

CONTRACTS 101—WARRANTY vs. QUITCLAIM DEEDS



A well respected Winter Park attorney, Frank Pohl practices in the area of real estate law. His column covers a wide range of topics that can help you better understand and avoid potential legal issues related to buying, selling, and owning a home.

If you have questions or topics pertaining to the legal aspects of residential real estate that you would like to see addressed in this column, send them to Frank do:

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This Article is not a substitute for hiring an independent attorney to prepare and review your real estate contract.

Clients often ask me to prepare a deed outside of a purchase and sale transaction, which typically consists of a transfer from one or two individuals to another individual or legal entity. The context varies from that of a gift, to that of a transfer by a shareholder to his privately owned corporation. The client often requests that the deed be in the format of a quitclaim deed, even though, as explained below, a warranty deed may be more appropriate. This article points out some of the differences and benefits of these two types of deeds, while detailing the parameters of the Special Warranty Deed that is also used in conveying real estate in Florida.

The three primary forms of deeds used in Florida are the **Warranty Deed**, the **Special Warranty Deed**, and the **Quitclaim Deed**. The Warranty Deed and Special Warranty Deed provide substantive covenants of ownership, while the Quitclaim Deed provides no covenants of ownership, and only conveys the interests that the Grantor (*the person conveying the property*) has in the property. The Grantee (*the person to whom the property is being deeded*) of a Quitclaim Deed will generally have no recourse against the Grantor, when confronted with any challenges as to the ownership of the property,

A **Warranty Deed** includes six covenants, or warranties, by which the Grantor is bound. The first three covenants are known as "present covenants," and the second three are referred to as "future covenants."

Present Covenants consist of "**seisin**" (*warranty that the Grantor is the legal owner of the property and has the right to possess the property*), covenant of the owner's right to convey, and the covenant against encumbrances (*i.e. that there are no liens or encumbrances that attach to the property*). The present covenants can only be enforced by the immediate Grantee. For example, if Andrew conveys land to Bruce by Warranty Deed, and Bruce subsequently conveys the same land to Charlie by Warranty Deed, then Charlie can sue Bruce under these present warranties, but Charlie cannot directly sue Andrew.

Future Covenants consist of quiet enjoyment (*a promise that the Grantee's possession will not be disturbed due to a prior existing title defect*), warranty (*promise by the Grantor to protect the Grantee from any loss caused by the pre-existing title defect*), and further assurances (*agreement by Grantor to execute additional documents if needed*). In many respects, the three future covenants are more important, since they represent a continuing obligation of the Grantor to take curative action if subsequent grantees or purchasers are confronted by defects in the chain of title that existed at the time the Grantor conveyed the property to the Grantee. In the example noted in the preceding paragraph, Charlie can sue Andrew for any violation of the future covenants.

A **Special Warranty Deed** differs from the general Warranty Deed because it only covenants against defects in title that are specifically caused by the Grantor. It does not warrant against any problems that predate the time the Grantor acquired title to the property. This deed is frequently used by those acting in a fiduciary capacity (*e.g. Personal Representatives, Guardians, and Bankruptcy Trustees*), and by Lenders who are in title after a mortgage foreclosure action.

A **Quitclaim Deed** does not include any assurances of ownership—it only provides that if *the Grantor owns the property*, then the Grantor is transferring his ownership interest in the property to the Grantee. Since the Grantee has

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no recourse against the granting party, these deeds are potential red flags that the Grantor may not own the property. Since Quitclaim Deeds do not provide a warranty of ownership, they are useful in title clearing actions, where an owner years back in the chain of title is hesitant to provide any warranty coverage; in divorces, where the court specifically directs that a Quitclaim Deed be provided by one spouse to the other; and, in situations where the Grantor is unclear as to his/her ownership of the property. In this light, a title insurance policy obtained by a purchaser provides a comfort level that any prior quitclaim deeds in the chain of title will not adversely impact the ownership of the purchaser.

Why, therefore, do I recommend the use of a Warranty Deed instead of a Quitclaim Deed, in situations where there is no consideration being paid? **Think** of the identity of the Grantee. If the Grantor's goal is to protect the interests of the Grantee, then a Warranty Deed should be used. Here is an example. Fred Thomas, a single man, is the sole owner of property and has an owners' policy of title insurance. Fred decides that he wants

to convey an interest in the property to his daughter Mary, so he directs that Mary's name be added to the title, to create a joint tenancy with right of survivorship.

A couple of years later, Fred dies. Mary becomes the sole owner of the property. She is subsequently notified that a missing heir back in the chain of title failed to convey his proportional interest in the property.

If Fred conveyed the property to Mary by Quitclaim Deed, Mary would have no recourse either against Fred's title insurance policy or against Fred's estate and his predecessors in interest (*i.e.* Mary has *no one to sue for coverage*). If Fred used a Warranty Deed, Mary would be able to take steps to cure the title, either under Fred's title insurance policy or through Fred's warranties of title.

For the reasons stated above, I generally recommend the use of a Warranty Deed in these transfers. An individual should always consult an attorney before executing any deed that transfers an interest in real property to another individual or entity—not only to determine the appropriate format of the deed, but to also determine if there are any other consequences that will result from the execution and recording of that deed. A