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When it comes to deeds, it pays to pay attention

By **Evan L. Randall**

Old habits die hard. And they can be expensive, especially when buying property in Colorado. Blindly agreeing to the commonly used general warranty deed to seal your transaction may come back to haunt you in later years. When buying property in Colorado, it pays to pay attention to what kind of deed you're signing.

Whether you're a buyer or a seller, it's important to understand the types of deeds available, since the contract typically will specify the type of deed to be used at closing. Colorado recognizes the following four types of deeds: (i) general warranty deeds, (ii) special warranty deeds, (iii) bargain and sale deeds, and (iv) quitclaim deeds. While each type of deed is effective to convey the seller's title and interest in the property to the buyer, there are significant differences between each.

Pay Attention to Warranties

The main differences between these types of deeds are the warranties provided by the seller to the buyer. Such warranties cover title matters that may negatively affect the property, such as unknown easements, encroachments, or other interests in the property. Because a buyer does not want to be surprised at a later date by claims of ownership or other rights to use or occupy all or a portion of the property, the seller is typically expected to provide some warranties of title. Having warranties in the deed reduces the risk of these types of uncertainties.

General Warranty Deeds

With a general warranty deed, the seller warrants title to the buyer and to any person or entity that acquires title after the buyer (sometimes called a successor in interest) against all matters that exist prior to the conveyance (except matters specifically excepted from the warranties in the deed). This warranty even includes

protection against encumbrances upon or interests in the property unknown to the seller and created before the seller acquired title.

Thus, the general warranty deed provides the greatest protection to the buyer. If the buyer (or a successor in interest) suffers a loss because of an adverse title matter covered by the seller's warranty, the buyer has the right to bring a claim against the seller.

Special Warranty Deeds

In residential transactions, it is still common to convey property by general warranty deeds. In commercial transactions, however, special warranty deeds are becoming more common.

With a special warranty deed, the seller warrants title to the property (again to the buyer and to its successors in interest) against only those matters created by the seller. Unlike with a general warranty deed, the seller does not warrant title to the property against matters created before the seller acquired the property. From the buyer's perspective, a special warranty deed is not as desirable as a general warranty deed.

Bargain and Sale Deeds

By contrast, a bargain and sale deed usually contains no warranties at all, not even a warranty that the seller actually owns the property. With a bargain and sale deed, the seller conveys its interest, if any, in the property to the buyer. Sometimes, a bargain and sale deed may contain a limited warranty that the seller did not encumber the property (similar to a special warranty deed), but such warranty is typically for the buyer's benefit only and is not passed on to the buyer's successors in interest in the property.

A general warranty deed, a special warranty deed, and a bargain and sale deed will each also transfer the seller's interests in what attorneys call "after acquired title" to the property. This means that if the seller did not actually own the property at the time of the conveyance, but the

seller later acquires title to the property, the seller's after acquired title will automatically transfer to the buyer by virtue of the previously delivered deed.

Quitclaim Deeds

Similar to a bargain and sale deed, a quitclaim deed does not contain any warranties. A quitclaim deed, however, will not transfer the seller's after acquired title in the property. Because of these limitations, buyers are usually reluctant to accept a quitclaim deed in a normal property transfer. Quitclaim deeds are frequently used for other purposes, such as to remedy boundary or title ownership problems.

The Importance of Title Insurance

The warranties in a deed are now commonly supplemented by a title insurance policy. This title insurance policy insures that the buyer is now the owner of the property and lists as exceptions to coverage specific matters, encumbrances, or other interests in the property that the title company has identified through the county records, the survey, or visual inspections.

If a title problem arises and is shown to have existed as of the date of the title insurance policy, and so long as the problem was not excepted from coverage, the title policy should provide protection for the buyer. This gives the buyer two-fold protection against adverse title matters, in part through warranties in the deed and, additionally, by way of the title insurance policy.

Mr. Randall, an associate in the Colorado Springs office of Hogan & Hartson L.L.P., practices in real estate and land use law and has worked with clients in various transactional and litigation matters, including commercial leasing, financing, commercial property sales, environmental remediation, environmental regulation, construction, institutional controls, zoning, and subdivision. He can be reached at 719/448-5953 or ELRandall@hhlaw.com.