failure to obtain financing by the contingency date in the purchase agreement terminated the purchase agreement. The seller, in turn, argued that the buyer was not able to exercise its rights under the financing contingency because the buyer’s failure to obtain financing was due to the buyer’s failure to act in good faith. The trial court concluded that, *inter alia*, because the buyer had failed to act in good faith in its efforts to obtain financing, the seller was entitled to specific performance of the purchase agreement. The Minnesota Court of Appeals reversed the decision of the trial court and found that the trial court’s conclusion that the buyer had not acted in good faith was clearly erroneous.

2. **Lesson Learned.** Consider including standards of conduct in connection with a contingency, such as whether a party must act in good faith, make reasonable efforts, commercially reasonable efforts, or best efforts, etc. Moreover, if there is an expectation concerning specific efforts that must be undertaken to satisfy a contingency, make certain to identify those specifically in the contingency provision.

D. **Key Drafting Tips.**

1. Always be strategic when choosing language in contingencies.
   a. Make sure that “trigger” words are defined.
   b. Less is not more in drafting contingency provisions.

2. Be certain to consider timing issues surrounding the potential exercise of a contingency, including whether either party may shorten or extend the contingency period.

3. Require written notice of the waiver / non-waiver of a contingency.
4. Always spend time examining “what-ifs” against your provision to see if it has any holes.

5. In drafting contingencies for the benefit of your client, you should consider whether it would be better to be locked in or out of an agreement (i.e., if the contingency is not satisfied, is the agreement void automatically, or instead, must notice be given to void the agreement).

6. Take the time to walk your client through how contingency provisions are structured and make certain that they work with your client’s plan for the transaction.

IX. CONSIDER CONDITIONS TO AND CONSEQUENCES OF ASSIGNMENT OF CONTRACT RIGHTS AND OBLIGATIONS.

A. Assignment (and sublease) provisions are often viewed as boilerplate text in real estate documents. As a result, attorneys and clients alike commonly breeze past these provisions in the negotiation and drafting process.

B. It is not uncommon that these provisions ultimately become very important to our clients, however. For instance, in the sale of a business or in the event a client is trying to escape the burdens of a failing business, assignment provisions can become critical to the ultimate outcome of our work for our clients. Thus, these provisions should not be overlooked and must be drafted carefully.

C. Key Drafting Tips.

1. Examine and define carefully what should constitute an “assignment.”
   a. Transfer of ownership or control of an entity
   b. Assignment of contract rights and obligations to an affiliate
   c. Encumbrance in favor of a lender

2. Address what ability, if any, a party will have to withhold its consent to a requested assignment or sublease.
   a. Impact of silence – obligation to deal fairly and in good faith
   b. Sole and absolute discretion
   c. Reasonable discretion
      1) What type of a denial would be reasonable?
      2) What factors may a party consider in determining whether to consent?
3. Carefully draft provisions about what information a party must provide for the approval process – it is common that decisions on assignments and subleases need to be made quickly, so it is a good idea to provide as much specificity as possible about the information that will need to be exchanged. Consider the following types of information:

   a. Financial records, tax returns, personal financial statements;
   b. Business plan;
   c. Credit references; and
   d. Information about investors.

4. Specify any timing constraints and the impact of a party’s failure to meet the time constraints.

5. Consider whether there will be continuing liability for the assignor/sublessor.

6. Consider continuing liability issues for any guarantors – few situations are worse for a guarantor than to have continuing exposure under a lease for a business with which the guarantor has no involvement or no familiarity with the owners or management.

X. SPEND THE TIME NEEDED TO DRAFT PRECISE AND THOROUGH USE PROVISIONS.

A. Many real estate documents, such as leases, declarations, and easements, commonly create restrictions on the types of uses that are and are not allowed on a parcel (or parcels) of real estate.

B. Drafting provisions that deal with allowed and prohibited uses can be extremely difficult. Indeed, even for relatively straightforward uses, it can be a challenge to find a way to adequately describe the use. Because even the best drafters struggle with these kinds of provisions, each of us must exercise special care when dealing with these provisions.


   1. **Background.** Barnes & Noble’s lease contained restrictions on various uses in the “shopping center,” including “living quarters, sleeping apartments, or lodging rooms.” The Landlord informed Barnes & Noble that it intended to build a Westin Hotel and condos on a portion of the parking area for the shopping center located near the Barnes & Noble. However, the lease also reserved the right to revise the site plan and the Landlord stated that it was revising the site plan, so that the portion of the parking area where the hotel and condos would be built would no longer be part of the shopping center-tract and, as a result, no longer subject to the use restrictions. The parties engaged
in complex arguments regarding what constituted the site plan and the shopping center tract, but the Court ultimately found that the Landlord was entitled to revise the site plan as it proposed.

2. **Lesson Learned.** Clearly specify the areas that are and are not subject to particular use restrictions and make clear whether such areas are subject to change.

D. **Key Drafting Tips.**

1. Define every use carefully. Think about whether the parties intend the use to be interpreted broadly or narrowly, and whether there is (or should be) flexibility for future changes in the use.

2. Consider the level of restriction on the “use” – do the parties intend a complete prohibition on a particular use or something less restrictive?
   a. Square footage restrictions
   b. Percentage of sales restrictions
   c. Gross sales restrictions

3. Specify the duration of the restriction on any uses. In the case of leases, is the restriction applicable for the entire lease term (including renewals)? Or limited to a specific period of time?

4. Think about addressing how provisions dealing with restrictions on uses may be modified in the future.

**XI. EXERCISE CAUTION WHEN DRAFTING INDEMNITY PROVISIONS.**

A. Indemnity provisions are important components of many real estate documents. When used and drafted properly, these provisions allow parties to allocate existing and potential risks and liabilities. These allocations are critical to the feasibility and economics of many deals.

B. When not drafted carefully, however, indemnity provisions can easily fail to serve their intended purpose. For instance, even a minor mistake in crafting an indemnity provision may result in the provision covering significantly more or less liabilities than intended.


   1. **Background.** A contractor sought indemnification from a subcontractor based on damages caused by the contractor’s own negligence. The subcontractor had agreed to indemnify the contractor for “all claims, damages, losses and expenses arising out of or resulting from the performance of the Subcontractor’s Work under the Subcontract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, to the extent caused in whole or in part by any
negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by a party indemnified hereunder.” The court noted that indemnity agreements are not construed in favor of indemnification and found that this provision was not clear enough to require the subcontractor to indemnify the contractor for claims arising out of the contractor’s own negligence.

2. **Lesson Learned.** Courts tend to dislike indemnity provisions and often will construe these provisions against the party seeking indemnification, which only further reinforces that drafters must clearly state all situations in which it is intended that one party will have indemnity protection.

D. **Key Drafting Tips.**

1. Consider whether an indemnity provision will apply only to certain issues that may arise under an agreement (e.g., environmental issues, breaches of representations and warranties, etc.) or whether it applies to all breaches?

2. Clearly define any carve-outs from the indemnity obligations. Be careful to not allow the carve-outs to ‘gut’ the indemnity provision.

3. Expressly state whether the indemnity agreement obligates the indemnitor to defend the indemnitee, and also, who makes the choices regarding such defense.

4. Clearly state what types of damages are covered by the indemnity agreement. Be sure you understand the application of direct damages versus consequential or special damages in your particular situation.

**XII. BE THOUGHTFUL WHEN DRAFTING REMEDY PROVISIONS.**

A. In the event of a dispute, the remedy provision in a real estate document becomes crucial. Indeed, many of the rights and protections built into an agreement may be virtually worthless if the remedy provision does not provide the injured party access to the remedies they truly need.

B. Remedy provisions are commonly overlooked and given little attention in the drafting process. This should not be the case. Because of the substantial consequences that may result from poorly drafted remedy provisions, drafters should always take time to consider what remedies are likely to be critical if a transaction goes bad.

C. **Key Drafting Tips.**

1. Consider carefully whether the return (or retention, as the case may be) of earnest money is an adequate and appropriate remedy for your transaction.

2. Understand the types of damages your client may suffer after a breach before agreeing to waive or limit recovery of certain kinds of damages.
3. Carefully scrutinize boilerplate language prohibiting the payment of “consequential damages,” “special damages,” or “incidental damages.” These limitations are often more significant than the parties realize and may result in protracted disputes about what damages were foreseeable, what damages were directly or indirectly related to the breach, etc.

4. When appropriate, use “baskets” and “caps” to limit parties’ exposure for certain kinds of damages, rather than complete waivers of such damages.

5. Examine whether specific performance is appropriate.
   a. If specific performance is appropriate, it may be helpful to expressly provide that the parties agree to specific performance as a remedy, although specific performance is commonly awarded in the real estate context.
   b. On the other hand, if a party does not want to be forced into specific performance, the parties may want to draft the document to specifically reject specific performance as a remedy.
   c. If a claim for specific performance is likely to be accompanied by other damages (such as interest expense, real estate taxes, etc.) consider whether the agreement should address what, if any, kinds of damages should be allowed with a claim for specific performance.

6. Always think about whether the agreement should include an attorneys’ fees provision, and, if so, what circumstances should allow one party to seek to recover attorneys’ fees (and other costs and expenses) from another party.

XIII. DO NOT GLOSS OVER “BOILERPLATE” PROVISIONS.

A. Real estate documents almost always contain boilerplate provisions, many of which are routinely located at the end of documents. Common examples of these provisions are notice provisions, choice of law clauses, merger/entire agreement provisions, and authority provisions. In practice, these provisions often receive much less attention than other contract provisions during the drafting and editing process.

B. Although many of these provisions read similarly from agreement to agreement, these provisions are not all created equal. The quality and impact of these provisions can vary wildly from one deal to another, so you must remain vigilant and review these clauses closely in each transaction.

C. Key Drafting Tips.
   1. Always read every line of every agreement at least one time. No exceptions.
2. Save time by using software to assist you with tracking changes to documents during the drafting and negotiation process.

3. Look for a way to improve one of your “boilerplate” clauses on each transaction.

4. Do not accept that, because someone else has used the provision before, it must be okay.

5. Never hesitate to borrow “boilerplate” clauses from other parties’ documents and to incorporate them into your form documents.

6. Look out for non-typical changes to “boilerplate” clauses that materially change the meaning or impact of such provision.
Understanding How to Draft Mistake-Free Deeds

Matthew Foli & Jody McGinley

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I. PROOF READ, EXECUTE, PROOF READ AGAIN, THEN RECORD.

A good carpenter will measure twice and cut once. Use this approach when drafting deeds. Your toolbox must include:

A. A copy of the Minnesota Title Standards, which will include the “White Pages,” a guide to the real estate lawyer in the transactional context. Order this book from the Minnesota State Bar Association.

B. A copy of the following chapters from the Minnesota Statutes:

   358—Seals, Oaths, Acknowledgments
   359—Notaries Public
   501C—Trusts
   507—Recording and Filing Conveyances
   508—Registration of Land
   523—Powers of Attorney
   524—Uniform Probate Code
   525—Probate Proceedings

C. Access to the Uniform Conveyancing Blank (UCB) forms, available free as fillable pdf forms on the Minnesota Department of Commerce website, and available as editable Microsoft Word documents to members of the Minnesota State Bar Association. The UCBs allow you to forget about the “form” and focus on the “substance.”

D. A good proofreader. Even the best carpenter needs an extra set of hands. And so does the drafter of real estate documents. Find someone who can review your work with a fresh set of eyes, someone who is a good proofreader and will catch what you have missed. You can always return the favor.

II. THE DEED, BROKEN DOWN INTO ITS INDIVIDUAL PARTS.

A deed is the document by which you transfer title to real estate from one person to another. It is the single most important document in the purchase or sale of property. Once recorded, it is difficult to correct errors in the deed, so it is important to do it right the first time.

A. Standards for Documents to be Recorded or Filed. See Minn. Stat. § 507.093. That section contains the following standards (and more):

   1. The first page shall contain a blank space at the top measuring three inches, as measured from the top of the page, and a border of one-half inch on each side and the bottom.
2. The right half of the blank space shall be reserved for recording information and the left half shall be reserved for tax certification.

3. Any person may attach an administrative page before the first page to accommodate this standard. The administrative page may contain the document title, document date, and, if applicable, the grantor and grantee, and shall be deemed part of the document when recorded.

4. A document presented for recording must be sufficiently legible to reproduce a readable copy using the county recorder’s or registrar of title’s current method of reproduction.

Minnesota Statutes Chapter 357, which is titled “Fees,” includes a section on county recorder fees, Section 357.18. A document should not be rejected unless the document is not legible or cannot be archived. Minn. Stat. § 357.18, subd. 5. And, the UCB forms are given a free pass—they are considered to comply with the recording standards. This is another reason to use them! Remember, county recorders shall be the registrars of titles in their respective counties, Minn. Stat. § 508.30, but the registrar of titles has a separate fee schedule found at Minn. Stat. § 508.82.

B. **Certificate of Real Estate Value (CRV).** See Minn. Stat. § 272.115. Whenever any real estate is sold for a consideration in excess of $1,000, whether by warranty deed, quitclaim deed, contract for deed or any other method of sale, the grantor, grantee or the legal agent of either shall file a certificate of value with the county auditor in the county in which the property is located when the deed or other document is presented for recording. There are exemptions, see subdivisions 5 and 6.

C. **Deed Tax Due.** See Minn. Stat. §§ 287.20, 287.21, 287.22, and 287.223. Like a sales tax, Minnesota has imposed a “deed tax” on the purchase price of real estate. The tax is due at the time a taxable deed is presented for recording. Minn. Stat. § 287.21, subd. 1(d). There are several exemptions, see Minn. Stat. § 287.22. When there is no consideration, or when the consideration is $500 or less, the tax is $1.65. Minn. Stat. § 287.21, subd. 1(b). When the consideration exceeds $500, the tax is .0033 of the net consideration. *Id.*

See also Minn. Stat. § 287.241, subd. 2 (no deed that is subject to the tax in Section 287.21 shall be recorded unless such deed is accompanied by a notice from the county auditor that a CRV was filed).

**PRACTICE TIP:** When the consideration is $500 or less, print “Total consideration for this transfer is $500 or less” in the legal description area on the deed.
**PRACTICE TIP:** You pay slightly more in Hennepin and Ramsey Counties due to an additional deed tax as defined in Minn. Stat. §§ 383A.80 and 383B.80. See Minn. Stat. § 287.223. When there is no consideration, or when the consideration is $500 or less, the tax is $1.70. When the consideration exceeds $500, the tax is .0034 of the net consideration.

**D. Date of Deed.** The UCB forms all contain a blank for the date of deed. Either put in the effective date of the deed (whatever that means) or cross out the blank and include a statement like “You cannot make me date this deed.” A deed does not need to be dated to be valid. It is valid upon delivery and acceptance which may be on the date of the deed or later. Delivery is presumed to have been made on the date of the deed. *Stone v. Jetmar Properties, LLC*, 733 N.W.2d 480, 487 (Minn. App. 2007). Unless the date of the deed is before the acknowledgment date, in which case the acknowledgment date would probably be deemed the date of delivery. Date of delivery is rarely an issue.

**PRACTICE TIP:** A deed may be rejected for recording before its “date of delivery.”

**E. Grantors.**

1. Identify the grantors by their correct names. Look at the Certificate of Title if registered land (Torrens) or the last deed of record if unregistered land (abstract).

2. Identify the grantors as “Mary Jones and Tom Jones,” not “Mary and Tom Jones.” On a deed, everyone deserves a first name and a last name. This is not a holiday greeting card.

3. If a grantor’s name has changed due to marriage, see Title Standard No. 54 for language to put in the grantor line. If a name change is not due to marriage, record evidence of the name change (e.g., a court order).

4. Do not use an “also known as” for a last name.

5. Including or omitting a middle initial is not an issue. The problem arises when there is a conflict between middle initials. If Mary T. Jones is the owner, she can convey title as Mary T. Jones, or Mary Teresa Jones, or Mary Jones. But she will run into problems if she conveys title as Mary D. Jones. See Title Standard Nos. 2 and 4.

**PRACTICE TIP:** Always get both spouses to “join in the deed” as grantors. This means they should both (a) be identified in the grantor clause, (b) execute the deed, and (c) acknowledge the deed in front of the notary. If the owner is married, no conveyance of the homestead shall be valid without the signatures of both
spouses. See Minn. Stat. § 507.02 (there are exceptions!). Don’t get cute and try to determine homestead/non-homestead, etc. Just get both to join in the deed.

F. Marital Status of each Grantor. Identify the marital status as “single” or “husband and wife” or “wife and husband” or “married to each other.”

G. Grantees.

1. Identify the grantees by their correct names. Use a last name for each grantee. If the grantee has a common name, consider using a middle name or middle initial. A future judgment search against “Mary Claudette Jones” will come up with fewer names than one against “Mary Jones.”

2. Do not use an “also known as” for a last name.

H. Tenancy. State “joint tenants” if that is what the grantees want. However, you must state it in the body of the deed—the document title of the deed is not sufficient. (Frankly, the document title of the deed could be “Aunt Martha’s apple pie recipe” and the deed will be recorded.) Minn. Stat. § 500.19, subd. 2, states that “[a]ll grants and devises of land, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy.”

I. Land Description.

1. Don’t use an Exhibit “A” stapled to the deed for a simple lot and block legal description. What takes up less space?

   See Exhibit A attached hereto and made a part hereof.

   or

   Lot 1, Block 1, Blackacre

2. Don’t spell out the lot and block numbers. Lot Three (3), Block One (1), Blackacre, can be Lot 3, Block 1, Blackacre.

3. If the lot is part abstract and part Torrens, it is absolutely okay to describe the land as Lot 1, rather than:

   Parcel 1: That part of Lot 1, Block 1, Blackacre, lying within the Northeast Quarter of the Northeast Quarter, Section 30, Township 29, Range 24. (Torrens property.)
Parcel 2: Lot 1, Block 1, Blackacre, except that part lying within the Northeast Quarter of the Northeast Quarter, Section 30, Township 29, Range 24. (Abstract property.)

The grantor does not own two parcels of land. She owns one parcel, which happens to have an imaginary line down the middle that shows that her documents must be recorded in two offices. One tax parcel, one lot, one legal description.

4. Do not include the stricken language (below), it serves no useful purpose. This is not fatal to your deed, it is just a pet peeve. The county is already included in the deed, before the legal description.

Lot 1, Block 1, Blackacre, according to the map or plat thereof on file and of record in the office of the Registrar of Titles in and for said County and State, including any part or portion of any street or alley adjacent to said premises heretofore vacated or to be vacated.

PRACTICE TIP: If the property is benefited by an appurtenant easement, you don’t need to include it in the legal description; it passes with the land.

J. Exceptions to Conveyance. What is commonly used is “Subject to easements, restrictions, and reservations of record, if any.” But if you said nothing, the conveyance would still be subject to all the encumbrances that affect the land.

K. Well Disclosure. See Minn. Stat. § 103I.235. When recording a deed or other instrument of conveyance requiring a Certificate of Real Estate Value (CRV), a completed well disclosure certificate (WDC) must be filed with the county recorder or registrar of titles, including a $50 fee for receipt of a completed WDC. Minn. Stat. § 103I.235, subd. 1(h). Again, there are times when you do not need to file the WDC, and those are addressed in the statute.

L. Signatures. All grantors must sign the deed. Minn. Stat. § 507.24, subd. 2. See the signature requirements (including use of a person’s “mark”) in Minn. Stat. § 645.44, subd. 14.

M. Venue. The county is where the grantor acknowledged the deed.


1. Under Section 358.47, titled Certificate of Notarial Acts, a notarial act must be evidenced by a certificate signed and dated by a notarial officer. The notary’s name as it appears on the official notarial stamp and on any jurat or certificate of acknowledgment and in the notary’s commission
must be identical. In Chapter 358, that is the only place where you will find the word “jurat.”

2. In *Black’s Law Dictionary, 6th edition*, some definitions for “jurat” include “certificate of officer or person before whom writing was sworn to” and “the clause written at the foot of an affidavit, stating when, where, and before whom such affidavit was sworn.”

3. Section 358.41, titled *Definitions*, states that “as used in Sections 358.41 to 358.49:”

   “Notarial Act” means any act that a notary public of this state is authorized to perform, and includes taking an acknowledgment and taking a verification upon oath or affirmation.

   “Acknowledgment” means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

   “Verification upon oath or affirmation” means a declaration that a statement is true made by a person upon oath or affirmation.

   “In a representative capacity” means:

   a. for and on behalf of a corporation (etc.) as an authorized officer (etc.);

   b. as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument.

   c. as an attorney-in-fact for a principal.

4. Section 358.42, titled *Notarial Acts*, states that

   a. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

   b. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer
and making the verification is the person whose true signature is made in the presence of the officer on the statement verified.

Under Section 358.07, clause (10), an oath to an affiant (the person who makes and subscribes an affidavit) is substantially in the following form: “You do swear that the statements in this affidavit, by you subscribed, are true. So help you God.”

Under Section 358.09, any officer authorized by Chapter 358 to take and certify acknowledgments may administer an oath, and, if the same be in writing, may certify the same under the officer’s signature, and an official notarial stamp, in the following form: “Subscribed and sworn to before me this ___ day of ________, ____.” The mode of administering an oath commonly practiced in the place where it is taken shall be followed, including, in Minnesota, the ceremony of uplifting the hand.

Applying these laws to real estate documents, any conveyance, power of attorney, or other instrument affecting real estate, must be acknowledged by the parties executing the same, under Minn. Stat. § 507.24, subd. 1.

The word “conveyance” includes every instrument in writing whereby any interest in real estate is created, aliened, mortgaged, or assigned or by which the title thereto may be affected in law or in equity. See Minn. Stat. § 507.01.

Affidavits are documents verified upon oath or affirmation, including any document called an affidavit, and also a certificate of trust (the signature of the settlor or trustee must be under oath before a notary public or other official authorized to administer oaths, see Minn. Stat. § 501C.1013, subd. 1), and a certificate of custodianship (see Minn. Stat. § 507.49, subd. 1).

Approved short form certificates of notarial act, for an acknowledgment in an individual capacity, for an acknowledgment in a representative capacity, and for a verification upon oath or affirmation, are found at Section 358.48.

**PRACTICE TIP:** If you need to add an acknowledgement clause to the deed (because there are two grantors, and they are acknowledging the deed at different times), use the same language in both clauses. Don’t have one that says:

This instrument was acknowledged before me on _______, 2016, by ____________________, grantor.
And another one that says:

On this ____ day of _________________, A.D. 2016, before me a notary public within and for said county, personally appeared ________________, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

PRACTICE TIP: Notwithstanding the previous tip, California has its own form for an acknowledgment, and a separate form for a jurat. Under California law (Section 1189(c) of the Civil Code), on documents to be filed in another state, a California notary public may complete any acknowledgement form as required in that other state provided the form does not require the notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law.

What this means: when you send a deed (for Minnesota property) to California for execution, and the grantor is ABC Company, Inc. (state of formation is not relevant), and you have completed the short form certificate of notarial act for an acknowledgment in a representative capacity found at Section 358.48, clause (2), and it reads: “This instrument was acknowledged before me on (date) by John Smith, as Vice President of ABC Company, Inc.,” the California notary should not sign that form, but instead should attach the California All-Purpose Acknowledgment.

O. Drafted By Clause. See Minn. Stat. § 507.091. Avoid phrases in the drafted by clause such as “Title to the property described herein was not examined” or, even worse, the following (from a deed recorded in Hennepin County):

No title search was performed on the subject property by the preparer. The preparer of this deed makes neither the representation as to the status of the title nor property use or any zoning regulation concerning described real property herein conveyed nor any matter except the validity of the form of this instrument. Information herein provided to preparer by Grantors/Grantees and/or their agents; no boundary survey was made at the time of this conveyance.

Don’t cheapen your value, unless you are willing to charge less. If you are not willing to review the title for correct names of grantors and legal description, what service are you providing in drafting the deed?

III. WARRANTY DEEDS AND QUIT CLAIM DEEDS: ARE THERE DIFFERENCES?

Yes, there are big differences. Perhaps not in the marketability of title, but in some important extras. For starters, “[a] deed of quitclaim and release shall be sufficient to pass all the estate which the grantor could convey by a deed of bargain and sale.” Minn. Stat. § 507.06. This law has been on the books since the beginning of time (in Minnesota). So if the conveyance is by a quit claim deed, without any reservation, the grantor has just conveyed every one of her sticks in the bundle. Remember, encumbrances of record are still exceptions to title that are not wiped out.

Minn. Stat. § 507.07 includes sample forms for warranty deeds and quitclaim deeds. The covenants that are in every warranty deed are:

A. That the grantor is lawfully seized of the premises in fee simple and has good right to convey the same.

B. That the premises are free from all encumbrances.

C. That the grantor warrants to the grantee the quiet and peaceable possession of the premises.

D. That the grantor will defend the title thereto against all persons who may lawfully claim the same.

The conveyance by quit claim deed “shall not extend to after acquired title, unless words expressing such intention be added.” See the very last sentence in Section 507.07. This means that when the quit claim deed is delivered, it is sufficient to convey only what the grantor had at that very moment. It does not include any interests that may be later conveyed to the grantor.

IV. WHAT IS A LIMITED WARRANTY DEED?

Often the seller is not comfortable warranting title back to the beginning of time. A compromise is for the seller to warrant that her title is free from any defects during the time of her ownership. From a buyer’s point of view, this may be the best you can do. The UCBs contain several limited warranty deed forms. It is actually a quit claim deed with only one warranty: “Grantor warrants that Grantor has not done or suffered anything to encumber the property.” Since it is a quit claim deed, it also states that “[t]his deed conveys after-acquired title.”
V. IF ONE SPOUSE IS IN TITLE, HOW DO YOU CONVEY TO BOTH?

Both spouses should always be grantors. The White Pages at I-B-2, states:

It is recommended that a conveyance between spouses be signed by both spouses, even if only one spouse is the owner. This recommendation is based on the circular nature of the language in Minn. Stat. § 500.19, subd. 4 and § 507.02.

Keep it simple and follow this recommendation.

VI. IF ONE SPOUSE IS IN TITLE, WHAT HAPPENS WHEN THE OTHER DIES?

File an affidavit of identity and death certificate. We think that UCB form 50.2.1 is too complicated for this situation. We think it can be as simple as Appendix D. See also Minn. Stat. § 508.71, subd. 4: the registrar of titles may receive and register as a memorial a certified copy of the death record of a party listed in any certificate of title as being the spouse of the registered owner when accompanied by an affidavit satisfactory to the registrar identifying the decedent with the spouse.

VII. CONVEYANCES FOLLOWING DISSOLUTION OF MARRIAGE.

There are actually three ways to transfer title after a marital dissolution.

A. Use the judgment and decree, all by itself.

B. Use the summary real estate disposition judgment, all by itself, see Minn. Stat. § 518.191. Use UCB form 80.1.2.

PRACTICE TIP: This is our preferred method of transferring title.

C. Use a deed, from one ex-spouse to the other, along with evidence of dissolution, which is either the judgment and decree, or the summary real estate disposition judgment, or a certificate of dissolution (see Minn. Stat. § 518.148).

PRACTICE TIPS: If you are going to rely on the judgment and decree to transfer title:

- Make sure the land is a marital asset. Remember, your presenters have seen it all. A judgment and decree that awarded real property that was titled in the parties’ revocable trust. Another one that awarded real property that was titled in the husband’s limited liability company. Pay attention people! The county recorder does not hide the ownership of property! All you have to do is pull the last deed. Do not take your client’s word for it.

- Use the correct legal description. Do not rely upon the property tax statements.
• If the decree states something like “Husband is awarded all right, title and interest in the premises, free and clear of all interest of Wife, but Wife can continue to possess the premises until Husband pays Wife $60,000.00,” how would any title examiner know when the right to possession has ended? Better plan to get an amended judgment and decree after the payment is made, or perhaps a summary real estate disposition judgment (see Minn. Stat. § 518.191) that specifically states that the possession has ended. The more creative you get in the judgment and decree, the more difficult it is to tell who has been awarded what.

**PRACTICE TIP:** When you choose to record the full marital dissolution judgment and decree, you end up with dirty laundry in the real estate records, for example:

*There has been an irretrievable breakdown of the marriage relationship of the parties due to the Husband’s infidelity.*

*Father is an alcoholic and although he received treatment for his addiction after his criminal conviction, Father continues to abuse alcohol.*

These are not made up. Use a summary real estate disposition judgment.

**PRACTICE TIP:** If you are using a deed, from one ex-spouse to the other, why not use the certificate of dissolution as the supporting document? All you need to show is that the marriage is terminated.

**PRACTICE TIP:** If you are using a deed and the certificate of dissolution, but reserving a lien awarded in the judgment and decree, use UCB form 10.3.7. We do not think it is necessary to record the judgment and decree in order to show the details of the lien. If someone disagrees, then use the summary real estate disposition judgment. When time comes to release the lien, use UCB form 80.1.1.

**VIII. DEATH OF THE JOINT TENANT OR LIFE TENANT.**

File an affidavit of identity and survivorship, and attach the death certificate of the deceased joint tenant/life tenant. Use UCB form 50.2.2.

**PRACTICE TIP:** When there are more than two joint tenants, upon the death of any of them, the decedent’s interest in the land ceases, and the title remains in the survivors as joint tenants. See the White Pages at I-B-4.

**PRACTICE TIP:** What exactly do you own as a joint tenant? Joint tenancy is the type of ownership by two or more persons in which each owns an undivided interest in the whole, and attached to which is the right of survivorship. So, it is not correct to say that three individuals each owns 1/3 of the property as joint tenants. Each owns the whole, subject to the other joint tenants’ rights of survivorship. *See* Black’s Law Dictionary, Sixth edition.
IX. PROBATE DEEDS; LET’S KEEP THIS SIMPLE.

The White Pages at I-F-1 provide the following general comments (we added the italics):

Probate proceedings under the UPC [Uniform Probate Code, Minnesota Statutes Chapter 524] are either:

(1) Formal proceedings commenced by petition for a court order determining testacy or intestacy and/or appointing a personal representative; or

(2) Informal proceedings commenced by application to the probate court registrar for the probate of the decedent’s will and/or appointment of a personal representative.

After commencement of proceedings, estates are administered either under the continuing authority of the court (formal supervised administration) or without the continuing authority of the court (formal unsupervised or informal administration).

Following formal testacy and/or appointment proceedings, the estate may be administered in either a supervised or an unsupervised administration.

Following informal probate of will and/or appointment proceedings, the estate is administered in an unsupervised administration.

* * *

*If the decedent died testate, the court issues letters testamentary to evidence appointment of the personal representative. If the decedent died intestate, letters of general administration are issued.*

To verify that a personal representative’s authority to deal with property of the estate has not terminated, substantiate from the evidence available that the letters issued to the personal representative are in full force and effect. Minn. Stat. § 524.3-711. This most commonly will be accomplished by obtaining letters certified to be in effect proximate to the date of any conveyance from the personal representative. The letters should contain no restriction on the personal representative’s authority to act. Rule 410 of General Rules of Practice for District Courts.

CAVEAT: The Examiner of Titles in some Minnesota counties may require that the letters of appointment be certified to be in effect on or after the date of the conveyance.

PRACTICE TIP: What is the deal with this caveat? If the letters are certified before the date of the deed, then the Examiner must assume that the personal representative did not
lose the power to act by the date of the deed. If the letters are certified after the date of the deed, then perhaps the power to act wasn’t there when the deed was dated, but was restored after the date of the conveyance. Who cares—first have the deed executed and acknowledged, and then go get your certified copy of the letters.

To determine what documents are necessary for conveyance of title during or following probate, ascertain whether:

(1) the transaction involves a sale during probate administration or a distribution from the probate estate to heirs or devisees;

(2) the probate proceeding was commenced formally or informally;

(3) the administration is supervised or unsupervised; and

(4) the decedent died testate or intestate.

PRACTICE TIP: A person who dies testate has made a will. The will may even refer to this person as the testator or the testatrix. A person who dies intestate has not made a will.

A. The real estate will be sold; decedent died with a will.

*Our perspective:* The deed and the probate documents complement each other. When we review a probate package for certification (see Minn. Stat. §§ 508.68 and 508.69) we first look at the will and the court document admitting it to probate, then we look at the deed, and then we check to see that the letters were certified on or after the date of the deed or the acknowledgment, whichever is later. Our analysis stays the same for a distribution.

*What are we looking for?*

Is a restriction (on the power of the personal representative to sell) endorsed on the letters? If so, you better comply with the restriction.

Does the deed conflict with a provision in the will or with a provision in an order in a formal proceeding? See the first phrase in Minn. Stat. § 524.3-715 (“Except as restricted or otherwise provided by the will or by an order in a formal proceeding * * *”)

Does the sale involve a conflict of interest? For example, the will contains a specific devise of the real estate to Sally, and now the personal representative is conveying the property to Johnny. What does Sally think of this sale? In such a case, it may be necessary to obtain either an order of the probate court approving the conveyance, or the acknowledged consents of devisees whose interests are affected by the conveyance (which consents may be stapled to the deed). Minn. Stat. § 524.3-713.
PRACTICE TIP: For acknowledged consents from devisees, use UCB form 70.1.1 and change it to fit your situation. For example, “Sally Smith, devisee under the terms of the will of Bill Smith, Decedent, consents to the Deed of Sale: Personal Representative to which this Consent is attached.”

In our opinion (which may not be universally held), you do not need the devisee’s consent if the devisee also happens to be the personal representative. Example: under the Will, the property is devised equally to Sally, Johnny and Bobby, and now Sally, the personal representative, conveys the property to Johnny and Bobby. We believe that Sally has consented to the transaction (as devisee) by signing the personal representative’s deed. We will assume that Sally knows what she is doing.

1. Have the deed dated, executed and acknowledged. Use one of the UCB forms that are specific for a sale (personal representative deed forms are numbered 10.5.x).

   PRACTICE TIP: The consent of the decedent’s spouse, if any, should always be attached (meaning stapled) to the deed, even if the property is non-homestead. Use UCB form 70.1.1. You will avoid the rest of the world questioning whether the property was the decedent’s homestead. Minn. Stat. § 524.3-715(23) states that the personal representative may sell real property of the estate, except that the homestead of a decedent when the spouse takes any interest therein shall not be sold unless the written consent of the spouse has been obtained. So, even though the requirement does not apply to non-homestead property, keep it simple and always obtain the spousal consent.

2. Now go get certified copies of the probate documents.
   a. In a formal proceeding, you need the will, order for probate, and letters testamentary.
   b. In an informal proceeding, you need the will, probate registrar’s statement admitting the will to probate, and letters testamentary.

   PRACTICE TIP: In all probate transactions, the letters should be certified to be “in full force and effect” on or after the date of the deed or the acknowledgment, whichever is later.

   PRACTICE TIP: In an informal probate, the personal representative is not empowered to sell, encumber, lease or distribute any interest in real estate owned by the decedent until 30 days have passed from the date of the issuance of the letters, under Minn. Stat. § 524.3-711. That means the
personal representative does not even have the power to sign the deed until 30 days have passed.

B. **The real estate will be sold; decedent died without a will.**

Your routine should be almost the same as when the decedent dies with a will.

1. Again, use a personal representative’s deed of sale.
2. Staple to the deed the consent of spouse, if applicable.
3. Once the deed is dated, executed and acknowledged, go get certified copies of the probate documents.
   a. In a formal proceeding, you need the order of formal adjudication of intestacy, and letters of general administration. The order must identify the name, relationship to decedent and interest of each heir to the property. You want the order to show the world that the grantee on the deed is not an heir of the decedent.
   b. In an informal proceeding, you need the probate registrar’s statement and order of informal appointment, and letters of general administration. The registrar’s statement must identify the name, relationship to decedent and interest of each heir to the property. Again, this is to show the world that the grantee on the deed is not an heir of the decedent.

C. **The real estate will be distributed by a deed; decedent died with a will.**

1. Use the correct UCB form; a personal representative’s deed of distribution.
2. Once the deed is dated, executed and acknowledged, go get certified copies of the probate documents.
   a. In a formal proceeding, you need the will, order for probate, and letters testamentary.
   
   **PRACTICE TIP:** In a formal supervised administration, you also need a court order authorizing the distribution. *See* Minn. Stat. § 524.3-504 (a supervised personal representative shall not exercise the power to make any distribution of the estate without prior order of the court).
   
   b. In an informal proceeding, you need the will, probate registrar’s statement admitting the will to probate, and letters testamentary.
3. Prepare the affidavit of service of the Notice to the Commissioner of Human Services, required under Minn. Stat. § 524.3-801(d). Use the appropriate UCB forms, numbered 70.3.x.

**PRACTICE TIP:** Record the affidavit of service in every distribution, not just when the decedent or a predeceased spouse received assistance. Just like in the case of a spousal consent when the property is non-homestead, you want to avoid the situation of someone questioning whether assistance was ever received.

Under Section 524.3-801(d)(2), no property subject to administration by the estate may be distributed by the estate or the personal representative until 70 days after the date the notice (use UCB form 70.3.1 for the notice) is served on the commissioner, unless the local agency (that means the proper authority at the county) consents to a personal representative’s request to distribute property during the 70-day period (see Section 524.3-801(d)(6)). Use UCB form 70.3.7 for the certificate of consent to an early distribution.

**PRACTICE TIP:** When you receive the local agency’s consent to an early distribution, you should record the affidavit of service and also the consent. Do not record just the consent. The notice gets first sent to the commissioner of human services, who then sends a separate notice to the county. Some counties may issue the consent to an early distribution without receiving the notice from the commissioner of human services. That is their business—your job is to provide marketable title, so record the affidavit of service along with the consent to an early distribution.

**D. The real estate will be distributed by a deed; decedent died without a will.**

Your routine should be very similar to the previous scenario, but make sure that you obtain probate documents that identify all the heirs.

1. Use the correct UCB form; a personal representative’s deed of distribution.

2. Once the deed is dated, executed and acknowledged, go get certified copies of the probate documents.

   a. In a formal proceeding, you need the order of formal adjudication of intestacy, and letters of general administration. The order must identify the name, relationship to decedent and interest of each heir to the property. Remember that in a formal supervised administration, you also need a court order authorizing the distribution (covered in a previous practice tip).
b. In an informal proceeding, you need the probate registrar’s statement and order of informal appointment, and letters of general administration. The registrar’s statement must identify the name, relationship to decedent and interest of each heir to the property.

**PRACTICE TIP:** Record a document that identifies all the heirs. That way you are showing that the property was distributed to all the heirs, in their correct proportions. If under the circumstances the property will be distributed to less than all the heirs (perhaps in exchange for other estate assets), then you know who needs to give an acknowledged consent to the distribution (hint, the heirs who are not receiving the real estate).

If the court or probate registrar simply finds that “the heirs are as identified in the Petition/Application,” then also record the Petition or Application along with the other probate documents.

3. Prepare the affidavit of service of the Notice to the Commissioner of Human Services, and get the consent to an early distribution if you need it.

E. **Decree of Distribution.**

In a formal proceeding, whether supervised or unsupervised, testate or intestate, you may encounter a situation where the property will be distributed by a court decree, rather than a personal representative’s deed. In this situation, you do not need the will, if there is one, and you do not need the letters.

1. Obtain a decree of distribution from the probate court.

2. Prepare the affidavit of service of the Notice to the Commissioner of Human Services, and get the consent to an early distribution if you need it.

**MISCELLANEOUS PROBATE PRACTICE TIPS.**

- **Using a deed of sale along with the notice to the commissioner sends mixed messages.** When you correctly use a deed of sale, because it truly is a sale to an unrelated third party and not a distribution, please do not record the affidavit of service of notice to the commissioner. Then you make it look like a distribution.

Now, in the situation where it is a sale to someone related to the decedent, either an heir or a devisee, where it may be part sale, part distribution, if you use a deed of sale then also record the affidavit of service of notice to the commissioner, just to avoid the question down the road, was this a sale or a distribution, or both? The answer will not matter if you obtained the proper consents from anyone else interested in the estate, and you gave notice to the commissioner.
• Don’t use “also known as” names in the grantor clause of the deed. There is only one name for the decedent in the grantor clause, and that is her name when she took title. Use all the aka’s you want in the case caption in the probate administration, but all we want to see is the decedent’s name when she took title (in Torrens, the name of the fee owner on the current certificate of title), we want to find that name in the case caption, and we want only that name in the grantor line of the deed. Does the deed fall apart if you use aka’s? Of course not. Do you look confused? Yes.

• Fact scenario, under Minn. Stat. § 524.2-402.

  • John Smith dies without a will. He is survived by spouse Sally Smith, and their only children Sam Smith and Todd Smith. The decedent was the sole owner of the homestead.

  • Section 524.2-402 states that if there is a surviving spouse, the homestead descends as follows: “if there are surviving descendants of decedent, then to the spouse for the term of the spouse’s natural life and the remainder in equal shares to the decedent’s descendants by representation.” In some counties, the Registrar’s Statement and Order of Informal Appointment of Personal Representative will set forth this determination of heirs and each heir’s interest or fractional share.

  • Sally Smith is appointed personal representative in an informal probate. Draft the deed of distribution as follows:

    Sally Smith, as Personal Representative of the Estate of John Smith, Decedent (“Grantor”), conveys and quitclams a life estate interest to Sally Smith, with remainder in fee to Sam Smith and Todd Smith (“Grantees”), real property in Hennepin County, Minnesota, legally described as follows: Blah blah blah.

    Do not use “subject to a life estate interest” because that presumes that the life estate has already been created.

    Do not use “reserving a life estate” because this is a conveyance of the decedent’s interest.

X. CONSERVATOR DEEDS.

This falls under the probate category because you are dealing with the probate court. The protected person used to be called the conservatee. See definition of protected person at Minn. Stat. § 524.5-102, subd. 14; definition of conservatee at Minn. Stat. § 525.539, subd. 5, repealed by 2003 Minn. Laws Ch. 12, Art. 2, § 8.
A. The court appoints a conservator for the protected person, under Minn. Stat. § 524.5-409. The general powers and duties of the conservator with respect to real property are found at Minn. Stat. § 524.5-418.

There are four documents necessary to convey title:

1. First the court issues an order directing the sale, under Section 524.5-418(b)(2). You need a certified copy of this order. It should identify the property by legal description, because land is conveyed by legal description, not by street address or “legal to govern.”

2. Upon making the sale, the conservator shall file a report with the court and, upon proof of compliance with the terms of the order directing the sale, the court may confirm the sale and order the conservator to execute the deed. See Section 524.5-418(b)(7). You need a certified copy of this order, too. It should again identify the property by legal description, and it should include the full legal name of the purchaser.

3. Prepare the conservator’s deed. Use UCB form 10.6.1.

   **PRACTICE TIP:** If the protected person is married, the grantors on the deed are the conservator and the spouse of the protected person. The spouse joins in the conveyance as a grantor, rather than simply consenting to the conveyance. Minn. Stat. § 507.04, subd. 6. Under certain circumstances (none of which we can recall), perhaps a consent is sufficient, but that analysis is beyond the scope of this presentation, and remember that our theme is to keep it simple. Do not play around the edges of acceptability when attempting to convey marketable title.

4. Then get letters of conservatorship, certified to be “in full force and effect” as of the date of the deed or the acknowledgment, whichever is later (just like in all probate deed situations).

B. If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may appoint an agent to convey the real estate, under Minn. Stat. § 524.5-412. In this situation,

1. Use a quit claim deed where the grantor is the individual, and the person executing the deed is the agent, and the short form certificate of notarial act should be for an acknowledgment in a representative capacity under Minn. Stat. § 358.48, clause (2). For example, “This instrument was acknowledged before me on (date) by (name of agent) as agent for (name of individual who owns the land), single/married to (insert name of spouse).” Again, if this individual is married, the spouse joins in the deed as a grantor.
2. Obtain a certified copy of the order appointing the agent, under Section 524.5-412.

XI. TRUSTEE DEEDS; A THREE LEGGED STOOL.

Our perspective: You will have three documents which complement each other. The first is the trust instrument or the certificate of trust. The second is the deed. And last is the affidavit of trustee. If the information in these three documents does not match, then someone did a poor job of drafting and proof-reading.

A. The real estate will be conveyed by a trustee of an inter vivos trust.


Additional Definitions, all from Black’s Law Dictionary, 6th edition:

“Settlor” means the grantor or donor in a deed of settlement. Also, one who creates a trust. See also Minn. Stat. § 501C.0103(o)—“settlor” means a person, including a testator, who creates or contributes property to a trust.

“Testamentary Trust” means a trust created by a will which takes effect only upon the testator’s death. The trust must satisfy requirements of both a valid trust and a valid will.

“Trustee” means one who holds legal title to property “in trust” for the benefit of another person (beneficiary) and who must carry out specific duties with regard to the property. The trustee owes a fiduciary duty to the beneficiary.

“Trustor” means one who creates a trust. Also called settlor.

1. Start with the original trust agreement (rarely used anymore) or a certificate of trust under Minn. Stat. § 501C.1013. If the trust agreement has already been recorded, then that is what you should use. If you use a certificate of trust, then make it either UCB form 90.1.1 or 90.1.2.

The certificate of trust is a thumbnail sketch of the full trust agreement. Section 501C.1013, subd. 1, states that “[t]he settlor or a trustee of a trust, at any time after execution or creation of a trust, may execute a certificate of trust that sets forth less than all of the provisions of a trust instrument and any amendments to the instrument.” In this statutory section, the “settlor” is the person who creates the trust. It is not always the grantor on the deed (although it may be the same person). The information contained on the certificate of trust either never changes or is specific to the moment in time when the certificate of trust is executed. What this means is that
the certificate of trust comes first, because it could be recorded immediately after the deed conveying the real property to the trustees.

**PRACTICE TIP:** Don’t staple a legal description to the certificate of trust. The form does not call for one. You tie it to a specific parcel of land because the name of the trust is also identified in the grantor/grantee index.

2. After the certificate of trust comes the trustee’s deed; use one of the UCB forms numbered 10.4.x.

3. The last document, the affidavit of trustee, ties it all together with a nice gift-wrapped ribbon. Or, if not completed correctly, and read out loud, it sounds like fingernails on a chalk board. The affidavit is found at Minn. Stat. § 501C.1014, subd. 1. Use UCB form 90.1.3.

Paragraph 3 of the affidavit of trustee is meant to include information about the trustee’s deed. It is not meant to include information about the trust agreement, or a mortgage granted by the trustee. The first blank is for the names of the trustees who signed the deed, the second blank is for the grantees on the deed, and the third blank is for the date of the deed.

The date on which the affidavit is “subscribed and sworn to” must be on or after the date of the deed or the acknowledgment, whichever is later. This doesn’t work: “I swear that with regard to the deed that I executed and acknowledged today, but is dated next week, I will still have the power to act when the deed is actually deliverable. Trust me.”

**PRACTICE TIP:** Paragraph 2 of the affidavit identifies the names and addresses of the trustees empowered to act at the time of execution of this affidavit. These trustees may not be the same as identified on the certificate of trust, if the two documents were executed months or years apart.

Perhaps the original trustee was the creator of the trust and now the current trustee is her son. Do you need to explain why mom is no longer trustee? No.

Perhaps the original trustee was First National Bank of Saint Paul and now the current trustee is U.S. Bank, National Association. Do you need to explain the mergers and acquisitions? No.
B. The real estate will be conveyed by a trustee of a testamentary trust.

1. Since the testamentary trust is part of a will, and becomes effective on the testator’s death, you do not need a certificate of trust. What you need is a certified copy of the will admitted to probate. Chances are the property was distributed out of the estate to the trustees, so the will was probably already recorded. The will is the complete trust agreement.

2. Use the correct trustee’s deed.

3. Use the affidavit of trustee that is specific for a testamentary trust, found at Minn. Stat. § 501C.1014, subd. 2. Use UCB form 90.1.4.

PRACTICE TIP: On the certificate of trust and affidavit of trustee, don’t include a signature “block” when all you need is a signature “line.” These two documents are affidavits, where a person is sworn under oath, and that person signs the document.

Use ______________________________
Sally Smith

Not

The Sally Smith Revocable Trust
Dated September 1, 2012
By_____________________
Sally Smith

PRACTICE TIP: Don’t convey to the “Johnson Living Trust;” instead convey to “James Johnson, as Trustee of the Johnson Living Trust.” Back in the day, the trust itself was not considered a legal entity that could hold title to real estate. Yes, Minn. Stat. § 507.421 (enacted in 1998) states that the conveyance directly to the trust is a valid and effective conveyance to the trustee, in like manner as if the trustee had been named the grantee. But that is exactly the point of this tip—make yourself look smart and do it the old-school way. Read the whole statutory section to understand the preferred way to convey title when made to an estate or trust, or when made by an estate or trust. (This tip may not apply to Delaware Statutory Trusts, Massachusetts Business Trusts, Idaho Purpose Trusts, etc. etc.)

PRACTICE TIP: This one is specific for Torrens property. The Registrar of Titles will not record a plat, executed by a trustee, unless it has been approved by the Examiner of Titles. Minn. Stat. § 508.62 states that “[n]o instrument executed by an owner whose fee title to registered land is held in trust which transfers or plats the land, shall be registered
except upon the written certification of the examiner of titles ***.” So the plat must be supported by a certificate of trust and an affidavit of trustee.

XII. CUSTODIAN DEEDS.

These instructions apply to custodianships established under a federal law or under a statute of this or any other state. They do not apply to custodianships governed by Minn. Stat. Ch. 527 (Uniform Transfers to Minors Act) or by the similar laws of another state. See Minn. Stat. § 507.49, subd. 4. For example, these instructions apply to situations where pension plans own real estate, or title to the real estate is held by “ABC Trust Company Custodian FBO Sally Smith Roth IRA.” When it is time to convey this property, you need a deed, a certificate of custodianship, and an affidavit of custodian.

- Start with the certificate of custodianship, found at Minn. Stat. § 507.49, and use UCB forms 90.2.1 or 90.2.2.

- Then draft the deed. There is no UCB form for this transaction. Use a quit claim deed, and the grantor is the custodian, and the short form certificate of notarial act should be for an acknowledgment in a representative capacity under Minn. Stat. § 358.48, clause (2). For example, “This instrument was acknowledged before me on September 1, 2016, by John Smith as vice president of ABC Trust Company, a Minnesota corporation, as custodian for the benefit of the Sally Smith Roth IRA.”

- Then prepare the affidavit of custodian, found at Minn. Stat. § 507.50, and use UCB form 90.2.3.

XIII. INDIVIDUAL OWNER; DEED EXECUTED BY AN ATTORNEY-IN-FACT.

A. Our perspective. Once again you have three documents that complement each other. The power of attorney comes first, then the deed, and last the affidavit of attorney-in-fact. Chapter 523 of the Minnesota Statutes is the relevant chapter, and it begins with “[a] person who is a competent adult may, as principal, designate another person or an authorized corporation as the person’s attorney-in-fact by a written power of attorney.” Minn. Stat. § 523.01.

B. Any valid power of attorney form may be used. The statutory short form power of attorney is most common (Section 523.23), and real property transactions are defined at Section 523.24, subd. 1. A husband or wife may appoint the other as an attorney-in-fact with respect to all property of the principal, or any interest in the property, whether real, personal, or mixed, under Minn. Stat. § 519.06. If you are drafting the power of attorney, use UCB form 100.1.1.

Section 523.07 states that “[a] power of attorney is durable if it contains language such as ‘This power of attorney shall not be affected by incapacity or incompetence of the principal’ or ‘This power of attorney shall become effective upon the incapacity or incompetence of the principal,’ or similar words showing
the intent of the principal that the authority conferred is exercisable notwithstanding the principal’s later incapacity or incompetence.

Section 523.08 states that “[a] durable power of attorney terminates on the earliest to occur of the death of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal’s marriage.”

Section 523.09 states that “[a] nondurable power of attorney terminates on the death of the principal, the incapacity or incompetence of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal’s marriage.”

**PRACTICE TIP:** In a power of attorney, an expiration date, if any, must be stated in terms of a specific month, day, and year. An expiration date stated in any other way has no effect. Minn. Stat. § 523.075.

**PRACTICE TIP:** Don’t include the grantor’s social security number on a power of attorney.

**PRACTICE TIP:** Remove any type of fancy backing to the power of attorney when you present it for recording. I am not talking about the ribbon and wax because it was executed and acknowledged in a foreign land. I am talking about the fancy colored backing that was put on the document by your law firm, to make it look officially official.

**PRACTICE TIP:** If the principal chooses to limit the power to specific real property, then always use a legal description under the power of (A) in part First of the statutory short form power of attorney. Use of a street address instead of a legal description invalidates the power of (A) for all real property transactions. Minn. Stat. § 523.23, subd. 3a.

To constitute a “statutory short form power of attorney,” as this phrase is used in Chapter 523, the wording and content of the form found at Section 523.23, subd. 1, must be duplicated exactly and with no modifications, parts First, Second, and Third must be properly completed, and the signature of the principal must be acknowledged. Minn. Stat. § 523.23, subd. 3. If something that is required is missing, then the document “may constitute a common law power of attorney that incorporates by reference the definitions of powers contained in Section 523.24.” *Id.*
C. **Now, on to the deed.** You can use either a warranty deed or a quit claim deed. The grantor on the deed is the principal with no indication that the attorney-in-fact is acting on her behalf. (This is a best practices tip—it again makes you look smart.) The deed is executed by the attorney-in-fact who should sign her name, not the name of the principal. (Again, this is a best practices tip.) The correct short form certificate of notarial act is an acknowledgment in a representative capacity under Section 358.48, clause (2). For example, “This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact for (name of principal), single/married to (insert name of spouse).” If the principal is married, the spouse joins in the deed as a grantor.

D. **Finally, the affidavit of attorney-in-fact.** The form of the affidavit is found at Minn. Stat. § 523.17. Use UCB form 100.2.1. The date on which the affidavit is “subscribed and sworn to” must be on or after the date of the deed or the acknowledgment, whichever is later.

**PRACTICE TIP:** When the principal under a power of attorney in a real property transaction is a business entity, the affidavit of attorney-in-fact shall not be required, under Section 523.17, subd. 3. The substance of the affidavit does not apply. Corporations do not die or become incapacitated or incompetent. Even Lehman Brothers did not “die.”

**PRACTICE TIP:** When a successor attorney-in-fact will act; don’t forget the extra affidavit. This scenario is covered at Minn. Stat. § 523.16, subd. 1, repeated below:

If the attorney-in-fact exercising a power pursuant to a power of attorney has authority to act as a result of the death, incompetency, or resignation of one or more attorneys-in-fact named in the power of attorney, an affidavit executed by the attorney-in-fact setting forth the conditions precedent to the attorney-in-fact’s authority to act under the power of attorney and stating that those conditions have occurred is conclusive proof as to any party relying on the affidavit of the occurrence of those conditions.

You do not need to recite the gory details of why the original attorney-in-fact is no longer acting. Just use UCB form 100.2.2. If you have already used the statutory short form power of attorney, which must state that the successor attorney-in-fact is “to act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve,” all the successor attorney-in-fact has to swear to is that “those conditions have occurred.” Pretty simple—but easy to forget that you need it.

**XIV. TRANSFER ON DEATH DEEDS.**

Make sure to use the uniform conveyancing blank forms. Form 10.8.1 for an unmarried grantor owner. Form 10.8.2 for a married grantor owner who is the sole spouse in title. And Form 10.8.3 for married grantor owners owning property as joint tenants. When you
have a married couple who own the property as tenants in common, they both complete their own TODD, and both should use Form 10.8.2. The tricky part is the blank grantee line. That is where the second-guessing takes place, after the death of the grantor owner…

XV. MISCELLANEOUS.

A. “Subject to” a life estate, or “reserving” a life estate. If the fee owner wants to keep a life estate, then the fee owner reserves this interest. Conveying land “subject to” a life estate does not create one, but presupposes an existing life estate interest. See Werner v. Sample, 107 N.W.2d 43, 44 (Minn. 1961).

B. Deeds cannot be delivered to non-existing entities, whether the entities are natural or legal. A deed cannot be delivered to a deceased grantee. In re Estate of Savich, 671 N.W.2d 746, 750 (Minn. App. 2003). It is void, and creepy. A deed to a limited liability company not in existence at the time of conveyance is void. Stone v. Jetmar Properties, LLC, 733 N.W.2d 480 (Minn. App. 2007).

PRACTICE TIP: For the attorney representing either buyer or seller. Check the secretary of state records to make sure the entity is formed (i.e., articles of incorporation have been filed) and is in good standing (i.e., not statutorily dissolved for failure to file an annual renewal). Then, draft the deed and have it dated, executed, and acknowledged.

C. Don’t send the County Recorder documents that you want filed in Torrens; you should be sending those documents to the Registrar of Titles. Yes, it is the same person (see Minn. Stat. § 508.30). But there may be different staff in these two recording departments. If your cover letter is addressed to the County Recorder, and the salutation is “Dear County Recorder,” and the check is made payable to the County Recorder, but the property is Torrens, you are asking for trouble. Minn. Stat. § 386.071 states in part that “[t]he county recorder may reasonably rely on the affirmative representation of the party presenting instruments for filing as to whether the land described in the instruments or any part of it is registered or unregistered.” It is not the job of the County Recorder staff to determine whether your documents should be recorded in Torrens—it is your job to make this determination before you submit the documents for recording. And better yet, why not make this determination before you draft the documents? That way, if the property is Torrens, you can obtain a copy of the certificate of title and use it to properly draft the deed.

D. You record documents with the County Recorder, and you file documents with the Registrar of Titles. For this basics course, the end result is the same. However, throughout the statutes and in common use, there are constant references to filing documents with the Registrar of Titles. If you want the gory details, read Imperial Developers v. Calhoun Development, 790 N.W.2d 146 (Minn. 2010).
E. **When the mortgage is amended and restated, which one gets satisfied?**

Mortgage recorded as Document No. 123.

Amended and Restated Mortgage recorded as Document No. 456. This document contains the following provisions:

- The cover pages says “This is a mortgage amendment which secures an increased amount of debt in the amount of $xxx and accordingly additional mortgage registry tax in the amount of $xxx is due upon the recording hereof.”

- The introductory paragraph, on page 1, says “This amended and restated mortgage shall amend, restate, supersede and replace in its entirety, that certain mortgage recorded as Document No. 123.”

When the time comes to satisfy the mortgage, only refer to Document No. 456, or refer to “the Mortgage recorded as Document No. 456, which amended, restated, superseded and replaced in its entirety the mortgage recorded as Document No. 123.” But just do not refer only to Document No. 123—that mortgage no longer exists.

F. **No need to identify an undivided interest in the common elements as part of the legal description for a condominium unit.**

The legal description reads:

> Apartment No. 1, together with an undivided 2.00% interest in the common areas and facilities, Apartment Ownership No. 1, Blackacre Condominium First Section, located in Hennepin County, post office address Bloomington, Minnesota, located on the following described land: Lot 1, Block 1, Blackacre, according to the plat thereof on file or of record in the office of the Registrar of Titles in and for said County.

Now, you represent the buyer and the legal description on the deed reads:

> Apartment No. 1, Apartment Ownership No. 1, Blackacre Condominium First Section, a condominium located in the County of Hennepin.

Do not panic! The revised legal is perfectly fine. This condominium was created under Minn. Stat. Ch. 515, and all that stuff in the legal description was required by Minn. Stat. § 515.12. When Minn. Stat. Ch. 515A was enacted, Section
515A.2-104 applied to Chapter 515 condominiums (see Minn. Stat. § 515A.1-102(a)) and provided that

a description of a unit which sets forth the number of the condominium, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and its common element interest whether or not the common element interest is described or referred to therein.

Then, when Minn. Stat. Ch. 515B was enacted, Section 515B.2-104 applied to Chapter 515 condominiums (see Minn. Stat. § 515B.1-102(b)(2)) and provided as follows:

(a) A description of a unit is legally sufficient if it sets forth (i) the unit identifier of the unit, (ii) the number assigned to the common interest community by the recording officer, and (iii) the county in which the unit is located. [Note: you need not include the name of the condominium, but it is a good practice to do so.]

(c) A description which complies with this section shall be deemed to include all rights, obligations, and interests appurtenant to the unit which were created by the declaration or bylaws, by a master declaration, or by this chapter, whether or not those rights, obligations, or interests are expressly described.

So, if the legal is the long version, ok. But do not panic if you are presented with the short version. See Title Standard No. 94, at Paragraph 4.

G. If your documents are going to be rejected by the Hennepin County Examiner of Titles, make sure it is for a reason other than those identified in Appendix A.
APPENDIX A—our rejection memo for common errors

Date: 
To: 
From: Deputy Examiner of Titles
Subject: Certificate of Title No.
   Our File No. (Leave this number in your voice mail message.)

Your documents could not be approved for filing with the Registrar of Titles for the following reason(s):

A. Deeds by Attorneys-in-Fact:
   1. The Affidavit of Attorney-in-Fact does not state the date of the power of attorney or states the wrong date.
   2. The Affidavit is not the current affidavit form.
   3. The Affidavit is dated before the deed.
   4. The deed is not acknowledged by the attorney-in-fact.
      (The acknowledgment should be by “______ as attorney-in-fact for ______, a single person (or “married to _______”).)
   5. Other:

B. Deeds by Personal Representatives:
   1. The deed is given before 30 days have elapsed from the issuance of the letters in an informal probate, see Minn. Stat. § 524.3-310.
   2. The deed is dated or acknowledged after the certification date of the letters.
   3. The letters were issued after July 1, 1996 and the required Notice to Commissioner of Human Services and Affidavit under Minn. Stat. § 524.3-801 do not accompany the Deed of Distribution/Decree of Distribution.
   4. Other:

C. Deeds by Trustees:
   1. The Affidavit of Trustee gives the wrong date of the Certificate of Trust or trust instrument.
   2. The Affidavit refers to the Certificate of Trust when the trust instrument is filed on the Certificate of Title.
   3. The Affidavit refers to the trust instrument when a Certificate of Trust is being used to support the deed.
   4. Paragraph 3 of the Affidavit is filled in with information about the trust instrument instead of information about the deed.
   5. The deed is dated after the Affidavit.
   6. The Certificate of Trust and/or Affidavit of Trustee is prepared on an outdated form.
   7. Other:

D. General:
   1. The documents refer to exhibits that are not attached.
   2. Certified copies have been taken apart.
   3. Photocopies are submitted instead of original documents.
   4. Documents are not complete and ready to be filed (dated, signed and acknowledged).
   5. Other:
All types of documents

- Include date and signature.
- Verify that the legal description is complete and correct.
- "Drafted by" statement — which includes both the name and address of the document drafter.
- Acknowledgment must include: date, legible notary seal, notary signature and commission expiration date.
  - Individual acknowledgements require signor names and marital status.
  - Corporate acknowledgements require business name as well as the name and corporate title of the signor.
- Include the electronic certificate of real estate value (eCRV) number on the first page of the document.
  - Effective October 1, 2014, the Minnesota Department of Revenue - Property Tax Division, will no longer accept paper versions of the CRV.
  - Paper CRVs for sales that occur on October 1 or after will cause the recording package to be rejected.
- Do not alter legal documents with strikeouts, line throughs, whiteout, correction tape, or staple removal.

Transfer deeds

- Use our online calculator to determine the correct State Deed Tax (SDT) amount (the tax is .0034 of the net consideration or purchase price) to include.
- For values of more than $1,000 complete and submit an eCRV (Minnesota Statute 272.115).
- For values of $500 or less, submit a check for SDT of $1.70 and write “Total consideration for this transfer is $500 or less" on the deed.
- An Agricultural Conservation fee of $5 is due on any transfer deed in which SDT is payable (Minnesota Statute 40A.152).
- Grantors must include marital status.
- Properties with delinquent taxes may not be transferred (Minnesota Statute 272.12).
- Include a “Send Tax Statements to” statement, which has both the names and addresses of all of the grantees on the document.
• Submit one of the following:
  - A completed Well Disclosure Certificate (WDC) and a $50 fee (for each WDC submitted), or
  - A statement: “The Seller certifies that the seller does not know of any wells on the described real property.” or
  - A statement: “I am familiar with the property described in this instrument and I certify that the status and the number of wells on the described real property have not changed since the last previously filed well disclosure certificate.”

**Mortgages**

• Use our [online calculator](#) to determine the correct Mortgage Registry Tax (MRT) (the tax is .0024 of the net consideration or purchase price) to include.

• An Agricultural Conservation fee of $5 is due on any mortgage in which MRT ([Minnesota Statute 40A.152](#)) is payable.

**Contract for deeds**

• Must include either a well statement signed by the buyer or a WDC and the $50 fee.

• SDT not required on a Contract for Deeds.

• A value of more than $1,000 of consideration must be accompanied by an [eCRV](#) ([Minnesota Statute 272.115](#)).

* Recommended and prepared in part by the Minnesota County Recorder’s Association. Revised: 08-01-2008*
APPENDIX C
An annotated version of a warranty deed executed by people (not business entities),
conveying to people who will take title as joint tenants.
Numbers are Minnesota statutory citations

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<thead>
<tr>
<th>WARRANT DEED</th>
<th>Individual(s) to Joint Tenants</th>
</tr>
</thead>
<tbody>
<tr>
<td>eCRV number: [...]</td>
<td>Title of document shall be prominently displayed here. See 507.093(5).</td>
</tr>
<tr>
<td>DEED TAX DUE: [...]</td>
<td>Electronic certificate of real estate value, see Minnesota Department of Revenue webpage and 272.115</td>
</tr>
<tr>
<td>DATE: [month/day/year]</td>
<td>See 287.20, 287.21, 287.22, 287.223</td>
</tr>
</tbody>
</table>

FOR VALUABLE CONSIDERATION, [insert name and marital status of each Grantor] (“Grantor”), hereby conveys and warrants to [insert name of each Grantee] (“Grantee”), as joint tenants, real property in [...] County, Minnesota, legally described as follows: [...] If you want joint tenancy, you must say so in the granting clause, not just the title to the document. See 500.19, sub. 2

Check here if all or part of the described real property is Registered (Torrens) □

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: [...] Check applicable box:

- [ ] The Seller certifies that the Seller does not know of any wells on the described real property.
- [ ] A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...] )
- [ ] I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Check here for the Minnesota Department of Health form

For well disclosure certificate requirements, see 1031.235. The first box comes from Subd. 1(c), and the third box comes from Subd. 1(i). Click here for the Minnesota Department of Health form

[printed name of Grantor]

[printed name of Grantor]
State of Minnesota, County of […]

This instrument was acknowledged before me on [month/day/year], by [insert name and marital status of each Grantor].

If spouses join in and acknowledge the execution of any instrument, they shall be described in the certificate of acknowledgment in a manner that indicates they are married to each other. See 358.14.

(Stamp)

“The official notarial stamp [for notaries licensed in Minnesota] shall be a rectangular form …”
See 359.03

Title (and Rank): ____________________________
My commission expires: ____________________________ (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
[insert name and address]

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO:
[insert legal name and residential or business address of Grantee]

Name and address required by 507.091

Required by 507.092
APPENDIX D
Sample Affidavit of Identity
To show death of non-titled spouse

Facts: Sally Smith is fee owner; John Smith is her deceased spouse

State of Minnesota )
ss. Decedent: John Smith
County of Hennepin )

Sally Smith, being first duly sworn, on oath, says to my personal knowledge:

1. That Decedent is the person named in the certified copy of the Certificate of Death attached hereto and made a part hereof.

2. That Decedent on the date of death was the spouse of Sally Smith who is the fee owner of the land located in the County of Hennepin, State of Minnesota, and legally described as follows:

   Lot 1, Block 1, Blackacre

______________________________
Sally Smith

Subscribed and sworn to before me on November 15, 2016, by Sally Smith.

______________________________
Notary Public
My commission expires: ___________

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)
Understanding how to draft mistake free deeds.

August 2017

www.mindsetonline.com

*Mindset*, a book by Carol S. Dweck, Ph.D.

(The next two paragraphs are from the website, [http://mindsetonline.com/whatisit/about/index.html](http://mindsetonline.com/whatisit/about/index.html))

In a fixed mindset, people believe their basic qualities, like their intelligence or talent, are simply fixed traits. They spend their time documenting their intelligence or talent instead of developing them. They also believe that talent alone creates success—without effort. They’re wrong.

In a growth mindset, people believe that their most basic abilities can be developed through dedication and hard work—brains and talent are just the starting point. This view creates a love of learning and a resilience that is essential for great accomplishment. Virtually all great people have had these qualities.

(The next paragraph is from page 238 of the book)

What are the opportunities for learning and growth today? For myself? For the people around me?

(Our questions to you)

Do you have a growth / fixed mindset?

_____________________________________________________________________________________

________________________________

How does that affect your drafting of real estate documents?

_____________________________________________________________________________________

________________________________

How do you feel when you realize a mistake has been made?

_____________________________________________________________________________________

________________________________.
CERTIFICATE OF TRUST
by Individual
Minn. Stat. 501C.1013

State of Minnesota, County of ____________________________

_________________________________________, being
first duly sworn on oath states, or affirms under penalties of perjury, that:

1. The name of the trust, if one is given, is: ________________________________.

2. The date of the trust instrument is: ________________________________.

3. The name and address of each trustee empowered to act under the trust instrument at the time of execution of this Certificate of Trust is:

4. The trustees are authorized by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real or personal property, except as limited by the following: (if none, so indicate)

5. The number of trustees required to act is: __________________________

6. The trust ☐ has ☐ has not been terminated.
   (check one box)

   The trust instrument ☐ has ☐ has not been revoked.
   (check one box)

Pursuant to Minn. Stat. 501C.1013 subd. 2:

The name of each settlor of the trust is: ______________________________________

The name of each original Trustee is: _________________________________________
Check this box □ if an Affidavit of Trustee, consisting of _____ pages, is attached to this Certificate of Trust.

The statements contained in this Certificate of Trust are true and correct and there are no other provisions in the trust instrument, or amendments to it, that limit (i) the powers of the trustee(s) to sell, convey, pledge, mortgage, lease, or transfer title to interest in real or personal property, or (ii) the authority of the trustees to exercise any other power identified in this Certificate of Trust.

Trustee or Settlor

______________________________________

(signature)

______________________________________

(signature)

Signed and sworn to (or affirmed) before me on ____________________________, by ____________________________

(month/day/year)

______________________________________

(inset name of Trustee or Settlor making statement)

__________________________

(Stamp)

______________________________________

(signature of notarial officer)

Title (and Rank): ____________________________

My commission expires: ____________________________ (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

(inset name and address)
TRUSTEE’S DEED  
by Individual Trustee  

Minnesota Uniform Conveyancing Blanks  
Form 10.4.1 (2016)

eCRV number: ____________________________

DEED TAX DUE: $ ____________________________

DATE: ____________________________ (month/day/year)

FOR VALUABLE CONSIDERATION, ____________________________, as Trustee

of ____________________________, as Trustee

("Grantor"), hereby conveys and quitclaims to ____________________________, as

("Grantee"), as

(Insert name of each Trustee)

(Insert name of Trust)

(Insert name of each Grantee)

(Check only one box)  

☐ tenants in common,  

☐ joint tenants,

(If more than one Grantee is named above and either no box is checked or both boxes are checked, 
this conveyance is made to the named Grantees as tenants in common.)

real property in ____________________________ County, Minnesota, legally described as follows:

Check here if all or part of the described real property is Registered (Torrens) ☐

together with all hereditaments and appurtenances belonging thereto.
Check applicable box:

☐ The Seller certifies that the Seller does not know of any wells on the described real property.

☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number.)

☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

State of Minnesota, County of ____________________________

This instrument was acknowledged before me on ________________________, by ________________________ (month/day/year) (insert name of each Trustee)

as Trustee of ____________________________ (insert name of Trust)

(Stamp)

(signature of notarial officer)

Title (and Rank): ____________________________

My commission expires: ________________________ (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY: ____________________________

(Tax statements for the real property described in this instrument should be sent to:)

(insert name and address)
AFFIDAVIT OF TRUSTEE (inter vivos Trust)  
Minn. Stat. 501C.1014

State of Minnesota, County of ____________________________, being first duly sworn on oath states, or
affirms under penalties of perjury, that:

1. Affiant is the trustee (one of the trustees) named in that certain Certificate of Trust (or trust instrument):
   (check one box) □ to which this Affidavit is attached.
   □ recorded ______________________ as Document Number ________________________________
   (or in Book __________ of _____________ Page ___________), in the
   Office of the □ County Recorder □ Registrar of Titles of ________________ County, Minnesota,
   (check the applicable boxes)

executed by Affiant or another trustee or the settlor of the trust described in the Certificate of Trust (or set forth in the trust instrument), which
relates to real property in ______________________ County, Minnesota, legally described as follows:

(if more space is needed, continue on attachment)

2. The name(s) and address(es) of the trustee(s) empowered by the trust instrument to act at the time of the execution of this Affidavit are
   as follows:
3. The trustee(s) who have executed that certain instrument relating to the real property described above between ________________________________, as trustee(s),
and ________________________________, dated ______________________, (a) are empowered by the trust instrument to sell, convey, pledge, mortgage, lease, or transfer title to any interest in real property held in trust; and (b) are the requisite number of trustees required by the trust instrument to execute and deliver such an instrument.

4.  
☐ The trust has not terminated and the trust instrument has not been revoked.  
☐ The trust has terminated (or the trust instrument has been revoked). The execution and delivery of the instrument described in paragraph 3 has been made pursuant to the provisions of the trust.

5. There has been no amendment to the trust that limits the power of trustee(s) to execute and deliver the instrument described in paragraph 3.

6.  
☐ The trust is not supervised by any court.  
☐ The trust is supervised by the ________________________________ Court of ______________ County, ________________________________, All necessary approval has been obtained from the court for the trustee(s) to execute and deliver the instrument described in paragraph 3.

7. Affiant does not have actual knowledge of any facts indicating the trust is invalid.

Affiant

[Signature]

Signed and sworn to (or affirmed) before me on ________________________________, by ________________________________, (insert name of Affiant making statement)

[Stamp]  
(signature of notarial officer)

Title (and Rank): ________________________________

My commission expires: ________________________________

THIS INSTRUMENT WAS DRAFTED BY:  
[Insert name and address]
STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice to the principal.

PRINCIPAL (Name and Address of Person Granting the Power)

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

ATTORNEY(S)-IN-FACT
(Name and Address)

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

SUCCESSOR ATTORNEY(S)-IN-FACT (Optional)
To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve
(Name and Address)
First Successor ___________________________________________________________________

Second Successor ___________________________________________________________________

NOTICE: If more than one attorney-in-fact is designated to act at the same time, make a check or "x" on the line in front of one of the following statements:

_____ Each attorney-in-fact may independently exercise the powers granted.

_____ All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

________________________________________________________________________

Use Specific Month Day Year Only
I (the above named Principal) appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or "x"-ed.)

Check or “x”

_______ (A) real property transactions;

I choose to limit this power to real property in ____________________________ County, Minnesota, described as follows: (Use legal description. Do not use street address.)

(If more space is needed, continue on the back or on an attachment.)

_______ (B) tangible personal property transactions;

_______ (C) bond, share, and commodity transactions;

_______ (D) banking transactions;

_______ (E) business operating transactions;

_______ (F) insurance transactions;

_______ (G) beneficiary transactions;

_______ (H) gift transactions;

_______ (I) fiduciary transactions;

_______ (J) claims and litigation;

_______ (K) family maintenance;

_______ (L) benefits from military service;

_______ (M) records, reports, and statements;

_______ (N) all of the powers listed in (A) through (M) above and all other matters, other than health care decisions under a health care directive that complies with Minnesota Statutes, chapter 145C.

SECOND: (You must indicate below whether or not this Power of Attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

_______ This power of attorney shall continue to be effective if I become incapacitated or incompetent.

_______ This power of attorney shall not be effective if I become incapacitated or incompetent.
THIRD: My attorney(s)-in-fact MAY NOT make gifts to the attorney(s)-in-fact, or anyone the attorney(s)-in-fact are legally obligated to support, UNLESS I have made a check or an "x" on the line in front of the second statement below and I have written in the name(s) of the attorney(s)-in-fact. The second option allows you to limit the gifting power to only the attorney(s)-in-fact you name in the statement. Minnesota Statutes, section 523.24, subdivision 8, clause (2), limits the annual gift(s) made to my attorney(s)-in-fact, or to anyone the attorney(s)-in-fact are legally obligated to support, to an amount, in the aggregate, that does not exceed the federal annual gift tax exclusion amount in the year of the gift.

I do not authorize any of my attorney(s)-in-fact to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

I authorize ____________________________________________

(write in name(s))
as my attorney(s)-in-fact, to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

FOURTH: (You may indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent.)

I request that my attorney-in-fact not render an accounting unless I request it, or the accounting is otherwise required by Minnesota Statutes, section 523.21.

I request that my attorney-in-fact render ________________ accountings to

me or ____________________________________________

(Name and Address)
during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

In Witness Whereof I have hereunto signed my name this __________ day of _______________________.

(Signature of Principal)

ACKNOWLEDGEMENT OF PRINCIPAL

State of Minnesota, County of ______________________

This instrument was acknowledged before me on ______________, by ______________________

(month/day/year) (insert name of Principal)

__________________________________________

(Stamp)

(signature of notarial officer)

Title (and Rank): ______________________

My commission expires: ________________

(month/day/year)
ACKNOWLEDGEMENT OF NOTICE TO ATTORNEY(S)-IN-FACT
AND SPECIMEN SIGNATURE OF ATTORNEY(S)-IN-FACT.

By signing below, I acknowledge I have read and understand the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23, and understand and accept the scope of any limitations to the powers and duties delegated to me by this instrument.

(Notarization not required)

________________________________________

THIS INSTRUMENT WAS DRAFTED BY:
(Inset name and address)

Specimen signature of Attorney(s)-in-Fact
(Notarization not required)

________________________________________

________________________________________

IMPORTANT NOTICE TO THE PRINCIPAL

READ THIS NOTICE CAREFULLY. The power of attorney form that you will be signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is anything about this form that you do not understand, you should seek legal advice.

PURPOSE: The purpose of the power of attorney is for you, the principal, to give broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to handle your affairs. Any action taken by your attorney(s)-in-fact pursuant to the powers you designate in this power of attorney form binds you, your heirs and assigns, and the representative of your estate in the same manner as though you took the action yourself.

POWERS GIVEN: You will be granting the attorney(s)-in-fact power to enter into transactions relating to any of your real or personal property, even without your consent or any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and not supervised. THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. TO GIVE SOMEONE THOSE POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH MINNESOTA STATUTES, CHAPTER 145C.

DUTIES OF YOUR ATTORNEY(S)-IN-FACT: Your attorney(s)-in-fact must keep complete records of all transactions entered into on your behalf. You may request that your attorney(s)-in-fact provide you or someone else that you designate a periodic accounting, which is a written statement that gives reasonable notice of all transactions entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the attorney-in-fact reimburses himself or herself for any expenditure they made on behalf of you. An attorney-in-fact is personally liable to any person, including you, who is injured by an action taken by an attorney-in-fact in bad faith under the power of attorney or by an attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section. The attorney(s)-in-fact must act with your interests utmost in mind.
TERMINATION: If you choose, your attorney(s)-in-fact may exercise these powers throughout your lifetime, both before and after you become incapacitated. However, a court can take away the powers of your attorney(s)-in-fact because of improper acts. You may also revoke this power of attorney if you wish. This power of attorney is automatically terminated if the power is granted to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney(s)-in-fact to act for you. You are not required to sign this power of attorney, but it will not take effect without your signature. You should not sign this power of attorney if you do not understand everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

Please place your initials on the following line indicating you have read this IMPORTANT NOTICE TO THE PRINCIPAL: __________

IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT

You have been nominated by the principal to act as an attorney-in-fact. You are under no duty to exercise the authority granted by the power of attorney. However, when you do exercise any power conferred by the power of attorney, you must:

1. act with the interests of the principal utmost in mind;

2. exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person’s own affairs;

3. render accountings as directed by the principal or whenever you reimburse yourself for expenditures made on behalf of the principal;

4. act in good faith for the best interest of the principal, using due care, competence, and diligence;

5. cease acting on behalf of the principal if you learn of any event that terminates this power of attorney or terminates your authority under this power of attorney, such as revocation by the principal of the power of attorney, the death of the principal, or the commencement of proceedings for dissolution, separation, or annulment of your marriage to the principal;

6. disclose your identity as an attorney-in-fact whenever you act for the principal by signing in substantially the following manner:
   Signature by a person as "attorney-in-fact for (name of the principal)" or "(name of the principal) by (name of the attorney-in-fact) the principal’s attorney-in-fact";

7. acknowledge you have read and understood this IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

You are personally liable to any person, including the principal, who is injured by an action taken by you in bad faith under the power of attorney or by your failure to account when the duty to account has arisen.

The meaning of the powers granted to you is contained in Minnesota Statutes, chapter 523. If there is anything about this document or your duties that you do not understand, you should seek legal advice.
QUIT CLAIM DEED
Individual(s) to Individual(s)

Minnesota Uniform Conveyancing Blanks
Form 10.3.1 (2016)

eCRV number: ________________________________

DEED TAX DUE: $ __________________________ DATE: __________________________
(month/day/year)

FOR VALUABLE CONSIDERATION, (insert name and marital status of each Grantor)

(Grantor),

hereby conveys and quitclaims to (insert name of each Grantee)

(Grantee), as

(Check only one box) □ tenants in common, □ joint tenants,
(If more than one Grantee is named above and neither box is checked or both boxes are checked, this conveyance is made to the named Grantees as tenants in common.)

real property in ____________________________ County, Minnesota, legally described as follows:

______________________________

Check here if all or part of the described real property is Registered (Torrens) □

together with all hereditaments and appurtenances belonging thereto.

______________________________
Check applicable box:

☐ The Seller certifies that the Seller does not know of any wells on the described real property.

☐ A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [insert WDC number].)

☐ I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

State of Minnesota, County of ________________________________

This instrument was acknowledged before me on ________________, by ________________, (month/day/year)

(insert name and marital status of each Grantor)

(Stamp)

(signature of notarial officer)

Title (and Rank): ________________________________

My commission expires: ________________, (month/day/year)

THIS INSTRUMENT WAS DRAFTED BY: ________________________________

(insert name and address)

TAX STATEMENTS FOR THE REAL PROPERTY DESCRIBED IN THIS INSTRUMENT SHOULD BE SENT TO: ________________________________

(insert legal name and residential or business address of Grantee)
State of Minnesota, County of ____________________________, being first duly sworn, on oath says:

1. Affiant is the Attorney-in-Fact (or agent) named in that certain Power of Attorney dated ____________________________, and filed for record on ______________, as Document Number ______________ (or in Book ______ of ______________) Page __________), in the Office of the □ County Recorder □ Registrar of Titles of ____________________________ County, Minnesota, executed by ____________________________, as Grantor and Principal, relating to real property in ____________________________ County, Minnesota, legally described as follows:

Check here if all or part of the described real property is Registered (Torrens) □

2. Affiant does not have actual knowledge and has not received actual notice of the revocation or termination of the Power of Attorney by Grantor's death, incapacity, incompetence or otherwise, or notice of any facts indicating the same.

3. Affiant has examined the legal description(s), if any, attached to the Power of Attorney and certifies that the description(s) has(have) not been changed, replaced, or amended subsequent to the signing of the Power of Attorney by the Principal.

Note: Remainder of page left blank, signature page follows.
Affiant

__________________________
(signature)

Signed and sworn to before me on ____________, by __________________________
(month/day/year)

__________________________
(insert name of person making statement)

(Stamp)

__________________________
(signature of notarial officer)

Title (and Rank): __________________________

My commission expires: __________________________
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)
AFFIDAVIT OF AUTHORITY OF SUCCESSOR
ATTORNEY-IN-FACT

State of Minnesota, County of __________________________

_________________________________________________________, being first duly sworn,
on oath says:

1. Affiant is the successor Attorney-in-Fact under that certain Power of Attorney dated ___________________________, and filed for record on ____________________________, as Document Number ____________________________ (or in Book _______ of ________________

Page ___________), in the Office of the ☐ County Recorder ☐ Registrar of Titles of ____________________________ County, Minnesota,
(check the applicable boxes)
from ____________________________, as Grantor and Principal,
to ____________________________, as Attorney-in-Fact, relating to real property
in ____________________________ County, Minnesota, legally described as follows:

Check here if all or part of the described real property is Registered (Torrens) ☐

2. The Power of Attorney provides as conditions precedent to affiant's authority to act, the following:

3. Those conditions have occurred.

Note: Remainder of page left blank, signature page follows.
Affiant

(signature)

Signed and sworn to before me on ________________, by _____________________________.

(month/day/year)

(insert name of person making statement)

(Stamp)

(signature of notarial officer)

Title (and Rank): _____________________________.

My commission expires: _________________.

(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:

(insert name and address)