



# Understanding the **USE OF DEEDS**



The standard forms of the Contract to Buy and Sell Real Estate contain an important choice in the type of deed by which the Seller will convey the property to the Buyer.

In Colorado, four types of deeds are commonly used which are broadly divided into two groups that are available to the Seller and Buyer.

## **Group 1: General and Special Warranty Deeds**

The Seller “sells and conveys” the property to the Buyer and, at the same time, gives certain warranties of title to the Buyer, namely that (1) the Seller is the owner of the property and is able to convey it to the Buyer, (2) the property is free and clear of all encumbrances, and (3) the Buyer will enjoy quiet and peaceable possession.

The extent of the warranties distinguishes the General Warranty Deed from the Special Warranty Deed. In the the General Warranty Deed, the Seller’s warranty extends to defending the title against all persons who may claim an interest in the title, even if the claim arose at a prior time when the Seller was not in title to the property. Essentially, the Seller is warranting the title of all prior owners. In a Special Warranty Deed, the extent of the warranties is much more limited. The Seller warrants title only for the time that the Seller was in title to the property, and not for any prior owner. If a person’s claim to an interest in the title arose before the Seller was in title, this claim is not covered by the warranties given by the Seller.

In both types of Warranty Deeds, the extent of the warranties can be limited by excluding certain matters from the warranties. For example, the Seller can exclude recorded easements and covenants from the warranties given with the result that if a person claims an interest in the property arising from these matters, the Seller will not be liable for a breach of a warranty for these matters.

## **Group 2: Bargain & Sale and Quitclaim Deeds**

In the Bargain and Sale Deed, the Seller “sells and conveys” the property to the Buyer, but without any warranties of title. In the Quitclaim Deed, the Seller “sells and quitclaims” whatever present interest the Seller may have in the property at that time without any warranties.

If the Seller has no interest in the title to the property, the Buyer will not receive any interest.

A feature of the Warranty Deeds and Bargain and Sale Deeds, but not Quitclaim Deeds is that these deeds will convey “after acquired title”. If the Seller did not have title to the property at the time that the Seller signed a deed conveying title to the Buyer, but the Seller subsequently acquires title to the property, then under the rules of after acquired title, title to the property will pass to the Buyer without the need for another deed.

## **Which Deed to Choose?**

The decision about which type of deed to choose is complex and it creates an inherent conflict between the Seller and Buyer. The Seller will want to limit liability under any warranties or offer no warranties at all. However, the Buyer will want the most extensive warranties without any limitations. This tension should be the subject of negotiation between the Seller and Buyer and their real estate agents.

The owner’s policy of title insurance plays an important role in choosing the type of deed. The policy continues for the warranties given by the insured when conveying the property by a General or Special Warranty Deed. If the Buyer claims a breach of a warranty by the Seller, the Seller’s policy of title insurance may provide the costs of defense and the claim always subject to the terms of this policy. Please contact your Account Manager at Land Title Guarantee Company for more information on this important piece of the puzzle on the type of deed.

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