850.00 DEEDS - ACTION TO ESTABLISH VALIDITY - REQUIREMENTS.

The (*state number*) issue reads:

"Did (*identify deed at issue*) meet the requirements of the law for conveying valid title?"

Members of the jury, to convey valid title, a deed must meet certain requirements. [The parties have agreed] [The Court has already ruled] that many of these requirements are met by (*identify deed at issue*). However, [the parties have not agreed] [the Court has not already ruled] that (*state number of requirements listed below which remain for decision by the jury*) of these requirements [has] [have] been met. Whether [this] [these] (*state number to be decided*) requirement(s) [is] [are] met by (*identify deed at issue*) is for you to decide.

Thus, on this issue, the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, that (*here select as appropriate*):

[the (*identify deed*) names the grantor[1]]

[the (*identify deed*) identifies a (then-existing) grantee[2]]

[the (*identify deed*) has operative words of conveyance.[3] It is not necessary that the grantor actually use such words as "convey" or "grant" as long as the words used by the grantor show *his* intent[4] to transfer *his* interest.[5]]

[the (*identify deed*) adequately identifies the land conveyed.[6] A description is adequate if it is sufficiently definite to identify the land being conveyed or refers to something by which the land may be identified with certainty.[7] A description is not adequate if it leaves the

identity of the land in a state of absolute uncertainty and fails to refer to something by which it might be identified with certainty.[8]]

[the (*identify deed*) was properly signed by the grantor (or *his* authorized agent).[9] (A signature may consist of a mark or a symbol made by the grantor with the intent that it constitute a signing of the deed.[10]) (A mark or symbol put on a deed by someone other than the grantor is nonetheless the grantor's signature if the grantor adopts it as *his* signature.[11])]

[NOTE WELL: Use only for deeds executed prior to June 17, 1999:[12]

the (*identify deed*) was properly sealed.[13] (A deed is sealed when the signature of the grantor is accompanied by a mark, impression or words which indicate that *he* adopts *his* signature as *his* seal. The word "seal" beside (or near) the grantor's name is sufficient.[14])]

[the (*identify deed*) was properly acknowledged by the grantor before an official authorized by law to take such acknowledgments[15] (probated and recorded).[16]]

[the (*identify deed*) was validly delivered[17] to [the grantee] [someone on the grantee's behalf].

[*Use where the plaintiff relies on a presumption of valid delivery:* You may find, though you are not compelled to do so, that a valid delivery has occurred if (*identify deed*) [is in the possession of the grantee][18] [has been probated and recorded in the public registry].[19]]

[*Use where the plaintiff relies on proof of grantor's intent to deliver, and a physical transfer:* A valid delivery requires two things.[20] First, the grantor must intend to transfer the deed beyond *his*

possession and beyond *his* legal control. Second, the grantor must actually physically transfer the deed from *his* possession with the intent that it shall pass to [the grantee] [someone on the grantee's behalf].[21]]]

[the (*identify deed at issue*) was accepted by the grantee in a legally adequate manner.

[*Use where the plaintiff relies on a presumption of legal acceptance:* You may find, though you are not compelled to do so, that the grantee accepted the deed [if the conveyance was beneficial to *him*[22] (even though the grantee [had no knowledge of the conveyance][23] [was an infant][24] [lacked mental capacity to understand what *he* was receiving][25] [*name other disability*])] [the deed has been probated and recorded in the public registry][26] [the deed is found in the possession of the grantee][27].]

[*Use where the plaintiff relies on proof of actual acceptance:* A grantee's acceptance may be [express] [implied from the circumstances]. [Acceptance is express when, by word or conduct, the grantee assents to the conveyance for *his* benefit.] [Acceptance is implied where a reasonable person, under the same or similar circumstances, would conclude that the grantee accepted the deed].[28]]]

[(*state other criteria at issue and supported by the evidence*)].]

Finally, as to the (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that (*identify deed*) met the requirements of the law for conveying valid title, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty

to answer this issue "No" in favor of the defendant.

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1. Lack of legal capacity in most cases will be an affirmative defense, so it is omitted as an element of this instruction. However, if the grantor has been adjudicated incompetent, the burden of proof is on the party seeking enforcement (assuming such party was not privy to the incompetency proceeding) to show restoration of mental competency or that the deed was made during a lucid interval. *Davis v. Davis,* 223 N.C. 36, 25 S.E.2d 181 (1943); *Beard v. Southern Ry. Co.*, 143 N.C. 136, 55 S.E. 505 (1906); *Armstrong v. Short*, 8 N.C. 11 (1820). In such instances, another element would need to be added to this instruction. *Estis v. Jackson*, 111 N.C. 145, 16 S.E. 7 (1892); *cf. Yates v. Dixie Ins. Co.*, 173 N.C. 473, 92 S.E. 356 (1917) (determining that where the names of the grantors are absent, but the name of the grantee is properly present, the deed is not invalid if the grantors are otherwise designated, and other formalities are met).

2. *Neal v. Nelson*, 117 N.C. 393, 23 S.E. 428 (1895); *see also Campbell v. Everhart*, 139 N.C. 503, 52 S.E. 201 (1905); *Morton v. Thornton*, 259 N.C. 697, 699, 131 S.E.2d 378, 380 (1963). This statement of the law may require elaboration in certain cases, particularly where the deed is to a dead grantee "or his heirs" or to the "heirs" of a living person. *See* Hetrick & McLaughlin, *Webster's Real Estate Law in North Carolina* (4th Ed), §§ 10-28 and 29. In addition, unborn infants are considered "then-existing" if they are *in esse*.

3. *New Home Bldg. Supply Co. v. Nations*, 259 N.C. 681, 131 S.E.2d 425 (1963); *Pope v. Burgess*, 230 N.C. 323, 53 S.E.2d 159 (1949).

4. For an instruction on intent, *see* N.C.P.I.-Civil 101.46.

5. *New Home Bldg. Supply Co.*, 259 N.C. at 683, 131 S.E.2d at 423. *Waller v. Brown*, 197 N.C. 508, 149 S.E. 687 (1929); *Cobb v. Hines*, 44 N.C. 343 (1853); *Armfield v. Walker*, 27 N.C. 580 (1845).

6. A deed seeking to convey an interest in land "is void unless it contains a description of the land sufficient to identify it or refers to something extrinsic by which land may be identified with certainty." *Overton v. Boyce*, 289 N.C. 291, 293, 221 S.E.2d 347, 348 (1976). An adequate description must allow the court to fit the description to the property conveyed by the deed without the aid of parol evidence that adds to, enlarges or changes the description. *See Foreman v. Sholl*, 113 N.C. App. 282, 286, 489 S.E.2d 169, 173 (1994). An inadequate description fails to allow the Court to determine that the description is "sufficient to serve as a guide to the ascertainment of the location of the land." *Maurice v. Hatterasman Motel Corp.*, 38 N.C. App. 588, 590, 248 S.E.2d 430, 432 (1978). However, a latent ambiguity does not necessarily void the deed. If the Court determines that the "essential element" of a "description identifying" the land is present but ambiguous, (for example, a description such as "the old Fletcher Homestead" is latently ambiguous), then parol evidence may be admitted to fit the description to the land. *Foreman*, 113 N.C. App. at 286, 489 S.E.2d at 173.

7. *Overton*, 289 N.C. at 293, 221 S.E.2d at 348.

8. *Kidd v. Early*, 289 N.C. 343, 353, 222 S.E.2d 392, 400 (1976); *Holloman v. Davis*, 238 N.C. 386, 78 S.E.2d 143 (1953). Parol evidence may be used to establish that the land at issue is the same as the land in the description. N.C. Gen. Stat. § 8-39 (identifying land with parol evidence).

9. *Devereux v. McMahon*, 108 N.C. 134, 12 S.E. 902 (1891), *see also New Hanover Rent-A-Car, Inc. v. Martinez*, 136 N.C. App. 642, 645, 525 S.E.2d 487, 491 (2000) ("it is not essential that the signatures should be placed at the end of the deed ... where the law requires signing only").

10. *Sellers v. Sellers*, 98 N.C. 13, 3 S.E. 917 (1887).

11. *Devereux*, 108 N.C. at 136, 12 S.E. at 903.

12. **Effective June 17, 1999, the seal requirement for deeds was eliminated. N.C. Gen. Stat. § 39-6.5.** *See* N.C. Gen. Stat. § 47-43.1 (eliminating requirement that powers of attorney empowering the attorney-in-fact to convey real estate be under seal); § 47-18.3 (eliminating attestation and corporate seal requirement for corporate conveyances).

13. *Williams v. North Carolina State Bd. of Educ.*, 284 N.C. 588, 201 S.E.2d 889 (1974). A recital of the seal in the instrument creates a rebuttable presumption that the seal was affixed to the original deed even though it is absent from the recorded deed. *Id*. Note, however, that there are numerous statutes which "cure" seal deficiencies (*e.g.*, N.C. Gen. Stat. §§ 45-20.1, 47-51, 47-53, 47-53.1, 47-71.1, 47-108.5 and 47-108.11), and no seals were required on deeds during the March 7, 1879 to March 5, 1881 interval.

14. *Williams v. Turner*, 208 N.C. 202, 179 S.E. 806 (1935); *see Mobile Oil Corp. v. Wolfe*, 297 N.C. 36, 252 S.E.2d 809 (1979).

15. Acknowledgment is not a prerequisite to the validity of a conveyance; however, a proper acknowledgment is a prerequisite to a valid registration. N.C. Gen. Stat. § 47-1. Registration is necessary to protect the grantee from third party purchases for value and lien creditors. *Bowden v. Bowden*, 264 N.C. 296, 141 S.E.2d 621 (1965). It is also permissible for an attesting witness to appear before an officer authorized to take acknowledgments and to acknowledge under oath that the grantor signed the deed in his presence or acknowledged to him the execution thereof. N.C. Gen. Stat. § 47-12. *See also*, N.C. Gen. Stat. § 47-13.

16. The probate of a deed by the Clerk of Superior Court (prior to October 1, 1967) or the Register of Deeds (after October 1, 1967) is not a prerequisite to the validity of a conveyance. It is, however, a prerequisite to registration, *Woodlief v. Woodlief*, 192 N.C. 634, 135 S.E. 612 (1926), and registration is a prerequisite to protection from the claims of third party purchasers for value and lien creditors. N.C. Gen. Stat. § 47-18. Note that, as with acknowledgments, there are many curative statutes for deficient or defective probates. See generally N.C. Gen. Stat. §§ 47-47 through 47-108.16.

17. *Williams*, 284 N.C. at 593, 201 S.E.2d at 892.

18. Valid delivery may be presumed from the fact the deed is in the possession of the grantee. *Tarlton v. Griggs*, 131 N.C. 216, 42 S.E. 591 (1902); *see also Branch Banking & Trust Co. v. Creasy*, 301 N.C. 44, 54, 269, S.E.2d 117, 123 (1980).

19. Valid delivery may be presumed from the fact the deed has been duly probated and recorded. *Williams*, 284 N.C. at 592-93, 201 S.E.2d at 892-93.

20. *Vinson v. Smith*, 259 N.C. 95, 130 S.E.2d 45 (1963); *Jones v. Saunders*, 254 N.C. 644, 119 S.E.2d 789 (1961); *Elliot v. Goss*, 250 N.C. 185, 108 S.E.2d 475 (1959).

21. Valid delivery may be presumed from the fact the deed is in the possession of the grantee or the fact the deed is recorded. *See* Hetrick and McLaughlin, *Webster's Real Estate Law in North Carolina* (4th Ed), §§ 10-51 and 52. Both presumptions are rebuttable. *See Ballard v. Ballard*, 230 N.C. 629, 632, 55 S.E.2d 316, 319 (1949).

22. *Ballard*, 230 N.C. at 632, 55 S.E.2d at 318.

23. *Id*.

24. *Buchanan v. Clark*, 164 N.C. 56, 80 S.E. 424 (1913).

25. Hetrick and McLaughlin, *Webster's Real Estate Law in North Carolina* (4th Ed), § 10-58 at 365, n. 287.

26. *Frank v. Heiner*, 117 N.C. 79, 23 S.E. 42 (1895).

27. *Whitman v. Shingleton*, 108 N.C. 193, 12 S.E. 1027 (1891).

28. *See* Hetrick and McLaughlin, *Webster's Real Estate Law in North Carolina* (4th Ed), § 10-58 at 366.