

STANDARD 3.1

AUTHORITY TO HOLD AND CONVEY TITLE - PARTIES TO CONVEYANCES

STANDARD: TITLE TO A REAL PROPERTY INTEREST MAY BE HELD AND CONVEYED BY A LEGAL ENTITY, AND TITLE MAY BE HELD BY A NATURAL PERSON BUT CONVEYED BY A NATURAL PERSON ONLY IF NOT PROHIBITED BY DISABILITY OR INCAPACITY.

Comment:

One of the requirements for a valid conveyance is the legal existence of the parties, whether natural or artificial, to the conveyance. In addition, both the grantor(s) and the grantee(s) have to be adequately identified in order to create a valid conveyance. A grantor conveying in a representative capacity must possess actual authority to execute the conveyance document.

The remainder of this Chapter 3.1 discusses specific classes of grantors and grantees, both natural persons and entities, whether incorporated or unincorporated, as parties to a conveyance. Each Standard under the Chapter 3.1 heading addresses requirements for that particular class of grantor or grantee to convey or receive marketable title. Title Standard 3.1-1 covers conveyances to unincorporated associations. Title Standard 3.1-2 deals with conveyances to and from trustees of unincorporated churches. Conveyances involving fictitious names are covered in Title Standard 3.1-3. Title Standard 3.1-4 addresses the conveyance of real property in a representative capacity rather than an individual capacity. The conveying of title held by a natural person who is a minor is covered in Title Standard 3.1-5. Finally, Title Standard 3.1-6 addresses conveyances to a deceased grantee.

A word about incapacity is necessary. There are different types of incapacity that can affect a person's ability to convey title to real property. In addition to incapacity due to minority, which is addressed in Title Standard 3.1-5, there are numerous other physical, mental, and legal reasons why a person of majority might be legally incapable of executing a binding conveyance of real property. In some of those cases, a practitioner should consider the need for a formal guardianship. The topic of guardianships and real property is beyond the scope of this Chapter. Conveyances using a power of attorney are discussed in Chapter 1 of these Title Standards.