

Deeds

A Primer for Surveyors

by
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During the course of searching the records, surveyors will review numerous deeds. I've often had surveyors ask about the difference between the various types of deeds. This article is an overview of the common forms of deeds used to convey title to property.

Most current deeds fall into one of four categories: 1) General Warranty, 2) Special Warranty, 3) Quit Claim deed, and 4) Bargain and Sale deed.

General Warranty Deed — The General Warranty deed is often referred to simply as a warranty deed. It is a deed conveying title where the seller (grantor) makes six covenants or promises to the buyer (grantee) as part of the conveyance. (Some states have limited or eliminated one or more covenants in a warranty deed by statute.) The six covenants that are part of a warranty deed are further divided into present and future covenants. The three present covenants are the following;

- 1) Covenant of Seisin - The grantor covenants to the grantee that the grantor has title and possession of the property. If a grantor conveys property burdened by a valid and current lease, the grantor would breach this covenant because they grantor had the title to the property but not the possession.
- 2) Covenant of Right to Convey - The grantor covenants that the grantor can validly grant or convey both title and possession. A life tenant that delivers a warranty deed to the grantee is in violation of this covenant. The life tenant had the right to convey the possession but not the right to convey the title to the property.
- 3) Covenant Against Encumbrances – The grantor covenants that there are no encumbrances against the title. Encumbrances could include easements, mortgages, trusts, and limitations on the title. A landowner that conveys property where the neighbor has secured an easement across the property by prescription is in violation of this covenant.

The three future covenants are the following:

- 4) Covenant of Warranty – The grantor covenants that the grantor will protect and defend the buyer against anyone who comes and claims a superior title to the property. Under this covenant, the grantor will have to defend any claim against the title of the grantee if and when a person comes forward with a claim to the title to the property the grantor conveyed by warranty deed.
- 5) Covenant of Quiet Enjoyment – The grantor covenants to the grantee that the grantee will have unimpaired use and unrestricted enjoyment of the property. For example, this covenant would be breached if someone obstructed the easement that provides access to the property (based on a claim of right).
- 6) Covenant of Further Assurances – The grantor covenants to the grantee that the grantor will take actions reasonably necessary to perfect the grantee's title if found

defective. For example, if a grantor delivered a deed to the grantee where the acknowledgement was found to be defective (e.g., notary commission expired), the grantor would be required to take the steps necessary to deliver a deed with a valid and effective acknowledgment.

The distinction that often arises between present and future covenants involves when the breach of a covenant occurred and when the statute of limitations begins to run. A breach of the present covenants will occur, if at all, at the time of conveyance. If a breach occurred, the time period of a relevant statute of limitation will commence at that time. On the other hand, the breach of a future covenant will occur after the time of conveyance, perhaps decades later.

The grantor may limit any of the warranties within the deed by express wording in the deed. For example, a grantor may state within the deed that the property is subject to an easement. Because the grantee is put on notice of the easement, the covenant against encumbrances would not apply to the easement cited in the deed.

The warranties that are included in a warranty deed extend back in time to the inception of title. The warranties made by earlier grantors also extend to future owners of the property. For example, assume a title defect occurred in 2001 when Ames owned the property. Ames conveys the property to Betty by quit claim deed. Betty conveys the property to Chad by special warranty deed. Chad conveys the property to Diane by warranty deed. Diane conveys the property to Edgar by quit claim deed. In 2013, Edgar discovers the 2001 title defect. Edgar can sue Chad for breach of warranty for the title defect occurring in 2001. Edgar can sue Chad even though Chad was not Edgar's grantor. The title defect that Chad had warranted occurred before Chad owned the property. Because of the long reach of the warranties back in time and future predecessors in title,¹ warranty deeds are losing popularity in favor of title insurance to protect the grantee. Warranty deeds may now be rare in certain states.

The title found at the top of the deed is not determinative if the deed is a warranty deed unless the state has a *Short Forms Deed Act* that allows for abbreviated wording in the deed to determine the covenants present in the deed.

Under the common law, a deed had to state the following or similar words in the habendum clause in order for the deed to be a warranty deed and the six covenants to be present:

To Have and to Hold, the premises hereby conveyed, ... and the Grantor(s) do for themselves, their heirs, successors and assigns covenant with the Grantee, their heirs, and assigns that the Grantor(s) are well seized of the premises as a good indefeasible estate in fee simple; and have good right to grant and convey the same ... and the same are free from all encumbrances whatsoever ... and the Grantors do by these presents bind themselves and their heirs, successors and assigns forever to warrant and defend

¹ Of course the obligations of the grantor imposed by warranties ends with the death of the grantor and probate of the grantor's estate.

the premises hereby conveyed to the Grantee and its assigns against all claims and demands whatsoever...

Special Warranty Deed — The category of special warranty deed is similar to a general warranty deed with one important difference. The covenants in the special warranty deed only extend to any breaches in title that were caused by the grantor or occurred during the time the grantor owned the property. In other words, the grantor in a special warranty deed only warrants the title against the grantor's own actions or omissions.

The habendum clause for a special warranty deed would have wording the same or similar to the following:

To Have and to Hold, the premises hereby conveyed, ... and the Grantor(s) will warrant specially the property thereby conveyed, ... and that he, his heirs and personal representatives, would forever specially warrant and defend the property unto the grantee, his heirs, personal representatives and assigns, against the claims and demands of the grantor and all persons claiming by, through, or under him.

Because of the phrase “specially warrant” and other words found in the special warranty deed, an uninformed grantee tends to believe “specially warrant” is better than “generally warrant.” Some states have eliminated special warranty deeds or changed the name or language in the deed to prevent heightened and mistaken expectations by the grantee. For example, Maine law has changed the name of a special warranty deed to a quit claim deed with covenants of warranty. Many states have also limited the number of covenants that arise in favor of the grantee by a special warranty deed.

Quit Claim Deed — A quit claim deed is also known as a “release” deed. As the name states, a quit claim deed does not actually state or claim that title is being conveyed. Rather, the grantor is quitting or releasing any claim they have in the title to the property against any present claims made or that can be made by the grantee for the title against their grantor.

In theory, if Sally had title to the property and quit any claim she had in the property to Sam, Sam would not have gained title to the property. However, Sally who does have title would be estopped from denying that Sam doesn't have title after delivery of the quit claim. Sally has by delivery of her deed to Sam asserted that she would not claim title to the property against Sam, his heirs, or assigns. Because Sally is merely quitting her claim she is making no covenants to Sam that she in fact actually has title.

Most states, as a practical matter, do view a quit claim deed as the conveyance of title. There are no warranties in the quit claim deed other than what a state law mandates. The quit claim deed is usually recognized by the use of the words “quit claim” or “release” rather than words such as “grant,” “convey,” “give,” or similar words found in warranty deeds. There is usually no habendum clause in a quit claim deed. A “Sheriff's Deed” or a “Tax Deed” are categorized in most states as a form of quit claim deed.

The quit claim deed is often used where the grantor does not want to be held to warranties

and the grantee is in no position to demand warranties from the grantor. This is usually the case when the property is being conveyed for less than the fair market value or the grantee is faced with a “take it or leave it” situation.

For example, assume a spouse dies without a will leaving a surviving spouse and two adult children sharing the title to the decedent’s property. It is not uncommon for the adult children to quit claim their interest in the estate to their surviving parent so the surviving parent will have full use and control of the property. The generous nature of the children toward their surviving parent would not go so far as to include warranties that the children may be called upon later in their lives to defend to a successor-in-interest to the surviving parent (i.e., later owner of the property).

A quit claim deed is often used to affirm a boundary line agreement. The owner on each side of the agreed boundary is willing to quit any claim to the owner on the other side of the agreed boundary. Given the uncertainty in the boundary location, the owner is not willing to warrant the conveyance made to the neighbor.

Bargain and Sale Deed — A bargain and sale deed does not usually warrant against any encumbrances. The bargain and sale deed does mean that the grantor claims to have title to the property. This type of deed has often been supplanted by the quit claim deed in many jurisdictions. The bargain and sale deed was used frequently in tax sales and for foreclosure actions. Other covenants may be made a part of a bargain and sale deed if the covenants are specifically stated.

This review should help surveyors understand the common forms of deed they will encounter as part of their practice. The form of deed is seldom critical in providing surveying services. The form may be an indication of a problem related to a boundary and provides some fodder for thought.

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