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If not a General Warranty Deed, then what?

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

The seller's deed conveys title (ownership) of the property to the buyer. But the deed should either directly or by reference perform other functions, such as describing the property's legal boundaries and spelling out rights in the property that run with the land and those that have been sold or given away.

Different types of deeds convey different types and levels of ownership. The General Warranty Deed (GWD) is the preferred choice from the buyer's point of view, since it provides the most comprehensive set of promises about the quality of the seller's title.

The six seller-given warranties in a GWD are discussed in the !! HYPERLINK "<http://www.landthink.com/>" ¶ www.landthink.com<sup>1</sup> column, "A General Warranty Deed is a good start."

In brief, a GWD promises that the seller 1) owns the property; 2) has the legal right to convey it; 3) is conveying a title that's free of all liens and encumbrances (limitations) except those set forth in the deed 4) guarantees that the title is superior to any other; 5) promises that the seller will get whatever legal instrument the buyer might need to make the title good; and 6) promises to defend the title against "lawful claims" and compensate the buyer for any loss arising from a title failure. These six seller warranties to the buyer go back to the origin of the property and extend into the future.

The next "best" deed is a special warranty deed, or limited warranty deed. Here, the seller's promises to the buyer are limited to the seller's period of ownership.

Under this deed, the seller promises that he received title and that the property was not encumbered during his ownership. The seller gives the buyer no protection from any claims against the property or losses under one of the six warranties that did not come by, through or under the seller's ownership.

If a buyer sees the words "remise, release, alienate and convey," the deed is a special warranty. Words like "warrant generally," "convey and warrant," and in some locales, "grant, bargain and sell" indicate a GWD.

Special warranty deeds are used in sales managed by fiduciaries holding title for a short period of time.

Some sellers try to sell property with a special warranty deed, even though they took title with a GWD. That's a tactic that may indicate that seller found something wrong in the title and wants to take himself off the hook.

A bargain-and-sale (B&S) deed implies (but does not state explicitly) that the seller owns the title to the property. This deed does not include an explicit promise against encumbrances. A buyer should be very careful with a B&S deed. Look for the words "grant, bargain and sell" or "grant and release."

A buyer can, of course, include in his purchase offer language that strengthens his protections in title from the seller. The buyer can propose that the seller with a B&S deed agree that he will, for example, free his property/title of all encumbrances prior to closing and will defend the title on this point in the future. A buyer can also insist on adding a covenant to the deed that protects him against "grantor's (seller) acts," that is, encumbrances the seller placed on the property.

A quitclaim provides the buyer with no warranties and conveys only such interest in the property that the seller holds when the deed is delivered—whatever that might be. Look for the words, "remises, releases and quitclaims."

A quitclaim can be as good as a GWD if the seller meets all GWD standards, but, as a rule, buyers should not buy property with a quitclaim.

Title insurance can help protect against some defects in title, but not all.

Buyers should talk to a local real-estate lawyer about a seller's deed before submitting an offer.