# FEDERAL STANDARD ABSTRACT
## TITLE NEWS

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# Title News

### INCAPACITY TO CONVEY

Generally, a minor, a mentally retarded person or a person of unsound mind cannot convey property. (Real Property Law sections 10 and 11). The issue of incapacity will increasingly present itself as time goes by as the baby-boomer generation ages and incidences of Alzheimer's unfortunately increase. It is therefore useful to have a general understanding of how the property can be conveyed when the person in title does not have the capacity to convey.

### MINORS

In the case of minors, those under 18 years of age, a court order giving a guardian or other court-appointed person permission to convey the property is required. The guardian or other interested person must ask permission to sell the property in either the Surrogate's Court or in the Supreme or County Court. Only the court-appointed guardian can ask permission of the Surrogate's Court, while Supreme and County Court allow someone other than the guardian to ask permission to sell the property. In Surrogate's Court, the guardian must state the facts as to the real property, the interest of the infant in it, the other property belonging to the infant, the infant's overall financial circumstances and the facts showing that it's in the best interests of the infant that the property be sold. S.C.P.A. section 1715(2). In Supreme or County Court, the guardian, relative or other person acting on behalf of the infant must state the "grounds of the proceeding" to the Court. R.P.A.P.L. section 1722. The Supreme or County Court may hear the proof in support of the sale or may appoint a referee to do so.

If a sale is concluded by court order, it vests good title in the purchaser. The party to the deed is the infant in such a case. The guardian merely executes the deed on the infant's behalf, so that the case is analogous to someone signing on someone else's behalf with a Power of Attorney. For example, let's say the infant's name is John Smith and that the guardian's name is Richard Jones. Here's how Jones would have to sign the deed: "John Smith by Richard Jones, General Guardian of John Smith, as infant."

### INCAPACITATED ADULTS

Where an adult is incapacitated, a guardian must also be appointed to convey title. Article 81 of the Mental Hygiene Law sets out the procedure for getting an order appointing a guardian in such a case. If the appointment of a guardian will affect real property belonging to an incapacitated person, a Notice of Pendency or lis pendens must be filed by the person asking for the appointment of the guardian before any guardian is actually appointed. In its Order or Judgment, the Court will state the exact powers of the guardian with respect to the property belonging to the incapacitated person. Any deed or mortgage executed on behalf of an incapacitated person must include a reference to the Order or Judgment appointing the guardian, since title is still in the incapacitated person.

Again, the guardian signs in a manner similar to that in a Power of Attorney: "John Smith by Richard Jones, Guardian of the property of John Smith.

## ALIENS (NON-CITIZENS)

There is no longer any restriction on the ownership or disposition of real property by an alien or non-citizen. R.P.L. section 10. However, both seller and purchaser should be aware of the need to comply with the Foreign Investment Real Property Tax Act, section 1445 of the IRS Code. Under this section of FIRPTA, 10% of the purchase price may have to be withheld for the payment of the tax. But if the consideration does not exceed $300,000.00 and the property is purchased for use as a residence, no tax may be due. (In any case, the title company has no liability as to the FIRPTA tax.)

## THE NAME ON THE DEED

It may seem like a small thing, but it is very common. The name on a deed is not the name the purchaser wanted to use. Either a middle initial is omitted or the spelling is just plain wrong. It's not the "end of the world" when such a thing happens, but the fact is that such an error can cause complications and inconveniences later. For example, a purchaser may later have to sign with and "aka" or "fka" when he or she refinances because of a previous mistake. If then, on top of that, someone signs on that purchaser's behalf with a Power of Attorney at a later closing, the signing of documents and mortgages can become quite a production, stretching out the time of closing by an hour or two, especially if every page on the mortgages must be initialed. Nevertheless, the error of an incomplete or misspelled name on a deed can be avoided quite easily, even though it happens all the time.

Such a mistake usually happens because the lawyers for each side are rushing to read contracts, clear encumbrances and secure funding. A spelling error can easily be made in such a context. If, however, the purchaser's attorney asks the purchaser at the closing table, "Is this how you want your name to be on the deed?" the purchaser may then quickly correct any mistake. If the attorney forgets to ask, the title closer may do so, and it will probably earn him or her a better tip from the purchaser. It takes roughly twenty seconds to correct a mistake that might last years since the deed will be recorded and remain on the public record for an extended period of time.

Why doesn't the purchaser's attorney usually ask about the purchaser's middle initial or about the spelling of a name? Perhaps he or she is too busy making sure the rest of the closing runs smoothly, that all of the adjustments add up, etc... Perhaps the purchaser's attorney does not want to embarrass the seller's attorney at the closing table if the name on the deed is wrong. Still, the error can be corrected with sufficient tact in order to save the purchaser and future lenders and title companies from dealing with unnecessary complications.



If you have any questions or comments, contact us at fsa@federalstandardabstract.com