

CONVEYANCING

Definition of Conveyancing

The art of 'conveyancing' is of English origin. The word 'to convey' means to transfer or to make over. The word conveyancing means an instrument or deed through which one or more living person transfer his or their interest in present or in future in or upon an immovable property to one or more living persons. In other words conveyance means an act by which property is conveyed or voluntarily transferred from one person to another by means of a written instrument and other formalities. Section 2(10) of the Indian Stamp Act, 1899 defines the term „conveyance' as: -Conveyance includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.

Object and Function of Conveyancing

Movable property may be physically given and taken by actual delivery, while this is not possible in case of property in case of immovable properties. Thus, conveyancing is that branch of the law of transfer of property which deals with the mode and form of transfer to which both- the transferor and the transferee have agreed upon. Its main object is to enable the owners of real property to make voluntary transfers of their right, title and interest therein for some specific purpose and for a specified period. Such transfers are not otherwise possible than by Conveyancing.

It incorporates the expressions of the intention of the parties to the deed of conveyance so that accordingly it shall take effect. In case of any doubt, dispute, ambiguity and susceptibility, the real intention of the parties may be discovered from the words, phrases and the expression used in the deed. A transferor may have passed the property intending to pass; but if he has not

expressed himself in suitable words of the language, the deed may be defective or susceptible of two or more constructions; and so the benefits of the transfer may be lost to the transferee. Secondly, where any adverse claimant interposes before the transferee, may get actual legal possession of the transferred property, it may be quite possible that the transferor with all his willingness may not be able to help the transferee.

It helps the Court and judicial tribunals to determine any dispute if subsequently arises between the parties to the deed. It serves the purpose of both- the transferor and the transferee in protecting their interests. It protects the interests of the transferee from any precedent and /or subsequent acts or omissions of the transferor or any other person claiming through or under him against the expressed intention of the grant and the covenant of the deed; and likewise, the interest of the transferor is also protected from any subsequent acts or omissions of the transferee. It is a document of title to the property and forms the basis of a record of rights maintained by the Government. It is, also, a documentary piece of evidence.

COMPONENTS OF DEEDS

Drafting of a deed involves the law by which parties are governed, effect of the transaction and certainty and clarity by using appropriate words and expressions. An ordinary deed of transfer may conveniently be divided into the following parts: Description of the deed; Date; Parties; Recitals; Testatum; Consideration; Receipt; Operative words; Parcels; Exception and Reservations (if any); Habendum; Covenants (if any); Testimonium. The part of the deed which precedes the habendum is termed “the premises”. Each of these parts will now be separately considered.

A) DESCRIPTION/NAME/TITLE OF THE DEED

All deeds should be described by the name of the transaction which they evidence, such as

“THIS DEED OF MORTGAGE”, THIS DEED OF SALE”, THIS LEASE”, THIS DEED OF GIFT”, etc. When the deed is of a complex character and evidences different transactions known by different legal names, or the conveyancer is not sure what name should properly be given to it, it would be best to describe it simply as “THIS DEED”. The description is usually written in capitals.

B) DATE AND PLACE

After the description of the deed is stated, the date on which it is executed, thus:

EXAMPLE- “THIS LEASE made on the first day of February one thousand nine hundred and ninety nine.”

The date of a deed is the date on which it is signed by the party or parties executing it. When there is only one party to a deed, as in the case of Deed Poll, or when all the parties sign it on one and the same date, or when, though there are several parties to a deed, all do not sign and those who sign do so on one date, there is no difficulty. But if several parties to a deed sign it on different dates, the question is which date should be entered as the date of deed. The practice is to regard the last of such dates as the date of the deed.

The date should, in order to avoid mistake and risk of forgery, be written in words and not in figures. Figures may be added within parenthesis.

In every case in which a deed is executed by more than one person, the date on which each signs the deed must be shown in the deed, preferably against his signature.

The place where the deed is executed must be specified very clearly and generally at the start of document.

C) PARTIES TO THE DEED

1. Transferee

After the date, the names and description of the parties to the deed are mentioned. Who are the necessary and proper parties to a deed depends on the circumstances of each case. Although a transferee is not a necessary party, and a deed will not be invalid or ineffective if he is not mentioned as such, except in the case of a Lease, he is certainly a proper party. It is always advisable to make him a party.

2 Third person

Sometimes it is necessary or expedient, in order to validate a transfer or to give a complete title to the transferee, or to avoid possible disputes or doubts in that regard, to obtain the consent or concurrence of a third person. In such cases, such third person may also be joined as parties.

3. Description

Full description of the parties so as to prevent difficulty of identification should follow the name. In India, parentage, occupation and residence including Municipal or survey number, street and city and in the case of resident of a rural area the village, sub-division, tehsil and/or development block are generally regarded as sufficient to identify a man, but if there is any other description which is sufficient, the same may be normally adopted. Where the transferor is as member of a scheduled caste or scheduled tribe for whose protection the statute places restrictions on his right to transfer it may be necessary to mention such caste or tribe while reciting the fact of permission for the transfer having been obtained from the competent authority.

4. Juridical Person

A party to a transfer need not be a living individual but may be a company, or association or body of individuals or an idol or a corporation sole or aggregate, or in fact, any juridical person capable of holding property and entering into contracts.

5. Idol

As an idol has to act through some natural person, the name of the latter should be disclosed.

6. Reference Labels of Parties

In order to avoid the repetition of the full name and description at every place, the parties are generally referred to in the body of the deed by some easy and convenient names which generally have reference to the character in which they join the deed, such as „the vendor’, „the purchaser’, „the lessor’, „the lessee’, In order to avoid mistakes in writing words resembling each other for opposite parties, e.g., a combination of „mortgagor’ and „mortgagee’ or „vendor’ and „vendee’, they prefer to use a combination of „borrower’ and „mortgagee’, or „vendor’ and „purchaser’. If no such name is adopted, the parties can be referred to as „the party of the first part’ (or „the first party’), „the party of the second part’ (or „the second party’), „the said AB’, „the said CD’, but it is always preferable to give each party some short name for reference. Whatever short name is adopted the party should be referred to throughout by the same name.

The form, in which the parties will be described in the beginning of the deed, would thus be as follows:

“This SALE DEED is made on the _____ day of
_____ BETWEEN AB, etc.

(hereinafter called „the Vendor’) of the one part and CD, etc., (hereinafter called „the Purchaser’), of the other part.”

If the transferor along is made a party, this clause will run as follows:

“The SALE DEED is made on the _____ day of _____ by AB etc., (hereinafter

called „the Vendor’).”

If there are more than two parties, instead of the words “of the one part” and “of the other part” the words “ of the first part”, “of the second part”, “of the third part”, etc., should be used.

D) RECITALS

Recitals are of two kinds: (1) Narrative Recitals, relates to the past history of the property transferred and set out facts and instruments necessary to show the title and the relation of the parties to the subject-matter of the deed; and (2) Introductory Recitals, which explain the motive for the preparation and execution of the deed.

Form of Recitals

Recitals generally begin with the word „WHEREAS’, but, when there are several recitals, one can either repeat the word before every one of them, by beginning the second and subsequent ones with the words „AND WHEREAS’, or divide the recitals into numbered paragraphs with the word „WHEREAS’ at the top.

E) Testatum

The next part of a deed consists of the operative part. It commences with a witnessing clause termed the „testatum’, which refers to the introductory recitals of the agreement (if any) and also states the consideration (if any) and recites acknowledgement of its receipt. The witnessing clause usually begins with the words „NOW THIS DEED WITNESSES’. These words of testatum are of no importance as affecting the operation of the deed and their sole use is to direct attention to the object which the deed is intended to serve several objects, use the words „as follows’ after the testatum, thus:

NOW THIS DEED WITNESSES

AS FOLLOWS:’

F) CONSIDERATION

As contracts are necessarily for consideration (Sec. 10 of the Contract Act), it is advisable to express the consideration. This is necessary in many cases of transfer for ascertaining the stamp duty payable on the deed as Sec. 27 of the Indian Stamp Act requires that the consideration should be fully and truly set forth in the deed. The penalty for omission to comply with this requirements is a fine which may extend to RS. 5,000 (vide Sec. 64).

G) RECEIPT

Acknowledgment of receipt of consideration may be embodied in the deed itself instead of passing a separate receipt. Thus:

“NOW THIS DEED WITNESSES THAT in pursuance of the aforesaid agreement and in consideration of Rs. _____ paid by the purchases to the vendor before the execution hereof, the receipt of which the vendor hereby acknowledges”.

H) OPERATIVE WORDS

Then follow the real operative words which vary according to the nature of the estate and of the transaction.

I) PARCELS

This is a technical expression meaning description of the property transferred and it follows the operative words. Care must be taken, on the one hand, to include in the particular description or in general words, all the lands, etc., which are intended to pass so that no doubt may arise as to the extent and operation of the deed; and on the other hand not insert words which will pass more than what is intended.

Map: Sometimes it is necessary to have a map or a plan of the property in order to avoid mistake about its identity and to indicate the actual property conveyed with greater definiteness and precision. A map referred to in a transfer deed is treated as incorporated in the deed, and if it is drawn to scale and demarcates the boundaries clearly it is not permissible to attempt to correct them with reference to revenue records.

Great care should be taken in describing the property, as a slight mistake or omission may cause immense loss to a party and if the property is described both in the body and the schedule, a conflict between the two should be carefully avoided.

J) EXCEPTIONS AND RESERVATIONS

All exceptions and reservations out of the property transferred should follow the parcels.

An exception is something in existence at the date of transfer which, if not expressly excepted, would pass with the property as described in the parcels, such as trees.

A reservations is something not in existence at the date of the transfer but is newly created by the grant, e.g. when the vendor reserves a right of way over the property. But since both 'excepting and reserving' are used in practice it is immaterial whether what follows is an exception or a reservation.

K) HABENDUM

This is familiar 'to have and to hold' (in Latin, *habendum et tenendum*) clause of the English precedents. In India such phrases as 'to have and hold' or such expressions as 'to the use of the purchaser' are not strictly necessary but there is no harm in continuing the established practice.

L) COVENANTS AND UNDERTAKINGS

If the parties to a transfer enter into covenants, such covenants should be entered after the Habendum. While drafting covenants, regard should be had to the statutorily implied covenants which operate subject to any contract to the contrary. Where several covenants follow each other, they may run on as one sentence, each being introduced with the words 'and also' or by the words 'First', 'Secondly', etc. or they may be set out in paragraph form with the heading.

„THE VENDOR HEREBY COVENANTS WITH THE PURCHASER AS FOLLOWS:'

It is better to put in the transferor's and the transferee's covenants separately, and any covenants mutually entered into by the parties with each other may be inserted separately. If the transferer's and transferee's covenants are separately mentioned in the deed, care should be taken that no covenant which should really by the covenant of one party is entered in the covenants of the other. For example, if a lessee is given the right to cut trees of a certain kind and not to cut tree of a different kind, the latter covenant is a covenant by the lessee and the former is a

covenant by the lessor and both should not be inserted in one covenant by either. When it is found inconvenient or awkward to split up, what really is one covenant into two parts, it is better to insert such a covenant as a mutual covenant by the parties.

Sometimes the terms and conditions of a transfer cannot be conveniently separated into transferor's covenants and transferee's covenants. In such cases, it would be better to include all the covenants under one head as parties' covenants thus:

„THE PARTIES AFORESAID HERETO HEREBY MUTUALLY AGREE WITH EACH OTHER AS FOLLOWS:’

M) TESTIMONIUM

The last part of a deed is the testimonium which sets forth the fact of the parties having signed the deed. This is not an essential part of the deed, but as it marks the close of the deed there is no harm in continuing the established practice. The usual English form of testimonium is as follows:

„In witness whereof the parties hereto have hereunto set their respective hands and seals the day and year first above written.’

The use of seals is not common in India except in cases of companies and corporations, and the proper form in simple language would be somewhat as follows:

„In witness whereof the parties hereto have signed this deed on the date first above written.’

N) SIGNATURES AND ATTESTATION

After testimonium should follow the signatures of the executants and those of attesting witnesses. If executant is not

competent to contract or is a juristic person, the deed must be signed by the person competent to contract on his or its behalf.

EXAMPLES

WILL

Section 2(h) of the Indian Succession Act, 1925 defines Will as:

“Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.”

Section 2(b) of the Indian Succession Act, 1925 defines Codicil as:

“Codicil is an instrument made in relation to a will, and explaining, altering or adding to its disposition, and shall be deemed to form part of the will.”

- There is no standard form prescribed by law regarding drafting a will.
- The language of the will should be clear and unambiguous.
- The properties should be described with complete clarity.
- A will is drafted in first person.
- Details of the testator to be mentioned clearly. (Name, Age, Occupation, Address etc.)
- Details of bequeath, to whom and which property is given.

- Details of the executor if any.
- Previous testaments if any.
- Sound state of mind of testator.
- Signature and attestation. Signature of the testator and attesting witnesses(with their details)
- No stamp duty is required to be paid on a will.
- Will is not required to be compulsorily registered, it is optional.

WILL

THIS IS THE LAST WILL TESTAMENT of me, Sh. XYZ S/o Sh. ABC R/O 13, PQS APPARTMENTS, ROHINI, DELHI-110085 made at....(Place) on....(Date).

That life is uncertain and this is my last Will by way of which I bequeath voluntarily and out of my own free will in a sound state of mind, my self acquired properties to the beneficiaries as described hereunder.

WHEREAS I was married to.....(name) on....(date) and is living happily for Years and

out of the wedlock we have two children, a son(name) aged... and a daughter

aged.....

AND WHEREAS my son is happily married to....(name) and out of the wedlock, they

are blessed with one child..... (name) aged.... and are residing at(address).

AND WHEREASmy daughter is married to...(name) and out of the wedlock they are

blessed with one child....(name) aged... and are residing at...(address).

In my lifetime I have built my movable and immovable properties out of my own sources and, therefore, I am the absolute owner of the properties hereunder. IMMOVABLE PROPERTY

1. Residential property bearing no.admeasuring
 2. Shop No.admeasuring.....
 3. Shop No.admeasuring.....
 4. Shop No.admeasuring
- (hereinafter called the Immovable Property)

MOVABLE PROPERTY

All my household and personal belongings at

FD's if any

Gold Details etc.

CAR

(hereinafter called the Movable Property)

I HEREBY WISH that my abovementioned property should devolve in the following manner:

That my property bearing no.....would
devolve on to my wife....absolutely and

unconditionally and she shall deal with the said property in any manner as she likes and my children will have no claim on this property whatsoever.

That my property bearing no..... and my all movable property would devolve on to my

son..... absolutely and unconditionally and none of my legal heirs shall have any claims on

this property whatsoever.

That my daughter is happily married and is well settled in her matrimonial home and she does not need any financial support for survival after my death.

That my present will is drafted in my presence and upon my instructions and contents of my will have been read out to me in my own vernacular.

I declare the contents of this Will to be my last Will arrived at by me in sound state of mind.

IN WITNESSES WHEREOF I..... have signed this will hereunder on thisDay of,

20...at...in the presence of the following witnesses who are also attesting this will in my presence and at my request.

Sign

TESTATOR

Signed by the above named testator in our presence at the same time and each of us has in the presence of the testator signed our name hereunder as an attesting witness

1. Name and details of Witness 1

Signature

2. Name and details of Witness 2

Signature

POWER OF ATTORNEY

Power of Attorney is a document of agency or a formal arrangement by which one person (Principal) gives another person (Attorney or Agent) authority to act on his behalf and in his name. As per the Power of Attorney Act, 1882:

“Power-of-Attorney includes any instruments empowering a specified person to act for and in the name of the person executing it.”

A Power of Attorney may be a general or special power. A General Power of Attorney covers more than one subject matter while a Special Power of Attorney relates to a specific subject matter, though it may contain several powers relating to the same subject matter. Power of Attorney is required to be stamped but need not be mandatorily registered.

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT THIS GENERAL POWER OF ATTORNEY is executed at New Delhi on this 1st day of January 2004 by M/s. TINRIN, a company incorporated under the Companies Act having its registered

office at E-1 WESTEND, New Delhi through its Managing Director Mr. X.....(details) (hereinafter

referred to as the EXECUTANT), DO HEREBY APPOINT, NOMINATE, CONSTITUTE AND AUTHORISE Sh. Y....(details), Executive Director of M/s TINRIN (hereinafter

referred to as the ATTORNEY) AS MY TRUE AND LAWFUL ATTORNEY TO MANAGE, CONTROL, LOOKAFTER / SUPERVISE, PERFORM ALL LEGAL ACTS MENTIONED HEREUNDER.

WHEREAS.....

AND WHEREAS.....(Mention few recitals like the purpose of making this GPA).

NOW THIS GENERAL POWER OF ATTORNEY WITNESSETH AS UNDER:-

- (i) To institute, commence and conduct any action, suit or other legal proceedings before any Court, Arbitrator, Quasi-judicial or authorities, Offices, Tribunals, Labour Courts, Conciliation Officers, Land Acquisition Officers, etc. on behalf of the company for claiming any right, relief, recovery, title, interest, property or in respect of any matter connected with or arising out of the Company's business and subject to aforesaid, to settle, adjust, compromise or submit to Arbitration any such actions, suits or proceedings.
- (ii) To defend all actions, suits, proceedings, applications, petitions, appeals, revisions, reviews, arbitrations, conciliations, taxation and labour matters and other disputes that are now pending or may hereafter be brought or made or instituted in any Court or office or Tribunal, Arbitrator,

Conciliation Officer, or any other Judicial or Quasi-judicial authorities in the name of the company.

- (iii) To appear and represent the Company in any Court of Justice or Tribunal whatsoever and for the purpose aforesaid or any of them to sign and verify plaints, written statements, applications and swear affidavits and to sign petitions and other necessary documents

including Valalatnama and to appoint any Solicitor, Advocate, Pleader or other Legal Advisor with the necessary power and such again at pleasure, to revoke and appoint others in their place.

- (iv) To continue and conduct or defend any appeal, review, revision, arbitration in any Court or Tribunal or office against any order, judgment or decree made in suits, actions, proceedings, application etc.
- (v) Generally for and in the name and as the act and deed of the Company to make, execute and do all and every such further and other acts. Deeds, matters and things as shall be fit, requisite and necessary in and about the premises and for all or any of the purposes aforesaid and as the Company could do if acting in the premises.

And I, the said Managing Director of the Company and also for the said Company hereby agree to ratify and confirm whatsoever the said Attorney shall lawfully do or cause to be done in or about the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto signed this document on the date and place first above written in the presence of following witnesses.

EXECUTANT

WITNESSES: (1)

(2)

SPECIAL POWER TO ATTORNEY TO EXECUTE A SALE DEED

KNOW ALL MEN BY THESE PRESENTS THAT THIS SPECIAL POWER OF ATTORNEY is executed at New Delhi on this 1st day of January 2004 by I, AB,(details)

(hereinafter referred to as the EXECUTANT), DO HEREBY APPOINT, NOMINATE, CONSTITUTE AND AUTHORISE Sh. Y....(details), (hereinafter referred to as the

ATTORNEY) AS MY TRUE AND LAWFUL ATTORNEY TO PERFORM ALL LEGAL ACTS MENTIONED HEREUNDER.

WHEREAS.....

AND WHEREAS.....(Mention few recitals like the purpose of making this SPA).

NOW THIS SPECIAL POWER OF ATTORNEY
WITNESSETH AS UNDER:-

1.To receive from the purchaser or his heirs or assigns the sum of Rs.....being the price agreed to be paid to me by XY for the purchase of (description of property) under an agreement dated the.....and to give an effectual receipt and discharge for the same;

2. To execute a proper sale deed of the said property or any other deed or assurance necessary for the completion of the sale of such property and to get the same duly registered;

And I hereby agree to ratify and confirm whatsoever the said Attorney shall lawfully do or cause to be done in or about the premises by virtue of these presents.

IN WITNESS WHEREOF I have hereunto signed this document on the date and place first above written in the presence of following witnesses.

EXECUTANT

WITNESSES: (1)

(2)

SALE OF IMMOVABLE PROPERTY

Section 54 of the Transfer of Property Act, 1882 defines Sale as:

“Sale is a transfer of ownership in exchange for a price paid or promised or part-paid or part-promised.”

- The contract for sale of immovable property must be in writing.
- Section 55 of the Transfer of Property Act, 1882 lays down the duties, obligation and rights of the vendor and purchaser under an agreement of sale, as well as for sale in case of absence of contract to the contrary.
- Sale deed is chargeable with the stamp duty.
- Where the value of the immovable property is more than Rs. 100, it is required to be compulsorily registered.
- An agreement for sale and sale deed should clearly show: who are the parties to the contract (Vendor/Vendee or Vendor/Purchaser or Seller/Buyer); the subject matter; the intention to sell and buy; the price agreed and how it is to be paid and other terms of the contract.
- The contract for sale of immovable property is usually preceded by an agreement for sale

AGREEMENT FOR SALE

THIS AGREEMENT is made aton thisday
of.....

BETWEEN

Mr. A aged.....s/o.....r/o..... (hereinafter referred to as the
VENDOR which expression

shall, unless repugnant to the context or meaning thereof shall
mean and include his heirs, executors, administrators and
assigns of the FIRST PART).

AND

Mr. B ageds/o.....r/o..... (hereinafter referred to as the
VENDEE/PURCHASER

which expression shall, unless repugnant to the context or
meaning thereof shall mean and include his heirs, executors,
administrators and assigns of the SECOND PART).

WHEREAS the Vendor is the absolute owner of the property
bearing no.....admeasuring....situated at.....(hereinafter
referred to as the said property).

AND WHEREAS the Vendor has agreed to sell the said
property to the Vendee at the price and on the conditions
mentioned hereinafter.

NOW IT IS AGREED BETWEEN THE PARTIES AS
FOLLOWS:

1. The Vendor hereby agrees to sell, transfer and convey the
said property in favour of the Vendee.

2. That the consideration of Rs....is to be paid by the Vendee to the Vendor. Rs.....is to be paid at the execution of this agreement as earnest money. Rs....on.....(date) and lastly Rs....at the time of final sale deed.
3. The Vendor acknowledges the payment of Rs....as earnest money paid in cash/cheque/dd no...drawn on(Bank name and Branch) by Vendee.
4. The Vendor shall make out a marketable title to the said property free from encumbrances and reasonable doubts.
5. The Vendor shall deliver to the Vendee the title deeds relating to the said property in his possession and power on execution of these presents for inspection and investigation of the title by the Vendee or his advocate.
6. The Vendor agrees to apply for, obtain and furnish unto the Vendee all such permissions as may be necessary under the laws for registration of Sale Deed.
7. The Vendor and the Vendee hereby agree that the sale will be completed within six months from the date hereof.
8. All the taxes, levies etc due and payable against the said property shall be paid by the Vendor till the completion of sale and thereafter it will be the responsibility of the purchaser. The Vendor shall handover all the tax receipts etc. duly paid to the Vendee at the time of completion of sale.

9. The Vendor agrees to handover actual, physical and vacant possession of the said property unto the Vendee at the time of sale deed.
10. That the expenses towards the payment of stamp duty, registration charges and all other incidental expenses for agreement for sale and sale deed shall be borne out by the Vendee.
11. If the Vendor fails to make out the clear marketable title to the said property as aforesaid then the Vendee will have the right to cancel this agreement by giving

atleast fifteen days notice to the Vendor and after the expiration of fifteen days the agreement shall stand terminated and the Vendor agrees to return the earnest money to the Vendee.
12. If the Vendee fails to perform his obligations under this agreement within the time stipulated then the Vendor shall be entitled to cancel this agreement by giving atleast fifteen days notice in writing to the Vendee. On termination the Vendor will be entitled to forfeit the earnest money paid by the Vendee.

SCHEDULE OF PROPERTY

Details of the property to be mentioned.

IN WITNESS WHEREOF parties hereunto have signed this document on the date and place first above written in the presence of following witnesses.

VENDOR

VENDEE

WITNESSES:

1)

2)

