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A General Warranty Deed is a good start

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(This is the tenth in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

An important element in a buyer's purchase-offer contract is specifying the type of deed wanted from the seller. A seller can usually convey property with the same type of deed that he received from the party that he bought from, or a deed that provides fewer protections for the buyer.

The major types of deed in use are: General Warranty, Special Warranty or Limited Warranty, Bargain-and-Sale or Statutory Warranty, and Quitclaim. The buyer is most protected when the seller conveys property through a General Warranty Deed.

A General Warranty Deed (GWD) obligates the seller to stand behind six types of covenants, or warranties, about his ownership and title that go back to the origins of the property. The GWD's six covenants are:

1. Covenant of seisin. This is the seller's promise to the buyer that he owns the property.
2. Covenant of the right to convey. This is the seller's promise that he has the legal right to convey the property that he owns.

3. Covenant against encumbrance. This is the seller's promise that his deed at the time he gives title to the buyer is free of all liens and encumbrances, except those set forth in the deed. Any encumbrance in a deed should also be a matter of public record since the deed should have been recorded when the seller purchased the property.

An encumbrance is any thing that might diminish the value or restrict the use and enjoyment of a property. Common encumbrances are a mortgage, easements that give another party the right to use the property, conservation easements that have sold or donated some right in the property to another, reservations of interest or profit in minerals or timber, tax liens or judgments, a life estate, or a dower right.

I recommend that buyers include language in their offer that specifically asks the seller to warrant that his property will be conveyed free of any encumbrance not of record. That protects against encumbrances and agreements that were not recorded.

4. Covenant of quiet enjoyment. The seller promises that the title he gives to the buyer is superior to any claim of ownership by a third party. If the seller's title is found to be inferior in a lawsuit, the seller is liable for damages.

5. Covenant of further assurance. This is the seller's promise that he will get whatever legal instrument -- deed, release, waiver, etc. -- that is needed to make the title good. Not all states read this covenant into a GWD.

6. Covenant of warranty forever, or general warranty. The seller promises to defend the title he gives to the buyer against "lawful claims" and compensate the buyer for any loss arising from the title's failure. Quiet enjoyment (#4) is sometimes read into this general promise.

States interpret the covenants in a GWD differently. Therefore, both buyer and seller should learn what a GWD promises in the state where the property is located.

I doubt that most sellers and buyers understand what a GWD obligates a seller to do. I have seen instances where sellers breach the GWD and force the buyer to either sue or live with the breach.

I have also seen sellers include language under "Permitted Title Exceptions," that modifies a GWD by, for example, exempting the seller from making good on unrecorded easements or defending the title against claims of adverse possession.

My advice is for the buyer to spell out these promises in the contract so that the seller has full knowledge of what the buyer expects of him and his deed.