



vantage point

Ancient Verbosity

“No one uses words like that anymore!” This statement, uttered with a laugh by someone to whom I was

describing a recent deed encounter, was soon disproved when I produced a copy of the document whose reality was being questioned. There it was in the caption: *enfeoff*. And the deed was dated 1979.

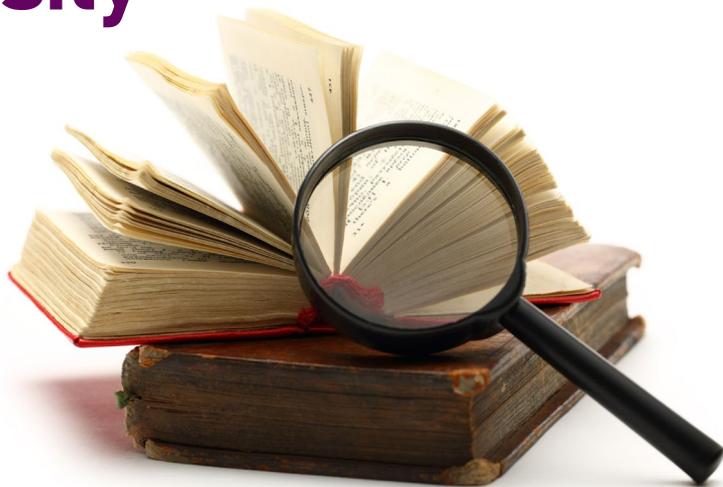
In fact, I had been glad to see that particular word in this particular deed, because another surveyor and I had been looking for clues as to the status of title in what had been a road but was now vacated. The full phrase read that “the said party of the first part being therewith fully satisfied, contented and paid, have [*sic*] given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm unto the said party of the second part. . .”

What a mouthful. But each word means something slightly different from its partners. Let’s take a look at each of them separately, with a little help from one of my good friends, *Black’s Law Dictionary*.

Give: “To transfer ownership or possession without compensation. To bestow upon another gratuitously or without consideration. See also ‘*Gift*.’” [That definition refers to “a voluntary transfer of property to another made gratuitously and without consideration. . .”]

Grant: “. . . A conveyance; i.e. transfer of title by deed or other instrument. . .”

Both of these terms refer to bestowing, which can occur without compensation. Because I see these terms in deeds for which full fee ownership is undeniably the intent, it



seems the primary impact is about the transfer or conveyance of interests, and their inclusion in the opening paragraph is not definitive as to the fullness of interest being conveyed.

Bargain: “. . . A contract or agreement between two parties, the one to sell goods or lands, and the other to buy them. To negotiate over the terms of a purchase or contract.”

Sell: “To dispose of by sale.”

Hmm, that last one isn’t too helpful, so let’s look at—

Sale: “A contract between two parties. . . by which the [seller], in consideration of the payment or promise of payment of a certain price in money, transfers to the [buyer] the title and the possession of property. . . A contract whereby property is transferred from one person to another for a consideration of value, *implying the passing of the general and absolute title*, as distinguished from a special interest falling short of complete ownership. . .” [*emphasis added*]

This looks more specific about interests than the “give” and “grant” terms. Separately, *Black’s* offers an entry for

Bargain and sale: “In conveyancing, the transferring of the property. . . from one to another, upon valuable consideration, by way of sale. . .”

Alien: “To transfer or make over to another; to convey or transfer the property of a thing from one person to another; to alienate. . . See ‘*Alienation*.’”

Okay, we will:

Alienation: “. . . The term is particularly applied to absolute conveyances of real property. The voluntary and complete transfer from one person to another. . .”

Along with “sale”, this is starting to sound more definitive,

Release: “The relinquishment, concession, or giving up of a right, claim, or privilege. . . Abandonment of claim. . . and may be gratuitous or for consideration. . .”

That sounds pretty final, and it overcomes questions relating to the amount of payment. But let's keep going.

Enfeoff: "To invest with an estate by feoffment. To make a gift of any corporeal hereditaments to another. See *'Feoffment'*."

While we have the dictionary open, we might as well.

Feoffment: "...A gift of a freehold interest in land accompanied by livery of seisin..."

Black's goes into the feudal origins of the term and historic processes, but the key point here is "freehold", defined as "an estate for life or in fee". Since we are talking about a municipality as the grantee, "freehold" translates to "fee" (another feudally rooted term), an absolute, unconditional estate in perpetuity. With "alien" and "release", we are moving away from mere possessory rights to a fuller ownership of title.

Convey: "...To pass or transmit the title to property from one to another... by deed, bill of sale, or instrument under seal. Used popularly in sense of 'assign', 'sale', or transfer."

If used in the sense of "assign", "convey" would refer only to some kind of transfer (such as assignment of a mortgage from one lender to another). The "sale" part of this definition goes back to the aspect of the contract, the agreement between parties and the payment of some form of consideration.

And finally:

Confirm: "...To make firm or certain; to give new assurance of truth or certainty, to put past doubt; to give approval to..."

If merely some of this array of terms had appeared in the caption of the deed, I might not have been so sure of the full passage of title from one party to another. Taken together, however, the conveyance seems pretty definite as to its totality.

But one should always read the full deed, looking into its "four corners" to see if the rest of the language supports or contradicts that understanding. Otherwise it is too easy to latch onto the parts we want to read and ignore the inconvenient truths or conflicts raised by other sections.

The caption says the conveyance is to the grantee, "its successors and assigns,

forever". While this could apply to either fee or a permanent easement, the words immediately following read, "All that certain tract or parcel of land..." Beyond the caption and description, the deed presents only pre-printed boilerplate phrases. There are **no** statements as to a particular purpose for the conveyance. There are **no** words specifying or limiting its use, **no** words imposing conditions such as "as long as", and **no** requirements to be fulfilled by the grantee. (One example of such conditions is the common requirement for grantee railroad companies to erect and maintain fences, indicating less than full rights and title in the land.)

Taken together, the words included and the phrases not included present an unfettered and unencumbered full conveyance of interest. The only possibly contrary argument is the nominal fee paid. But all that ancient verbosity indicates to me that any consideration at all, whether nominal or fair market value, is sufficient indication of the grantor's intent to turn over every interest held. ■

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