

CHAPTER 47-09
TITLE BY TRANSFER - GENERAL PROVISIONS

47-09-01. Transfer defined.

Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another.

47-09-02. What may be transferred - Exceptions.

Property of any kind may be transferred except:

1. A mere possibility not coupled with an interest.
2. A mere right of re-entry or of repossession for breach of a condition subsequent which cannot be transferred to anyone except the owner of the property affected thereby.

47-09-03. Voluntary transfer defined - Consideration unnecessary.

A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general except that a consideration is not necessary to its validity.

47-09-04. Transfer - How made.

A transfer may be made without writing in every case in which a writing is not required expressly by statute.

47-09-05. Names of transfers by writing.

A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this title includes all these instruments unless it is specially applied to real property.

47-09-06. Delivery of written transfer - Requirement - Presumption from execution.

A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor and is presumed to have been delivered at its date.

47-09-07. Delivery must be absolute - Conditional delivery ineffective, becomes absolute.

A grant cannot be delivered to the grantee conditionally. Delivery to the grantee or to the grantee's agent as such is necessarily absolute and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

47-09-08. Delivery in escrow.

A grant may be deposited by the grantor with a third person to be delivered on the performance of a condition, and on delivery by the depositary it will take effect. While in the possession of the third person and subject to condition, it is called an escrow.

47-09-09. Constructive delivery.

Though a grant is not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. When, by the agreement of the parties, the instrument is understood to be delivered at the time of execution and the circumstances are such that the grantee is entitled to immediate delivery; or
2. When it is delivered to a stranger for the benefit of a grantee and the grantee's assent is shown or may be presumed.

47-09-10. Redelivery does not retransfer.

Redelivering a grant of real property to the grantor, or canceling it, does not operate to retransfer the title.

47-09-11. Interpretation of grants.

Grants shall be interpreted in like manner with contracts in general except so far as is otherwise provided by this chapter. If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction, and if several parts of a grant are absolutely irreconcilable, the former part shall prevail. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

47-09-12. Interpretation of descriptive words.

If any instrument relating to real or personal property shall be executed by or to any person as trustee, guardian, executor, administrator, or in any other representative capacity, and shall fail to identify clearly the beneficiary by name and the nature of the trust, the qualifying words in such instrument shall be treated as surplusage and as description only of the person by whom or to whom the instrument was executed.

47-09-13. Grant shall be interpreted in favor of grantee - Exceptions.

A grant shall be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

47-09-14. Without issue defined.

When a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of the person's body, without issue, or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

47-09-15. Words of inheritance or succession unnecessary to fee.

Words of inheritance or succession shall not be requisite to transfer a fee in real property.

47-09-16. Transfer vests actual title - Thing includes incidents.

A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied. It also transfers all its incidents unless expressly excepted, but the transfer of an incident to a thing does not transfer the thing itself.

47-09-17. Present interest and benefit - When taken.

A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant although not named a party thereto.