

Typical Types of Deeds

Coverage of deed warranty is limited to extent of damage as calculated based on land "as conveyed" at conveyance

General Warranty Deed – no defects at all

Special words: **CRS 38-30-113**
"grants, conveys and warrants" or "warrants title to same"

Special Warranty Deed – CRS 38-30-113
only warrants vs defects due to seller
Special words:
"bargains, sells and conveys" or "warrants title against all persons claiming under me"

Bargain and Sale Deed CRS 38-30-113
– seller is legal titleholder, but no guarantee the title is clear; property is conveyed without covenants and no warranties of title

Quitclaim Deed CRS 38-30-113
no warranty at all
"whatever I've got, you've got"
uses the term "quitclaims"

Deeds

Formal Requirements for Deeds:

- Satisfy the Statute of Frauds
 - Identifies the parties
 - Identifies the land
 - Show intent to convey
- Execution
 - Deed must be signed by grantor
- Delivery
 - Grantor must deliver to grantee
- Acceptance
 - Grantee must accept delivery
- Acknowledgement & Recordation
 - In almost all states, deed is effective upon delivery, even if it is not acknowledged (by notary public) or recorded

Deed Covenants of Title

Present Covenants of Title – can only be breached at moment deed is delivered
CRS 38-30-113 combines the six warranties of title into four

- 1) **Covenant of Seisin** – promise by grantor that he owns land conveyed by deed but maybe not encumbrance-free
- 2) **Right to Convey** – grantor promises he has legal right to convey
- 3) **Against Encumbrances** – grantor promises land is encumbrance-free

Future Covenants of Title – can be breached only when an eviction of the grantee occurs

- 4) & 5) **Warranty & Quiet Enjoyment**
grantor promises grantee may possess and enjoy the land
- 6) **Further Assurances** – promise to do what it takes to vest title in grantee. Including reasonable measures to cure title, such as obtaining releases of interests held by third parties

Remedies for Breach of Deed Covenants of Title

For breach of Title Covenants 1-5, remedy is damages only, limited to value at the time of closing

- most states limit the grantor's liability to the purchase price, plus statutory interest from the date the price was paid

For breach of Title Covenant 6, remedy provided is specific relief and grantor may be ordered to take steps to remove the defect or perfect the grantee's title

Quality of Title

Marketable Title –

- subject to no outstanding rights which might interfere with buyer's or any successor's use and enjoyment of the land, and no reasonable doubt as to any such rights.
- Free of any clouds sufficient to give a reasonable person pause –

Generally:
if it's a mess, it's NOT marketable

Common Problems:

- an encroachment
- Access **can** be a problem w/title
- An existing breach of covenant is a title issue
- Zoning issues not usually title issue

Terms:

Insurable Title – such title as any reputable title company would approve & insure on normal terms & normal fee

Endorsement – an addition to the policy for title insurance – often bought with add'l premium

Satisfactory Title – ambiguous term
- based on reasonableness, good faith and fair dealing (which really means marketable title)

'**Insuring over a defect**' – provides title coverage despite a known defect

Doctrine of Merger

- If two interests in same property are held by the same person, those interests merge together in that person
- Everything that came before closing is merged into the documents exchanged at closing
 - The instant the deed is delivered, the contract is merged into the deed
 - Subsequent remedies are under the deed warranties, and not under the contract
 - Damages under breach of warranty are usually limited to value at time of performance