

To Deed or not to Deed... That is the question

Consider this... A bank is selling REO property, but will convey by “special” warranty deed, rather than the statutory warranty deed we usually see. Isn’t it still a warranty deed? Will the purchaser accept this? And, isn’t a statutory warranty deed required?

There are several types of deeds. A “warranty” deed warrants title for all matters, no matter what they are or when they were created prior to the date of sale. It binds the seller for the benefit of the buyer and all heirs and assigns of both. Express warranties aren’t shown in the deed because Washington’s statutes say what they are – hence a “statutory” warranty deed includes them without recitals in the deed. (The warranties are set out in RCW 64.04.030.)

A “quitclaim” deed means that no covenants of warranty are included at all. The buyer gets only whatever interest the seller has, good, bad or ugly (and may even be nothing). It is often used to clear a cloud on the title. (These deeds are provided for by RCW 64.04.050.)

A “bargain and sale” deed falls somewhere in the middle. It also has statutory definitions, and means the seller is limiting covenants of good title to only matters created during the time that the seller was in title or as specified in the deed. (The specifics are in RCW 64.04.040.)

The ability to further limit warranties gives rise to the “special” warranty deed. It’s not a statutory form, but simply means the grantor is expressly stating in the deed what the limited warranties, if any, are.

Warranties may be unacceptable to a seller who shouldn’t have to assume that type of liability. Thus, a special warranty deed is used in fiduciary situations, including (in addition to the sale of REO property) a personal representative in a probate, a deed of trust trustee, and a trustee of a trust – all parties who aren’t responsible for matters arising before coming into title or who don’t have any active ownership of the land.

Warranties are valuable to a buyer because if there are problems or defects in the title, it is important to be able to sue the seller, even when the buyer has title insurance. That’s also why title companies like a warranty deed, because they have subrogation rights under the policy, meaning it can step into the shoes of the insured and sue the seller under the deed warranties. The buyer’s title policy still provides the same coverage no matter which type of deed is used.

Only the parties’ respective attorneys can offer advice in this area. The seller and purchaser need to agree on the form of deed. They each have valid legal reasons for their requirements. While it is unlikely that any REO seller will be willing to offer a statutory warranty deed, the form of deed ultimately comes from negotiation.

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