

850.50 DEEDS - ACTION TO SET ASIDE - LACK OF VALID DELIVERY.

The (*state number*) issue reads:

"Did (*name grantor*) fail to make a valid delivery of (*identify deed*) to [(*name grantee*)] [someone on (*name grantee's*) behalf]?"

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 (*name grantor*) failed to make a valid delivery of (*identify deed*) to [(*name grantee*)] [someone on (*name grantee's*) behalf]¹

No valid delivery is made if

[(*name grantor*) did not intend² to pass (*identify deed*) from *his* possession and beyond *his* legal control]³

[(*name grantor*) failed to pass (*identify deed*) from *his* possession (during *his* lifetime)⁴ with the intent that it be accepted by [(*name grantee*)] [someone on (*name grantee's*) behalf].⁵

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 (*name grantor*) failed to make a valid delivery of (*identify deed*) to [(*name grantee*)] [someone on (*name grantee's behalf*)], 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.

1. Valid delivery is a prerequisite to lawful passage of title by deed of conveyance. *Williams v. North Carolina State Bd. of Educ.*, 284 N.C. 588, 201 S.E.2d 889 (1974).

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

3. *Talton v. Griggs*, 131 N.C. 216, 42 S.E. 591 (1902); *Newell v. Edwards*, 7 N.C. App. 650, 173 S.E.2d 504 (1970).

4. *Butler v. Butler*, 169 N.C. 584, 86 S.E. 507 (1915). The deed must pass out of the legal control of the grantor. Retention of the power to regain possession by the grantor negates delivery. *Gaylord v. Gaylord*, 150 N.C. 222, 653 S.E. 1028 (1909); *Penninger v. Barrier*, 29 N.C. App. 312, 224 S.E.2d 245 (1976).

5. *Talton*, 131 N.C. at 218, 86 S.E. at 508; *Newell*, 7 N.C. App. at 655, 173 S.E.2d at 508.