

TITLE 55
PROPERTY IN GENERAL

CHAPTER 6
TRANSFER OF REAL PROPERTY

55-601. CONVEYANCE -- HOW MADE. A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. The name of the grantee and his complete mailing address must appear on such instrument.

[(55-601) 1863, p. 528, sec. 1; R.S., sec. 2920; reen. R.C. & C.L., sec. 3105; C.S., sec. 5373; I.C.A., sec. 54-601; am. 1973, ch. 284, sec. 1, p. 600; am. 1989, ch. 105, sec. 1, p. 238.]

55-602. CONVEYANCE BY ATTORNEY IN FACT. When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

[(55-602) R.S., sec. 2925; reen. R.C. & C.L., sec. 3110; C.S., sec. 5374; I.C.A., sec. 54-602.]

55-603. EASEMENTS PASS WITH PROPERTY -- EASEMENTS IN GROSS OF A COMMERCIAL CHARACTER. (1) A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

(2) Easements in gross of a commercial character, whether existing or created in the future, may be transferred, assigned, or conveyed in accordance with the express language of the instrument. As used in this section, "easement in gross of a commercial character" means an easement that is a personal interest in or right to use the land of another:

- (a) For the transmission or distribution of water, sewer, natural gas, or petroleum products;
- (b) For the provision of telephone or data service;
- (c) For the transmission, distribution, or transformation of electricity; or
- (d) For purposes of commercial agricultural uses, including without limitation grazing of livestock, farming, and propagation and harvest of timber crops.

[(55-603) R.S., sec. 2926; reen. R.C. & C.L., sec. 3111; C.S., sec. 5375; I.C.A., sec. 54-603; am. 2022, ch. 276, sec. 1, p. 885.]

55-604. FEE PRESUMED TO PASS. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

[(55-604) 1863, p. 528, sec. 43; R.S., sec. 2927; reen. R.C. & C.L., sec. 3112; C.S., sec. 5376; I.C.A., sec. 54-604.]

55-605. ACQUISITION OF SUBSEQUENT TITLE BY GRANTOR. Where a person purports by proper instrument to convey or grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors.

[(55-605) 1863, p. 528, sec. 32; R.S., sec. 2928; reen. R.C. & C.L., sec. 3113; C.S., sec. 5377; I.C.A., sec. 54-605.]

55-606. CONCLUSIVENESS OF CONVEYANCE -- BONA FIDE PURCHASERS. Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for a valuable consideration, acquires a title or lien by an instrument or valid judgment lien that is first duly recorded.

[(55-606) R.S., sec. 2929; reen. R.C. & C.L., sec. 3114; C.S., sec. 5378; I.C.A., sec. 54-606; am. 1989, ch. 107, sec. 1, p. 247.]

55-607. UNAUTHORIZED GRANT BY LIFE TENANT. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

[(55-607) R.S., sec. 2930; reen. R.C. & C.L., sec. 3115; C.S., sec. 5379; I.C.A., sec. 54-607.]

55-608. DEFEAT OF GRANT ON CONDITION SUBSEQUENT. Where a grant is made upon condition subsequent, and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors, by grant duly acknowledged for record.

[(55-608) R.S., sec. 2931; reen. R.C. & C.L., sec. 3116; C.S., sec. 5380; I.C.A., sec. 54-608.]

55-609. GRANT ON CONDITION PRECEDENT. An instrument purporting to be a grant of real property, to take effect upon condition precedent, does not pass the estate upon the performance of the condition. Such instrument is an executory contract for the conveyance of the property. Upon compliance with the condition, the grantee is entitled to a grant or conveyance, from the grantor or his successors, for the property, duly acknowledged for record.

[(55-609) R.S., sec. 2932; reen. R.C. & C.L., sec. 3117; C.S., sec. 5381; I.C.A., sec. 54-609.]

55-610. GRANT OF RENTS, REVERSIONS, OR REMAINDERS. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants; but no tenant who, before notice of the grant, has paid rent to the grantor, must suffer any damage thereby.

[(55-610) 1863, p. 528, sec. 47; R.S., sec. 2933; reen. R.C. & C.L., sec. 3118; C.S., sec. 5382; I.C.A., sec. 54-610.]

55-611. GRANT OF LAND BOUNDED BY HIGHWAY. A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to

the soil of the highway in front, to the center thereof, unless a different intent appears from the grant.

[(55-611) R.S., sec. 2934; reen. R.C. & C.L., sec. 3119; C.S., sec. 5383; I.C.A., sec. 54-611.]

55-612. COVENANTS IMPLIED FROM GRANT. From the use of the word "grant" in any conveyance by which an estate of inheritance, possessory right, or fee simple is to be passed, the following covenants, and none other, on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from encumbrances done, made or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

[(55-612) 1863, p. 528, sec. 50; R.S., sec. 2935; reen. R.C. & C.L., sec. 3120; C.S., sec. 5384; I.C.A., sec. 54-612.]

55-613. ENCUMBRANCES DEFINED. The term "encumbrances" includes taxes, assessments, and all liens upon real property.

[(55-613) R.S., sec. 2936; reen. R.C. & C.L., sec. 3121; C.S., sec. 5385; I.C.A., sec. 54-613.]

55-614. LINEAL AND COLLATERAL WARRANTIES ABOLISHED. Lineal and collateral warranties, with all their incidents, are abolished; but the heirs and devisees of every person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the manner prescribed by law.

[(55-614) 1863, p. 528, sec. 49; R.S., sec. 2937; reen. R.C. & C.L., sec. 3122; C.S., sec. 5386; I.C.A., 54-614.]

55-615. SOLAR EASEMENTS. (1) An easement, as defined in section [50-1301](#), Idaho Code, may be obtained for the purpose of exposure of a solar energy device to sunlight. Such easement shall be known as a solar easement, shall be created in writing, and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(2) Any instrument creating a solar easement shall include, but the contents shall not be limited to:

(a) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement;

(b) Any terms or conditions or both under which the solar easement is granted or will be terminated;

(c) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the en-

joyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) A solar easement shall be presumed to be attached to the real property on which it was first created, and shall be deemed to pass with the property when title is transferred to another owner as prescribed in section [55-603](#), Idaho Code.

[55-615, added 1978, ch. 294, sec. 1, p. 741.]

55-616. PROHIBITION AND REMOVAL OF RESTRICTIVE COVENANTS. (1) Every provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, color, ethnicity, or national origin and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, color, ethnicity, or national origin is void.

(2) It shall be unlawful to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.

(3) The owner or tenant of property subject to a written instrument that contains a provision that is void pursuant to subsection (1) of this section may record a restrictive covenant modification document with the county clerk in the county in which the property is located. Such modification document shall be a standard form developed and designed by the county clerk. Each county clerk shall make available in the county clerk's office instructions on how to record a restrictive covenant modification document and shall provide such instructions on the county website, if applicable.

(4) The modification document shall contain a recording reference to the original written instrument and a legal description of the property, and the owner or tenant who causes to be recorded a modification document shall clearly state the person's name on the modification document and shall execute the modification document prior to recordation. Except for a modification regarding a provision that is void pursuant to subsection (1) of this section, no other modifications shall be allowed on a restrictive covenant modification form.

(5) The modification document must state, in part: "The referenced original written instrument contains discriminatory provisions that are void and unenforceable under Section [55-616](#), Idaho Code, and federal law. This document strikes from the referenced original instrument all provisions based on race, color, ethnicity, or national origin that are void and unenforceable under law."

(6) The effective date of the modification document shall be effective as of the date of the original document and shall supersede the discriminatory language in the original written instrument.

(7) If the owner or tenant causes to be recorded a modification document that contains modifications not authorized by this section, the county clerk shall not incur liability for recording the document. Any liability that may result is the sole responsibility of an owner or tenant who willfully causes the recordation with modifications not authorized by this section.

(8) No filing or recording fees or otherwise authorized surcharges shall be required for the filing of a modification document pursuant to this section.

(9) Nothing in this section shall affect the provisions of section [67-5909](#) (10), Idaho Code.

[55-616, added 2022, ch. 159, sec. 1, p. 547.]

55-617. APPURTENANT WATER RIGHTS AND WATER ENTITLEMENTS AND OBLIGATIONS PASS WITH PROPERTY. (1) A transfer of real property passes appurtenant water rights decreed by court order pursuant to [chapter 14, title 42](#), Idaho Code, permitted or licensed by the department of water resources pursuant to [chapter 2, title 42](#), Idaho Code, or established by the constitutional method of appropriation, and that are owned by the seller and are not reserved by the seller in the instrument of conveyance.

(2) A transfer of real property included in an irrigation district that operates pursuant to [title 43](#), Idaho Code, to which the district has apportioned the right to receive water from the district's water rights, passes the statutory rights and obligations of the property relative to the district's distribution of water and assessments.

(3) A transfer of real property included in a city irrigation system that operates pursuant to [chapter 18, title 50](#), Idaho Code, to which the city has apportioned the right to receive water from the city's water rights, passes the statutory rights and obligations of the property relative to the distribution of water and assessments.

(4) A transfer of real property included in a ground water district that operates pursuant to [chapter 52, title 42](#), Idaho Code, to which the district has levied assessments or apportioned mitigation plan obligations, passes the statutory rights and obligations of the property relative to such assessments and obligations.

(5) A transfer of real property that is entitled to receive water from the water rights of a canal company, ditch company, association, or other water delivery entity, passes the rights and obligations of the property relative to the entity's distribution of water and assessments as evidenced by stock ownership, or other evidence of an entitlement to receive water, subject to the bylaws of the water delivery entity.

(6) A transfer of real property does not pass water rights or water entitlements and obligations that are not appurtenant to the real property.

[(55-617) 55-616, added 2022, ch. 267, sec. 1, p. 857; am. and redesign. 2023, ch. 218, sec. 20, p. 643.]

55-618. INTERNAL ACCESSORY DWELLING UNITS -- RESTRICTIVE COVENANTS PROHIBITED. (1) On and after July 1, 2023, no restrictive covenant may be entered into that prohibits an internal accessory dwelling unit, as defined in section [55-3212](#), Idaho Code. Any such covenant is hereby declared to be against public policy and is void and unenforceable. Any person attempting to create or enforce such a covenant shall be liable for any attorney's fees, court costs, and any other damages incurred by the other party. The provisions of this section shall not be construed to protect more than one (1) internal accessory dwelling unit per homestead.

(2) This section does not apply to a restrictive covenant against internal accessory dwelling units entered into prior to July 1, 2023.

[55-618, added 2023, ch. 265, sec. 2, p. 792.]

ACKNOWLEDGMENTS -- [REPEALED]