

TABLE OF CONTENTS

CHAPTER ONE: INTRODUCTION.....	1
§ 1 Source of Law Concerning Deeds of Conveyance.....	1
§ 2 Definitions.....	2
A. Deed.....	2
B. Lands, Tenements and Hereditaments.....	3
C. Appurtenances.....	3
D. Ad Coleum Doctrine.....	3
1. In General.....	3
2. Airspace, Minerals, Fixtures, Crops, and Timber.....	4
§ 3 Estates in Lands.....	5
A. Estates in Land.....	5
B. Estate.....	5
§ 4 Tenure.....	5
§ 5 Tenure in South Carolina.....	8
A. Charters to Lords Proprietors.....	8
B. Fundamental Constitutions.....	9
C. Validation of Proprietary Grants.....	12
D. Revolutionary War — Validation of Titles.....	14
§ 6 History of Conveyances and Forms of Deeds.....	15
A. Statutory Form of Deed.....	15
B. Common Law Conveyances.....	16
1. Deed of Feoffment.....	17
2. Common Law Conveyances Valid under Statute of Uses.....	18
C. Covenant to Stand Seised to Uses.....	23
D. Effect of 1795 Statutory Deed.....	24
§ 7 Conclusion.....	25

TABLE OF CONTENTS

CHAPTER TWO: PARTS OF A DEED.....	27
§ 1 In General.....	27
§ 2 Discussion of Deed Clauses.....	27
A. Caption.....	27
B. Premises.....	28
C. Granting Clause.....	28
D. Description.....	28
E. Habendum.....	28
F. Reddendum.....	28
G. Warranty Clause.....	29
H. Condition.....	29
I. Covenant.....	30
J. Testimonium.....	30
K. Signature.....	30
L. Attestation.....	30
CHAPTER THREE: TYPES OF DEEDS.....	31
§ 1 Statutory General Warranty Deed.....	31
A. In General.....	31
B. Covenants Defined.....	32
1. Present Covenants.....	32
2. Future Covenants.....	33
§ 2 Limited or Special Warranty.....	33
§ 3 Quit Claim Deeds.....	33
§ 4 Doctrine of After-Acquired Property.....	34
CHAPTER FOUR: PARTIES TO A DEED.....	37
§ 1 In General.....	37
§ 2 Grantor.....	37
§ 3 Grantee.....	37
§ 4 Terms Distinguished.....	37
§ 5 Time of Taking Effect.....	38

TABLE OF CONTENTS

CHAPTER FIVE: CAPACITY TO EXECUTE DEEDS.....	39
§ 1 Natural Persons.....	39
A. Existence.....	39
B. Competency.....	40
§ 2 Limitations on Capacity.....	41
A. Mental Incompetency.....	41
1. In General.....	41
2. Effect of Mental Incompetency.....	42
B. Minority.....	44
1. In General.....	44
2. Capacity of Minors.....	44
C. Intoxication.....	46
D. Marital Status.....	46
E. Foreign Citizenship.....	48
F. Bankrupt Status.....	50
G. Undue Influence and Duress.....	50
H. Fraud.....	53
§ 3 Business Entities.....	54
CHAPTER SIX: DEED EXECUTION.....	57
§ 1 Formalities of Execution.....	57
A. Governing Law.....	57
B. Writing Required.....	57
C. Formalities of Execution.....	58
1. Signature of the Grantor.....	58
2. Seal of the Grantor.....	58
3. Witnesses.....	60
4. Acknowledgments/Probate.....	60
D. Words of Inheritance or Succession.....	63
1. In General.....	63
2. Deeds Executed Prior to January 1, 1994.....	64
3. Deeds Executed After December 31, 1993.....	64

TABLE OF CONTENTS

E.	Legal Description.....	65
1.	In General.....	65
2.	Metes and Bounds.....	68
3.	Reference to Plat or Other Document.....	68
4.	Land Description on a Survey.....	69
5.	Excepted Property.....	69
6.	Description of Condominium Unit.....	70
F.	Derivation Clause and Other Requirements/Disclosures.....	71
1.	Derivation Clause.....	71
G.	Other Requirements and Disclosures.....	72
1.	Grantee's Mailing Address.....	72
2.	TMS Number.....	72
3.	Notice of Hazardous Waste Storage or Disposal.....	72
4.	Beachfront Disclosure.....	72
H.	Renunciation of Dower/Curtesy.....	73
1.	Dower.....	73
2.	Curtesy.....	74
§ 2	Delivery and Acceptance.....	75
A.	Delivery.....	75
B.	Acceptance.....	78
§ 3	Recordation.....	79
A.	In General.....	79
B.	Constructive Notice.....	79
C.	Prerequisites to Recording.....	80
D.	Recording and Indexing.....	80
E.	Deed Recording Fee.....	83
1.	Recording Fee Imposed.....	83
2.	Exemptions.....	83
3.	Liability for Fee.....	84
4.	Payment of Fee.....	84
5.	Affidavit.....	84

F.	Filing Fee.....	85
G.	Local “Transfer Fees”.....	85
§ 4	Effect of Properly Executed and Delivered Deed.....	85
CHAPTER SEVEN: CONSIDERATION.....		87
§ 1	Consideration Required for Valid Deed.....	87
A.	Consideration Required.....	87
B.	Inadequate Consideration.....	89
1.	Between Parties to the Deed.....	89
2.	As to Creditors.....	89
3.	Gift Deeds.....	90
CHAPTER EIGHT: EXCEPTIONS, RESERVATIONS, CONDITIONS, COVENANTS AND RESTRICTIONS.....		93
§ 1	Exceptions and Reservations.....	93
§ 2	Conditions, Covenants and Restrictions.....	95
A.	Conditions.....	95
1.	Conditions Precedent.....	95
2.	Conditions Subsequent.....	95
3.	Conditions Not Favored.....	96
B.	Covenants and Restrictions.....	97
CHAPTER NINE: PRESENT ESTATES WHICH MAY BE CONVEYED BY DEED....		99
§ 1	Definition and Scope.....	99
A.	Freehold v. Non-Freehold Estates.....	99
B.	Limitations on Estate Conveyed.....	100
C.	Determination of Estate Conveyed.....	100
§ 2	Fee Simple Absolute.....	101
A.	Defined.....	101
B.	Creation.....	101
1.	Deeds Executed Prior to January 1, 1994.....	101
2.	Deeds Executed Subsequent to December 31, 1993.....	105

TABLE OF CONTENTS

3.	Effect of Rule in Shelley's Case.....	107
§ 3	Fee Simple Defeasible.....	110
§ 4	Fee Simple Determinable.....	111
§ 5	Fee Simple Subject to a Condition Subsequent.....	113
§ 6	Fee Simple Conditional.....	115
§ 7	Estate in Fee Tail.....	120
§ 8	Life Estates.....	120
A.	In General.....	120
1.	Lack of Words of Inheritance or Succession.....	121
2.	Rule in Shelley's Case.....	122
B.	Transfer or Encumbrance of Life Estate.....	122
C.	Life Estate Coupled with a Power to Dispose.....	123
D.	Termination of Life Estate.....	123
1.	Death of Life Tenant.....	123
2.	Merger of Interest.....	124
3.	By Condition or Breach of Condition.....	124
§ 9	Remainders.....	125
CHAPTER TEN: CONSTRUCTION OF DEEDS.....		127
§ 1	Presumption of Validity.....	127
§ 2	Unambiguous Deeds.....	127
§ 3	Rules of Construction.....	128
A.	In General.....	128
B.	Interpretation is an Equitable Matter.....	129
C.	Deeds Construed as a Whole.....	129
D.	Intention of Parties Must be Ascertained.....	130
1.	Four Corners.....	130
2.	Presumption of Intent to Grant All Necessary for Enjoyment.....	131
3.	Construction against Grantor.....	131
4.	Clauses and Words in a Deed May be Transposed or Construed.....	131

TABLE OF CONTENTS

E.	Conflicting Provisions in Deed.....	132
F.	Merger of Previous Agreements.....	132
1.	Sales Contracts or Agreements.....	132
2.	Parol Reservations or Exceptions.....	133
3.	Prior Negotiations.....	133
4.	Leases.....	134
5.	Options.....	134
6.	Accommodation Clause.....	134
G.	Consideration of Other Instruments.....	134
H.	Recitals.....	134
I.	Construction of Parties.....	135
J.	Construction of Terms.....	137
K.	Extrinsic Evidence.....	138
CHAPTER ELEVEN: CONCURRENT OWNERSHIP.....		139
§ 1	Introduction.....	139
§ 2	Types of Concurrent Ownership.....	139
A.	Tenancy in Common.....	139
B.	Tenancy in Common with Right of Survivorship (TICROS).....	140
1.	Characteristics.....	140
2.	Creation.....	140
3.	Effect.....	141
4.	Spouse-to-Spouse Conveyance.....	141
C.	Joint Tenancy.....	147
1.	Common Law.....	147
2.	Statutory Changes.....	149
3.	Incidents of Ownership under South Carolina Code § 27-7-40.....	151
D.	Tenancy by the Entirety.....	153

TABLE OF CONTENTS

CHAPTER TWELVE: DEEDS AND TITLE EXAMINATION.....	155
§ 1 Constructive Notice.....	155
§ 2 Title Examination.....	156
A. Chain of Title.....	156
1. Establishing Chain of Title.....	156
2. Length of Chain/Title Examination.....	157
3. Matters to be Examined in Deeds Constituting the Chain of Title.....	158
CHAPTER THIRTEEN: DEEDS AND DECEDENTS.....	161
§ 1 Decedent's Estates.....	161
A. In General.....	161
B. Intestate Succession.....	162
C. Testate Succession.....	162
§ 2 Deeds of Distribution.....	163
A. In General.....	163
B. Purpose and Effect.....	165
1. Where Title Not Devise to Personal Representative.....	165
2. Where Title is Devise to Personal Representative.....	166
C. Effect of Private Agreements on Deeds of Distribution.....	166
§ 3 Sale by Personal Representative.....	168
A. General.....	168
§ 4 Sale by Court Order.....	169
§ 5 Performance of Decedent's Contract Concerning the Sale of Real Estate.....	170
§ 6 Property Owned as Joint Tenants with Right of Survivorship.....	170
CHAPTER FOURTEEN: DEEDS TO WATER, MINERALS, AIR AND TRACKS...173	
§ 1 Deeds of Water and Water Rights.....	173
A. In General.....	173
B. Riparian and Littoral Rights.....	173

TABLE OF CONTENTS

C.	Land under Private Pond.....	174
D.	Wetlands.....	174
E.	Islands within Wetlands.....	175
§ 2	Deeds of Mineral Estates.....	176
A.	Definition.....	176
B.	Creation.....	176
C.	Severed Minerals.....	177
§ 3	Deeds to Air Space.....	177
§ 4	Deeds of Railroad Property.....	178
CHAPTER FIFTEEN: TIMBER DEEDS.....		181
§ 1	Introduction.....	181
A.	In General.....	181
B.	Interest In Real Estate.....	181
§ 2	Term of Timber Deed.....	182
§ 3	Timber Conveyed.....	184
§ 4	Extension of Timber Deeds.....	184
§ 5	Construction of Timber Deeds.....	185
§ 6	Effect of Uniform Commercial Code (UCC).....	185
§ 7	Requisites for a Valid Timber Deed.....	186
CHAPTER SIXTEEN: CONTRACTS FOR DEED/BONDS FOR TITLE.....		187
§ 1	Definition.....	187
§ 2	Equitable and Legal Title.....	187
§ 3	Recordation.....	187
§ 4	Judgments and Tax Liens Against Seller (Vendor).....	188
§ 5	Judgments and Tax Liens Against Buyer (Vendee).....	188
§ 6	Consummation of Bond for Title.....	189
§ 7	Termination of Bond for Title.....	189

TABLE OF CONTENTS

CHAPTER SEVENTEEN: DEEDS OF CORRECTION	191
§ 1 Scriveners and Scrivener's Errors	191
§ 2 Use of Corrective Deeds or Correcting the Original Deed	191
§ 3 Written Consent of Parties	191
§ 4 Correcting Legal Description	192
§ 5 Other Uses of Corrective Deeds	193
§ 6 Multiple Corrective Deeds	194
APPENDICES	195
PREFACE TO APPENDICES	197
Appendix 1. General Warranty Deed	201
Appendix 2. Limited Warranty Deed	205
Appendix 3. Quitclaim Deed	209
Appendix 4. General Warranty Deed Reserving Life Estate	213
Appendix 5. General Warranty Deed to General Partnership under POA and Reserving Easement	217
Appendix 6. General Warranty Deed from Corporation to Limited Liability Company	221
Appendix 7. General Warranty Deed from Limited Liability Company to Corporation	225
Appendix 8. General Warranty Deed from Limited Partnership to Sole Proprietorship	229
Appendix 9. General Warranty Deed from General Partnership to Unincorporated Church	233
Appendix 10. General Warranty Deed from Trustees of Trust to Trustees of Trust	237
Appendix 11. General Warranty Deed Joint Tenancy with Right of Survivorship	241
Appendix 12. General Warranty Deed Tenancy in Common with Right of Survivorship	245