

## **The Different Deeds**

### Warranty Deed

- Greatest protection to the grantee/purchaser
- Basic covenants (agreements) or warranties, which are legal promises, that the grantee will have unchallenged ownership.
  - Covenant of Seizing (ownership). The grantor warrants that he/she is the owner of the property and has the right to convey it.
  - Covenant against Encumbrances (title free & clear). The grantor warrants that the property is free from any liens or encumbrances except those specifically stated in the deed.
  - Covenant of Quiet Enjoyment (no 3<sup>rd</sup> party claims, peaceable possession). The grantor guarantees that the grantee's title is good against anyone who challenges the grantee's ownership.
  - Covenant of Further Assistance. The grantor promises to obtain and deliver any instrument needed to make the title good.
  - Covenant of Warranty Forever (no time limit). The grantor promises that if at any time in the future the title fails, he/she will be liable.

### Bargain & Sale Deed with covenant against grantor's acts

Covenant that the grantor/seller has not done or suffered anything whereby the premises have not been encumbered in any way. The grantor is willing to warrant about the time he/she owned the property but not about the previous owners.

### Bargain & Sale Deed without covenant

No warranties. However, it implies that the grantor holds title to the property. The grantee has little legal recourse if defects later appear in the title.

### Executor's Deed

Used to convey title from a decedent's estate to a grantee/purchaser. It is a bargain and sale deed with covenant.

### Referee's Deed

Used for the conveyance of real property sold pursuant to a judicial order (e.g., foreclosure, partition suit). No covenants or warranties although it implies ownership (seisin).

### Quitclaim Deed

No warranties. It conveys only whatever interest the grantor may have. Nevertheless, if the grantor has title, it is conveyed. A quitclaim deed is commonly used for simple transfers within a family and for property transferred during divorce settlements. A quitclaim can also be used to clear a cloud in the title when a person who may or may not have some claim to the property is asked to sign off.

\*\*All deeds in New York State must contain a lien covenant, stating that the grantor/seller holds the proceeds of the sales in trust against unpaid improvements to the property.

Requirements for a valid deed:

- Legally capable grantor. In New York State, a person must be of sound mind and have reached the age of eighteen to effect a valid conveyance.
- Identifiable grantee. In New York State, both the grantor and the grantee must be identified with addresses if the deed is to be recorded.
- Recital of consideration
- Granting clause
- Habendum clause (to have and to hold)
- Description of any limitations on conveyance
- Legal description of the property
- Acceptance and reservation
- Grantor's signature and acknowledgment
- Delivery and acceptance

Land can be described by three methods:

1. Metes and bounds
2. Government survey
3. Reference to a map filed in the County Clerk's Office in the county where the property is located.

Forms of Ownership:

A fee simple estate in land (meaning estate in land without limitation or condition) may be held:

1. In severalty where title is held by one owner
2. In co-ownership where title is held by two or more persons (tenants in common, joint tenancy with right of survival, or tenancy by the entirety)
3. In trust, where title is held by a third person for the benefit of another.

Tenants in Common: own an undivided interest in property. Upon the death of the co-owner, his/her interest passes to heirs or devisees.

Joint Tenancy with right of survivorship: The property is owned by a group made up of two or more people. The death of one of the joint tenants simply means there is one fewer person in the group. Four unities required to create a joint tenancy: unity of time; unity of title; unity of interest; and unity of possession.

Tenancy by the Entirety: a special joint tenancy between spouses. They have rights of survivorship but there is no right to partition.

Land Contract: sometimes called a contract for deed or an installment contract. The property owner/vendor retains ownership while the buyer/vendee moves in and has an equitable interest in the property. The vendor grants title when the vendee has fulfilled the terms of the contract.