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## **DEED TYPES AND WHEN TO USE IN COMMUNITY PROPERTY JURISDICTIONS**

Over the past few months I have been asked “what type of deed do I need?” or have I been in situations where I asked “why are you using that type of deed?” As such, I thought it may be useful to explain the difference between the types of deeds and when they should be used.

One thing everyone needs to understand is that there is a big difference between the type of deed and the way someone holds title. First, there are basically four ways to take title in Arizona:

**Community Property** – Married individuals can take title basically as a partnership, while it takes both spouses signature to transfer or encumber the property while living, upon death, each individual spouse can “will” the property to anyone.

**Community Property with Rights of Survivorship** – The only difference between taking title in this capacity vs. general Community Property is that the property automatically transfers to the surviving spouse upon death. No probate or court action is required.

**Tenancy in Common** – Two or more people hold a common interest in title that can be individually mortgage, sold or otherwise encumbered.

**Joint Tenancy with Rights of Survivorship** – This is very similar to Tenancy in Common and although any owner can transfer or encumber their share during their lifetime, upon death, the property automatically transfers to the remaining joint tenants.

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Second, any of the above tenancies are created by the deed used to transfer the property interest. The three main “types” of deeds you need to be aware of are “general warranty deeds”, “limited (special) warranty deeds” and “quit claim deeds”. These three types will cover 99% of all real estate transactions we deal with on a daily basis. These deeds all transfer the Grantor’s interest to the Grantee however, each provides the buyer with very different levels of protection.

General Warranty Deed – This deed is considered the “gold standard” of deeds that a buyer can receive. This deed provides the buyer with the most protection as it carries several warranties of title committing the seller (grantor) to protect the buyer’s (grantees) interest in the property. Under this deed, the seller provides the buyer with the following covenants:

1. Covenant against encumbrances – There are no liens.
2. Covenant of seisin - The seller is the true owner with right to transfer.
3. Covenant of quiet enjoyment – No one is going to try to kick you out.
4. Covenant of assurance – The seller will provide any document necessary to make title good.
5. Covenant of warranty forever – The seller will protect your right of ownership forever.

Should anyone make a claim against your property, no matter how far back in the chain of title the defect may have occurred, the seller must defend your title. A word of caution however, never let a general warranty deed substitute for title insurance. If your seller becomes penniless or worse yet dies, you will be protecting your own property.

Limited Warranty Deed – A limited warranty deed is somewhat similar to a general warranty deed except that the seller’s “warranties” are limited to the period of time in which they owned it and that were caused by their actions. So, if someone claims that the deed two owners back was forged, or that a mortgage or lien against a prior owner was missed, you have no protection. This type of deed is generally used when the seller is a corporate entity, trust, commercial real estate or builder.

Quit Claim Deed – This is the lowest standard of deed but, can be the most beneficial depending on the interest being transferred. A quit claim deed provides absolutely no warranties of title. The grantor is not even making an affirmative statement that they even own the property. Simply put, the deed merely transfers any interest the grantor may or may not have to the grantee without recourse. When should we use this type of deed? Anytime the grantor is merely extinguishing any interest they may have in a property without consideration or by court order. Quit claim deeds are generally used to:

- Transfer property between family members outside of a true sale.
- Extinguishing contract for deeds or even deed in lieu of foreclosures.
- When the property being transferred is being done as a gift.
- When the grantor is transferring the property for little or no consideration.

I hope this clarifies the difference between the types of tenancies and deeds and provides some guidance as to when to use them.

Sincerely,

Mike A. Abel, Esq.

(This document is not intended to be a paid legal opinion and should not be relied upon as such.)