Title: THE ART AND SCIENCE OF DRAFTING PROPERTY CONVEYANCES
Date: September 16, 2010
Location: Topeka, Kansas
Program: Real Estate Law Society
Sponsor: Washburn Law School
Duration: One Hour
YOUR CLIENT: DOCK HILLARD WANTS TO CONVEY SOME LAND

Dock informs you that he owns, in fee simple absolute, real property described as the:

Southeast Quarter of Section 3, Township 11 South,
Range 15 East, from the 6th Principal Meridian, in
Shawnee County, Kansas.

Dock received this land by inheritance from his grandfather, Thomas Hillard. Dock is married to Cheryl Hillard and they reside in Topeka, Kansas, but not on the land being sold. Dock informs you this is his “separate” property.

Dock desires to convey to Levi Pierce, Will Pierce, and Cody Pierce, a fee simple absolute in the Northeast Quarter of the Southeast Quarter of Section 3, Township 11 South, Range 15 East, from the 6th Principal Meridian, in Shawnee County, Kansas. Dock wants the three to hold the conveyed land as joint tenants “so nobody has to worry about the probate court and lawyers.” Dock also wants to transfer the land at this time so it will not be part of his taxable estate at his death.

Dock does not want to guarantee title to the property but does want to provide Levi, Will, and Cody with all rights Dock has in the property now, or that he may become entitled to in the future. Dock, Levi, Will, and Cody want to make sure the transfer can be recorded to provide the world notice that Dock has transferred his interest to the Pierce brothers. Levi, Will, and Cody are providing no consideration for the conveyance by Dock.

HOW TO APPROACH THIS DRAFTING TASK

You need to fully understand what your client seeks to accomplish – so you can help them achieve their goals. This is “art” and “science.” In most situations the best source of information regarding what you need to
do, and how you need to do it, will be your client. You want to assist your client to accomplish his or her goals in the most efficient and effective way possible. You want to provide all necessary representation to ensure nothing is left undone and that the things you do are fully implemented. Many clients are under-represented by their attorneys. That is not acceptable as a professional, nor as an independent business person seeking to make a living practicing law.

**You need to fully understand the law that is implicated by the drafting task.** This is “science.” Dock’s facts indicate several matters need to be addressed. For example: (1) How do you convey real property from an owner to a grantee? (2) How do you convey a “fee simple absolute?” (4) How do you make the grantees “joint tenants?” (4) What must be done with the document to make it recordable? (5) What must be done to convey the real property without any “guarantee” of title? (6) How do you convey property to include “all rights Dock has is the property now, or that he may become entitled to in the future?” (7) Is it possible to make a present conveyance without consideration? (8) Does it matter that this property is Dock’s “separate property”? (9) Who should sign the document?

To answer these questions you will need to research the applicable law. For this exercise you begin by searching statutory law for guidance. This involves choice of law issues at several levels: (1) Does state or federal law apply? (2) If state law applies, which state’s law? [For this problem, assume Kansas law applies.] What “law” of Kansas? Is this governed by a specialized body of Kansas law, such as the Uniform Commercial Code?

If you are at a complete loss regarding how to approach the issues, the first step may be to research the general subject matter in a treatise. For example, a real property treatise section on “conveying land.” If you have a basic understanding of the issues involved, your first step will be to look for relevant statutory law on the subject. This means you will begin your research in the Kansas Statutes Annotated.

Once you have exhausted your study of the relevant statutes, you may need to examine, depending upon the subject matter, relevant regulations, orders, case law, commentary, and other information that can assist you in understanding a statute, or to address issues not addressed by statute.

**You need to prepare a document that has the exact language required to accomplish your client’s goals – no more, no less.** This is “art” and applied “science.” The structure of the document should complement its substance and the manner in which it will be used by your client.
DEED

Dock Hillard and Cheryl Hillard convey to Levi Pierce, Will Pierce, and Cody Pierce, as joint tenants with the right of survivorship and not as tenants in common, the

Northeast Quarter of the Southeast Quarter of Section 3, Township 11 South, Range 15 East, from the 6th Principal Meridian, in Shawnee County, Kansas.

This conveyance is made without warranty, whether express, implied, or statutory, but seeks to convey an indefeasible estate in fee simple absolute to include any estate in the conveyed property that may be subsequently acquired by the grantors.

Signed, delivered, and accepted this 16th day of September 2010.

DOCK HILLARD

CHERYL HILLARD

ACKNOWLEDGMENT CERTIFICATE

Shawnee County, Kansas

This Deed was acknowledged before me on 16 September 2010 by Dock Hillard and Cheryl Hillard.

DONNA S. HAVERKAMP
Notary Public
My Appointment Expires: ____________

Grantees' Designee for Receipt of Property Tax Statement(s):

Levi Pierce
1301 SW High
Topeka, Kansas 66604
58-2203. Form of warranty deed. Any conveyance of lands, worded in substance as follows: A.B. conveys and warrants to C.D. (here describe the premises), for the sum of (here insert the consideration), the said conveyance being dated, duly signed and acknowledged by the grantor, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants from the grantor, for himself or herself and his or her heirs and personal representatives, that the grantor is lawfully seized of the premises, has good right to convey the same and guarantees the quiet possession thereof, that the same are free from all encumbrances, and the grantor will warrant and defend the same against all lawful claims.

58-2205. How conveyances executed and acknowledged. Conveyances of land, or of any other estate or interest therein, may be made by deed, executed by any person having authority to convey the same, or by that person's agent or attorney, and may be acknowledged and recorded as herein directed, without any other act or ceremony whatever.
58-2209. Conveyance of real estate; signature required. All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed by the party granting the same, or by the party's lawful agent or attorney, and may be acknowledged or proved and certified in the manner prescribed by the uniform law on notarial acts and K.S.A. 58-2216 and amendments thereto.

The Grantor's "Spouse" (Cheryl) Potential Rights at Dock's Death

59-505. Same; half of realty to surviving spouse. Except as provided further, the surviving spouse shall be entitled to receive one-half of all real estate of which the decedent at any time during the marriage was seized or possessed and to the disposition whereof the survivor shall not have consented in writing, or by a will, or by an election as provided by law to take under a will, except such real estate as has been sold on execution or judicial sale, or taken by other legal proceeding. The surviving spouse shall not be entitled to any interest under the provisions of this section in any real estate of which such decedent in such decedent's lifetime made a conveyance, when such spouse at the time of the conveyance was not a resident of this state and never had been during the existence of the marriage relation. The spouse's entitlement under this section shall be included as part of the surviving spouse's property under K.S.A. 59-6a207, and amendments thereto.
Art. 15, § 9. Homestead exemption. A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon: Provided, That provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife: And provided further, That the legislature by an appropriate act or acts, clearly framed to avoid abuses, may provide that when it is shown the husband or wife while occupying a homestead is adjudged to be insane, the duly appointed guardian of the insane spouse may be authorized to join with the sane spouse in executing a mortgage upon the homestead, renewing or refinancing an encumbrance thereon which is likely to cause its loss, or in executing a lease thereon authorizing the lessee to explore and produce therefrom oil, gas, coal, lead, zinc, or other minerals.
The Grantor’s “Wife” (Cheryl)  
Protection Upon “Husband’s” (Dock’s) Death

59-401. Homestead. A homestead to the extent of 160 acres of land lying without, or of one acre lying within, the limits of an incorporated city, or a manufactured home or mobile home, occupied by the decedent and family, at the time of the owner's death, as a residence, and continued to be so occupied by the surviving spouse and children, after such death, together with all the improvements on the same, shall be wholly exempt from distribution under any of the laws of this state, and from the payment of the debts of the decedent, but it shall not be exempt from sale for taxes thereon, or for the payment of obligations contracted for the purchase thereof, or for the erection of improvements thereon, or for the payment of any lien given thereon by the joint consent of husband and wife. The title to the homestead property of a decedent shall pass the same as the title to other property of the decedent.
Sec. 5.001. FEE SIMPLE. (a) An estate in land that is conveyed or devised is a fee simple unless the estate is limited by express words or unless a lesser estate is conveyed or devised by construction or operation of law. Words previously necessary at common law to transfer a fee simple estate are not necessary. 

(b) This section applies only to a conveyance occurring on or after February 5, 1840.

Sec. 5.021. INSTRUMENT OF CONVEYANCE. A conveyance of an estate of inheritance, a freehold, or an estate for more than one year, in land and tenements, must be in writing and must be subscribed and delivered by the conveyor or by the conveyor's agent authorized in writing.

Sec. 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:
Sec. 5.022. FORM. (a) The following form or a form that is the same in substance conveys a fee simple estate in real property with a covenant of general warranty:

'The State of Texas,

'County of ____________________ .

"know all men by these presents, That I, _________________________, of the _________________________ (give name of city, town, or county), in the state aforesaid, for and in consideration of _________________________ dollars, to me in hand paid by _________________________, have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said _________________________, of the _________________________ (give name of city, town, or county), in the state of _________________________, all that certain _________________________ (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said _________________________, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said _________________________, his heirs, and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this _________________________ day of _________________________, A.D. 19___.

"Signed and delivered in the presence of _________________________ ."
58-2221. Recordation of instruments conveying or affecting real estate; duties of register of deeds. Every instrument in writing that conveys:

(a) Real estate;

(b) any estate or interest created by an oil and gas lease;

(c) any estate or interest created by any lease or easement involving wind resources and technologies to produce and generate electricity; or

(d) whereby any real estate may be affected, proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated. It shall be the duty of the register of deeds to file the same for record immediately, and in those counties where a numerical index is maintained in the register of deeds' office, the register of deeds shall compare such instrument, before copying the same in the record, with the last record of transfer in the register of deeds' office of the property described. If the register of deeds finds such instrument contains apparent errors, the register of deeds shall not record the instrument until the grantee has been notified, if such notice is reasonably possible.

The grantor, lessor, grantee or lessee or any other person conveying or receiving real property or other interest in real property upon recording the instrument in the office of register of deeds shall furnish the register of deeds the full name and last known post-office address of the person to whom the property is conveyed or such person's designee. The register of deeds shall forward such information to the
county clerk of the county who shall make any necessary changes in address records for mailing tax statements.
The Art and Science of Drafting Property Conveyances

Real Estate Law Society
16 September 2010
Professor David Pierce

Your Professional Responsibility

• Kansas Rules of Professional Conduct
• Supreme Court Rule 226
• RULE 2.1 Advisor
  "In representing a client, a lawyer shall exercise independent professional judgment . . . ."

Your Professional Responsibility

• RULE 1.1 Competence
  "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Your Professional Responsibility

• Comment to RULE 1.1 Competence:
  "[2] Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve . . . ."

The Basic Goal of “Drafting”

• You will learn how to prepare documents that make the law operate in such a manner as to accomplish your client’s goals.
The Basic Goal of “Drafting”

- You have the opportunity to operate in the lawyer's dream world: a place where you can create the facts you need to achieve a desired legal result.

Drafting Basics

- To draft effective documents you must:
  - Understand the client's goals.
  - Identify the issues triggered by the project.
  - Research the law concerning the issues.
  - Apply the research to fashion your terms.
  - Communicate the terms to your audience.

Drafting Basics

- A substantial part of your drafting task, which is the "science" part of the undertaking, is what I call the "validation" process.
- What validates my decision to use a particular word or phrase in my document?
- The validation process consists of basic legal analysis and research.

Your Client and the Facts

- Dock received the land from his grandfather, Thomas Hillard.
- Dock was Thomas' only heir; Thomas died without a will as the owner of the land.
- Thomas' estate was administered; the court found Dock was entitled to the land.

Your Client and the Facts

- Dock is married to Cheryl and they both live in Topeka.
- The land at issue is not where Dock and Cheryl have their residence.
- The facts indicate this is Dock's "separate property."
Think Drafting for a Moment

• What are we dealing with?
  • Land, "real property".

• Why does that matter?
  • The subject matter of the conveyance dictates many of the legal aspects of what must be included in the conveyance document.

Think Drafting for a Moment

• For example, with a transfer of land as the object of the transaction, we can answer questions such as, must I use a document to accomplish the task?

  • This implicates considerations like the Statute of Frauds.

Think Drafting for a Moment

• 33-105. Leases or estates exceeding one year in duration. No leases, estates or interests of, in or out of lands, exceeding one year in duration, shall at any time hereafter be assigned or granted, unless it be by deed or note, in writing, signed by the party so assigning or granting the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

Think Drafting for a Moment

• "Art" = how should it look, how should it be organized?
• "Science" = what do we need to make it work (the way the client wants it to work).
• Consider the art and science of something as simple as: “what signature lines must we put on the document”?

Think Drafting for a Moment

• Must Thomas sign?
• Must Dock sign?
• Must Cheryl sign?
• What about Levi, Will, and Cody?

Think Drafting for a Moment

• Thomas isn't going to be signing anything.
• What about the others?
• What does the "law" tell us?
• Research applicable statutes and case law – statutes first.
• State or federal statutes? Both?
Think Drafting for a Moment

- Some basic legal research takes you to:
  Chapter 58.--Personal and Real Property
- Under Chapter 58 you find:
  Article 22.--Conveyances of Land

Think Drafting for a Moment

- Under the "Conveyances of Land" article you find several statutes that assist you in determining who must sign the conveyance document.
  - Note: Chapter 59 is the "Probate Code" and Article 5 of Chapter 59 deals with "Intestate Succession."

Think Drafting for a Moment

- Recall that the facts indicated the Dock and Cheryl did not live on the property.
- Why does that matter?

Think Drafting for a Moment

- Kansas Statutes Annotated § 59-404 (Homestead).
- Kansas Constitution, article 15, § 9.
- Homestead rights conferred by article 15, § 9 are not inchoate or potential, but exist whenever the property qualifies as homestead property.

Think Drafting for a Moment

- Up to this point, all we have are the signature lines.
- We need one for Dock.
- We need one for Cheryl (not because it is homestead property but because we want to cut off her inchoate rights as a spouse under K.S.A. 59-505 because Dock is conveying "real estate").

Think Drafting for a Moment

- If the conveyance contained a warranty, Cheryl would not want to sign as a conveying party because she would not only be releasing her inchoate rights under K.S.A. § 59-505 but would also be making a covenant of warranty.
- In that case, Cheryl would want to limit the effect of her signature as follows:
Think Drafting for a Moment

• "Cheryl Hillard consents to this conveyance by Dock Hillard and acknowledges she is releasing any rights she may have in the conveyed property pursuant to: K.S.A. § 59-505, the homestead laws, or any other statutory or common law provision."

Some More “Art” and “Science”

• What do we put at the top of the document?
• What do we call it?
• Every document should have a title.
• Makes it easy for the client to find it and have an immediate understanding of what it is.

Some More “Art” and “Science”

• Lets call it a "Deed."
• K.S.A. § 58-2205 states: "Conveyances of land, or any other estate or interest therein, may be made by deed. . . ."
• If the conveyance included a "warranty," K.S.A. § 58-2203 suggests an appropriate title would be: "Warranty Deed."
• K.S.A. § 33-105 (Statute of Frauds).

Your Client and the Facts

• Dock desires to convey to Levi Pierce, Will Pierce, and Cody Pierce, a fee simple absolute in the Northeast Quarter of the Southeast Quarter of Section 3, Township 11 South, Range 15 East, from the 6th Principal Meridian, in Shawnee County, Kansas.
• Get the simple things right – like the description of the property.

Think Drafting for a Moment

• We know who the "grantors" are (Dock and Cheryl), now we need to identify the "grantees."
• Levi, Will, and Cody.
• Do we need to identify Dock and Cheryl as the "grantors" and Levi, Will, and Cody as the "grantees"?
Your Client and the Facts

• Dock wants to convey to Levi, Will, and Cody "a fee simple absolute in the Northeast Quarter of the Southeast Quarter...."

• Client will probably actually say: "I want to give Levi, Will, and Cody all my rights in the land."

• How do we do that?

Think Drafting for a Moment

• Consider the language used in the Texas statutory form of fee simple conveyance.

• Texas Property Code § 5.022 uses the following words of conveyance:

  "have granted, sold, and conveyed, and by these presents do grant, sell, and convey unto the said

Read and Use Richard Wydick's Plain English for Lawyers

• Avoid verbal clutter.

• Use words sparingly.

• Use ordinary language unless there is a need for special terms.

• "Good legal writing does not sound as though it had been written by a lawyer."

  Wydick at p. 5.

Read and Use Richard Wydick's Plain English for Lawyers

• Omit surplus words.

• "Working Words" and "Glue Words"

• A trial by jury was requested by the defendant.

  Glue-to-Working Ratio: 5/4

• The defendant requested a jury trial.

  Glue-to-Working Ratio: 2/4

Read and Use Richard Wydick's Plain English for Lawyers

• Avoid Compound Constructions.

  • at the point in time (then)
  • by means of (by)
  • by reason of (because of)
  • by virtue of (by, under)
  • for the purpose of (to)
  • for the reason that (because)

Read and Use Richard Wydick's Plain English for Lawyers

• Avoid Word-Wasting Idioms.

  • the fact that she had died (her death)
  • despite the fact that (although)
  • because of the fact that (because)
  • he was aware of that fact that (he knew)
Read and Use Richard Wydick's Plain English for Lawyers

Do Not Use Redundant Legal Phrases.
- null and void
- totally null and void
- totally null and void and of no further force or effect
- totally null and void and of no further force or effect whatsoever—dude
- How about "void."

My Favorite Writing Guide
- The Elements of Style by William Strunk, Jr. and E.B. White.
  - This is all you need to know about writing (in less than 100 pages).

Think Drafting for a Moment
- K.S.A. § 58-2205. "Conveyances of land... may be made by deed, executed by any person having authority to convey the same... without any other act or ceremony whatever."
  - This means no "feoffment" performed by making a symbolic delivery of the property by presenting "turf or twig" and reciting words of enfeoffment.
Think Drafting for a Moment

• K.S.A. § 58-2202. "The term 'heirs,' or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; and every conveyance of real estate shall pass all the estate of the grantor therein, unless the intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant."

Think Drafting for a Moment

• K.S.A. § 58-2203. Indicates that the word "convey" by the grantor "shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns ...." 
• So, we have part of our first sentence: "Dock Hillard and Cheryl Hillard convey to Levi Pierce, Will Pierce, and Cody Pierce, ...."

Think Client Goals for a Moment

• Dock also wants to transfer the land at this time so it will not be part of his taxable estate at his death. 
• This means popular alternatives to a current conveyance, such as a transfer-on-death deed, will not accomplish Dock's goals.

Your Client and the Facts

• Dock wants the three to hold the conveyed land as joint tenants "so nobody has to worry about the probate court and lawyers."
• Wishful thinking – but joint tenancy has created a number of problems – particularly when it is not intended to be a present conveyance but rather an estate planning tool. ("Put the kids' name on it.")

Think Client Goals for a Moment

• Joint tenancy is a fragile form of ownership. 
• Can be destroyed on purpose, or by accident, by any owner. 
• No guarantee the balance of the property will ultimately end up with the survivor of the three owners. 
• Need to counsel all parties accordingly.

Think Drafting for a Moment

• How do you make Levi, Will, and Cody "joint tenants"?
• K.S.A. § 58-501. Conveyance to Levi, Will, and Cody will create a tenancy in common unless the "grant ... makes it clear that a joint tenancy was intended to be created."
Think Drafting for a Moment

- Case law defines the language to be used.
- *Matter of the Estate of Wood*, 218 Kan. 630, 632, 545 P.2d 307, 309 (1976), refers to the "magic words" to create a joint tenancy: "as joint tenants with the right of survivorship, and not as tenants in common."

Think Drafting for a Moment

- So, we have the second part of our first sentence: "Dock Hillard and Cheryl Hillard convey to Levi Pierce, Will Pierce, and Cody Pierce, as joint tenants with the right of survivorship and not as tenants in common."

Your Client and the Facts

- Dock does not want to guarantee title to the property but does want to provide Levi, Will, and Cody with all rights Dock has in the property now, or that he may become entitled to in the future.
- No guarantee that Dock has title = "no warranty" conveyance.
- But, if Dock does not currently have 100% ownership, but gets it later, Dock wants it to go to Levi, Will, and Cody.

Think Client Goals for a Moment

- Supplement your statutory research with case law research:
- *Knight v. Dalton*, 83 P. 124, 126 (Kan. 1905) ("his mere quitclaim . . . would not have . . . carried to the grantee any estate or title which the grantor might subsequently acquire").

Think Client Goals for a Moment

- K.S.A. § 58-2204. Is a form of "quitclaim" deed. "Quitclaims . . . ."
- Problem: Quitclaim deed will not convey after-acquired-title.

Think Client Goals for a Moment

- K.S.A. § 58-2207. "Where a grantor by the terms of his or her deed undertakes to convey to the grantee an indefeasible estate in fee simple absolute, and shall not at the time of such conveyance have the legal title to the estate sought to be conveyed, but shall afterwards acquire it, the legal estate subsequently acquired by the grantor shall immediately pass to the grantee; and such conveyance shall be as effective as though such legal estate had been in the grantor at the time of conveyance."
Think Drafting for a Moment

- **Note:** case law indicates that a quitclaim conveyance will not trigger after-acquired-title because it is not a conveyance of an "indefeasible estate in fee simple absolute."
- How do we make sure that our no-warranty conveyance properly triggers the benefits of after-acquired-title?

Think Property for a Moment

- Common problem in drafting conveyances is distinguishing between limitations on the estate being conveyed vs. the nature of the guarantee of title that is being given.
- Exceptions to the **grant** vs. exceptions to the **warranty**.
- We want to make it clear that just because no warranty is being given, the grantor still wants the grantees to receive an indefeasible estate in fee simple absolute.

Think Drafting for a Moment

- K.S.A. § 58-2207 provides the necessary guidance to draft a clause that will ensure Levi, Will, and Cody have the benefit of any after-acquired-title Dock (and Cheryl) may have.
- Express language to negate a warranty.

Think Property for a Moment

- So, we have our second sentence: "This conveyance is made without warranty, whether express, implied, or statutory, but seeks to convey an indefeasible estate in fee simple absolute to include any estate in the conveyed property that may be subsequently acquired by the grantors."

Think Drafting for a Moment

- The final sentence before the signature lines: "Signed, delivered, and accepted this 16th day of September 2010."
- We know, from the statutes, the conveyance must be signed by the grantors.
- What about "delivered, and accepted"?
- Where did that come from?
### Think Drafting for a Moment

- Case law discusses the elements of a gift.
- **Delivery** is critical — put the interest out of the control of the grantor.
- **Acceptance** is usually presumed — unless the conveyance creates a burden on the grantee, the grantee is presumed to accept it and must take affirmative action to reject it in a timely manner.

### Your Client and the Facts

- Levi, Will, and Cody are providing no consideration for the conveyance by Dock.
- K.S.A. § 58-2203 suggests that the deed will reflect the consideration that is being paid for the conveyance.
- Do not need consideration for a completed gift (delivery) — only for a promise to make a gift.

### Think Drafting for a Moment

- **K.S.A. § 58-2203.** Indicates the conveyance should be dated.

### Your Client and the Facts

- Dock, Levi, Will, and Cody want to make sure the transfer can be recorded to provide the world notice that Dock has transferred his interest to the Pierce brothers.
- **What is required so the deed can be recorded?**

### Think Drafting for a Moment

- **K.S.A. § 58-2221.** "Every instrument in writing that conveys . . . Real estate . . . proved or acknowledged, and certified in the manner hereinbefore prescribed, may be recorded in the office of register of deeds of the county in which such real estate is situated. . . ."
- **K.S.A. § 58-2211**

### Think Drafting for a Moment

- **58-2211.Acknowledgment of instrument relating to real estate.** All conveyances, and other instruments affecting real estate must be acknowledged before a person authorized by the uniform law on notarial acts to perform notarial acts or, if acknowledged within this state, by a county clerk, register of deeds or mayor or clerk of an incorporated city.
• 58-2223. Same; unrecorded instrument valid only between parties having actual notice. No such instrument in writing shall be valid, except between the parties thereto, and such as have actual notice thereof, until the same shall be deposited with the register of deeds for record.

• However, other statutes make recording an absolute necessity to the validity of the conveyance: transfer-on-death deeds.

• 59-3502. Same; filing of form with register of deeds. An interest in real estate is titled in transfer-on-death form by executing, acknowledging and recording . . . prior to the death of the owner . . . ."

• K.S.A. § 58-2209 indicates a conveyance may be "acknowledged or proved and certified in the manner prescribed by the uniform law on notarial acts . . . ."

• There are hundreds of notarial act certifications in the Kansas Statutes Annotated.

• Unless a statute expressly requires a particular form, use the following forms:

• Everyone must become familiar with Chapter 53.—NOTARIES PUBLIC AND COMMISSIONERS, particularly Article 5.—Notarial Acts, K.S.A. §§ 53-501 to 53-511.

• K.S.A. § 53-509. Short forms. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsection (a) of K.S.A. 53-508: . . .

• Using my deed form, note the title: "Acknowledgment Certificate."

• The short-form acknowledgment lets you accomplish in six words what some forms use sixty or more words to accomplish.
Think Drafting for a Moment

• Using my deed form, look at the bottom of the page: "Grantee’s Designee for Receipt of Property Tax Statement(s)."
• Where does that come from?
• K.S.A. § 58-2221.

Think Drafting for a Moment

• “The grantor, lessor, grantee or lessee or any other person conveying or receiving real property or other interest in real property upon recording the instrument in the office of register of deeds shall furnish the register of deeds the full name and last known post-office address of the person to whom the property is conveyed or such person’s designee.”

Think Drafting for a Moment

• Other nice things to consider about drafting the document:
• K.S.A. § 28-115(d): If the name or names of the signer or signers or any notary public to any instrument to be recorded are not plainly typed or printed under the signatures affixed to the instrument, the register of deeds shall charge and collect a fee of $1 in addition to all other fees provided in this section.

Think Service for a Moment

• Now that you have your completed document, think about what you might need to do to assist your client in making sure it is fully implemented.
• Recording, notice to grantees, notice to other interested parties (tenants, etc.).
• Lawyers are in a "service" profession.