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THE BARNES WALKER EDUCATIONAL SERIES PROUDLY PRESENTS:

A Deed Indeed! – A Guide to Different Types of Deeds in Florida

There are four basic types of deeds in Florida with some specialized deeds based on one of the four types. The four basic types of deeds, in order of decreasing benefit to the Grantee, are: the Warranty Deed, the Special Warranty Deed, the Fee Simple Deed, and the Quit Claim Deed. In addition, there are specialized Deeds such as Personal Representative's, Trustee's, Guardian's, and Life Estate Deeds.

All of the preceding deeds, with the exception of the Quit Claim Deed, expressly convey fee simple ownership of property. "Fee simple" is a common law term that originated in England and was adopted by the United States. It means full and complete ownership of property which can be inherited by the owner's heirs or devised by the owner's Will or Trust to the owner's beneficiaries. Thus, fee simple ownership of property does not terminate upon the owner's death and is more than a mere right of possession that a lease gives a tenant. Its use is not limited to a specific use or uses as is the use of someone who owns only an easement, i.e., ownership is absolute.

A. The Warranty Deed.

1. The General Warranty Deed. The General Warranty Deed is the most common deed used in the sale of residential properties. It is one of deeds called for in the most commonly used real estate contracts: (a) the regular and "AS IS" Residential Contracts for Sale and Purchase, approved by the Florida Realtors® and The Florida Bar, in their Paragraph 18.H., and (b) the Contract for Residential Sale and Purchase, approved by the Florida Realtors®, in their Paragraph 10. This deed not only conveys fee simple title to the property from the seller to the buyer, but also provides, at a minimum, certain covenants of title, one of which is a warranty of title to the buyer. A covenant is an assertion or promise that certain facts or circumstances are true. The warranty is a guarantee of the seller that is enforceable in court by the buyer against the seller, so should one of the covenants or promises be untrue, the buyer can obtain a judgment against

the seller for the damages the buyer sustained as a result of the covenant or promise being untrue. Consequently, the General Warranty Deed derives its name from the warranty covenant.

The General Warranty Deed and the five (5) covenants of title provided by a General Warranty Deed were part of the English common law that the United States adopted as its own law when the United States declared its independence from Great Britain. The five covenants of title are:

a. The Covenant of Seisin. This covenant is an assertion by the seller that the seller in fact owns the property being conveyed, is the sole owner, and is the only party in possession, unless the existence of a tenant was disclosed to, and accepted by, the buyer.

b. The Covenant of the Right to Convey. This covenant is an assertion by the seller that the seller has the right to convey the property, i.e., there are no restrictions or limitations on the ability of the seller to convey the property to the buyer. For example, by making this covenant, the seller is promising that no other party has an option or right of first refusal to purchase the property.

c. The Covenant Against Encumbrances. This covenant is an assertion by the seller that there are no undisclosed or nonvisible encumbrances against the property being conveyed. The encumbrances can be either (i) monetary liens or (ii) restrictions or limitations on the use of the property.

i. Examples of monetary liens are mortgages, judgments, and unpaid real estate taxes.

ii. Examples of restrictions or limitations on the use of the property are subdivision or condominium restrictions set forth in declarations of protective covenants or declarations of condominium. Other examples of limitations on the use of property that are encumbrances are: encroachments of a neighbor's fence or building on a seller's property, and easements, which are the right of a non-owner to use a part of another's property for a specific purpose or purposes, such as access or utilities.

iii. It is important to understand that encumbrances that are disclosed, visible, or removed at closing are not considered encumbrances for purposes of this covenant. Thus, the following encumbrances would violate the covenant against encumbrances: subdivision or condominium restrictions that are referenced in general in the real estate contract (they do not have to be specifically described); a mortgage paid off by the seller at closing; or a driveway or overhead powerline easement.

d. The Covenant of Quiet Enjoyment. This covenant is a promise by the seller that the buyer's use, possession, and enjoyment of the property will not be disturbed or "disquieted" because of a defect in the title to the property, i.e., a third party will not make claim against the buyer for ownership, possession, or use of the property.

e. The Covenant of General Warranty. This covenant is a warranty that the seller will protect the buyer from harm caused by title defects and defend the buyer from any claims by others to the property's title. This covenant is also essentially a warranty against any of the preceding covenants being untrue.

   The preceding covenants to the buyer, called the grantee in the deed, are typically expressed together in a paragraph near the end of the General Warranty Deed above the signature line for the seller, called the grantor in the deed. An example of the paragraph, which can vary in the language used, is as follows:

"Grantor hereby covenants to Grantee that Grantor is lawfully seised of the land hereby conveyed in fee simple; that Grantor has good right and authority to sell and convey the said land; that the said land is free and clear of all liens and encumbrances; that Grantee shall have the peaceful and quiet enjoyment of the said land; and that Grantor shall warrant and defend the title to the said land from and against the lawful claims of all persons whomsoever."

It is important to know that the five covenants of title that a seller gives in a General Warranty Deed are given not only on the behalf of the seller, but the seller is also giving the five title covenants on the behalf of all prior owners of the property since the beginning of time. Therefore, if a prior owner breached one of the five title covenants, creating a current title defect, the current seller is responsible for correcting the defect, even though the seller had nothing to do with the breach of the covenant. This obligation of the seller to correct title defects caused by the prior acts and omissions of previous owners is an important difference between Warranty Deeds and Special Warranty Deeds.

So, why haven't you heard of a buyer suing a seller when the buyer discovers that the buyer's property's title is defective, which typically means that one or more of the five covenants of title in a Warrant Deed has been breached? Such lawsuits are not as common anymore since the providing of title insurance at the closing on the sale of property has become predominate. Buyers now file claims with their title insurance companies for damages caused by title defects. Filing an insurance claim is typically cheaper and faster than (a) finding the seller of the property (often, the seller has moved away since he or she has sold his or her property), (b) filing a lawsuit, (c) winning the lawsuit against the seller, and (d) forcing the seller to pay the resulting judgment for the buyer's damages when the seller may have spent all of the proceeds from the

property's sale. In fact, these difficulties and their costs are the reasons for the creation of title insurance and its current predominance.

Finally, one should always remember that the giving of a Warranty Deed by a seller, despite it having all of the preceding five title covenants, does not guarantee the buyer that the buyer will own the property referenced in the Warranty Deed. If a seller does not truly own a property, the Warranty Deed will not convey it to the buyer. While the buyer will have the right to sue the seller for breach of probably all five title covenants and obtain a judgment against the seller, if the seller has no money or other assets with which to pay the buyer, the Warranty Deed with its covenants of title will be of no benefit to the buyer. Thus, a buyer should insist that a real estate attorney or title company perform a title search and provide them with title insurance insuring that, when the seller's Warranty Deed is recorded, the buyer will have good, marketable title to the property.

2. The Statutory Warranty Deed. The Statutory Warranty Deed is a warranty deed statutorily created by Florida Statutes Sections 689.02 and 689.03 which is essentially a short-form version of the General Warranty Deed that provides all of the five (5) title covenants of a General Warranty Deed described above.

   Section 689.02 sets forth a form that can be used for a Statutory Warranty Deed. That form essentially reduces the General Warranty Deed's paragraph providing the five (5) covenants of title to the following paragraph:

   "Grantor does hereby fully warrant the title to the said land, and will defend the same against the lawful claims of all persons whomsoever."

   Section 689.03 then states that the Statutory Warranty Deed shall be held to include all of the common law covenants of title as if the covenants were specifically set out in the deed.

B. The Special Warranty Deed.

Like Warranty Deeds, the Special Warranty Deed conveys fee simple title and has the same five covenants of title. The difference, however, is that the Special Warranty Deed limits the time period to which the seller's five covenants of title apply. The application of the five covenants of title is limited to only the time period during which the seller owned the property. Therefore, if a seller gives a buyer a Special Warranty Deed, and the buyer later discovers that a prior owner breached one of the five title covenants, creating a current title defect, the current seller is not responsible for correcting the defect because the seller did not breach the covenant.

Special Warranty Deeds are typically given by sellers of commercial property, and these Special Warranty Deeds will also typically have exceptions to the five title covenants for known matters that are in conflict with one or more of the covenants. There are a number of reasons for the use of Special Warranty Deeds in commercial property sales. Traditionally, under the law, commercial property buyers do not have the protection of the residential property buyers. For commercial buyers, the principle that generally applies is "caveat emptor," or "let the buyer beware," i.e., the commercial buyer must protect

himself or herself by negotiating protective provisions into the sales contract (if he or she can) and by performing investigations of the property to determine its condition. Further, titles of commercial properties are usually much more complicated than those of residential titles with many more easements, restrictions, and limitations. Thus, it is easier to make a mistake when the title is examined as to the applicability and effect of all the various documents related to the property's title. Therefore, while the seller may be comfortable with giving, or the buyer may insist upon receiving, the five title covenants, the seller often draws the line and refuses to give warranties as to the acts and omissions of prior owners back to the beginning of time.

An example of the title covenants paragraph in a Special Warranty Deed (and the language can vary) is as follows (significant differences from the corresponding General Warranty Deed paragraph are in bold italics):

"Grantor, for Grantor and no others, hereby covenants to Grantee that Grantor is lawfully seised of the land hereby conveyed in fee simple; that Grantor has good right and authority to sell and convey the said land; that the said land is free and clear of all liens and encumbrances; that Grantee shall have the peaceful and quiet enjoyment of the said land; and that Grantor shall warrant and defend the title to the said land from and against all lawful claims which arise by, through, or under Grantor, but against no others."

Another example of the warranty paragraph in a Special Warranty Deed, which is a variation of the paragraph from the Statutory Warranty Deed, is as follows:

"Grantor does hereby warrant the title to the said land, and will defend the same against all lawful claims which arise by, through, or under Grantor, but against no others."

Note again, the bold, italicized language above that distinguishes this paragraph in the Special Warranty Deed from that of the Statutory Warranty Deed. Also note in the first line that the Grantor no longer "fully warrants" the title – the Grantor only "warrants."

C. The Fee Simple Deed

With a Fee Simple Deed, like with Warranty Deeds and Special Warranty Deeds, the seller conveys fee simple title, but unlike with Warranty Deeds and Special Warranty Deeds, the seller gives no warranties or covenants of title – the seller simply conveys the fee simple title.

Thus, the Fee Simple Deed has no warranty paragraph or covenants of title. Instead, often only the following statement is in their place:

"The Grantee shall have and hold the said property in fee simple forever.

D. Variations Upon The Preceding Deeds.

1. Personal Representative's, Trustee's, and Guardian's Deeds. At times, persons serving as personal representatives, trustees, and guardians sell and convey the property of others to buyers. Persons serving in these positions serve in fiduciary capacities. A person who serves in a fiduciary capacity transacts business on behalf of, or handles the money of, others, not for his/her own benefit, but for the benefit of the owners, and the fiduciary must act in good faith and in trust on behalf of the owners. Traditionally, fiduciaries such as personal representatives,

trustees, and guardians, are selling and conveying the property of others, of which they typically often have little knowledge and, of course, do not personally own. For these reasons, Personal Representative's, Trustee's, and Guardian's Deeds are actually based upon Fee Simple Deeds, and thus, usually have no title covenants or warranties since, again, the personal representatives, trustees, and guardians are acting not for themselves, but on behalf of others who are the owners of the property. Since their deeds have no warranties, personal representatives, trustees, and guardians are thus protected against being held personally liable by buyers should the properties the fiduciaries convey have title defects. However, should a real estate contract require it, a Personal Representative's, Trustee's, or Guardian's Deed can be based upon a Warranty Deed or a Special Warranty Deed, rather than a Fee Simple Deed. These deeds are also referenced in the most commonly used real estate contracts: (a) the regular and the "AS IS" Residential Contracts for Sale and Purchase, approved by the Florida Realtors® and The Florida Bar, in their Paragraph 18.H., and (b) the Contract for Residential Sale and Purchase, approved by the Florida Realtors®, in its Paragraph 10.

2. Life Estate Deeds. Life Estate Deeds are also often based on the Fee Simple Deed, but can be based upon the Warranty Deed or Special Warranty Deed. These deeds convey property to a person or persons for their life or lives, ending upon his or her death for one person or the last of their deaths for more than one person. This ownership is called a "life estate," and it means that the holder of the life estate has a right to possess, live at, and use the property during their lifetime. The deed goes on to state that, upon the applicable death, the property is then owned by another person or persons in fee simple. The ownership of these people is called the "remainder interest," and they are called "remaindermen (or women)." These deeds are used for estate planning, both in small estates to avoid probate where a home or other land is the primary asset, and in large estates for the primary residence or homestead where the owner(s) want to retain the legal benefits of homestead while also using living or revocable trusts to avoid probate and possibly estate taxes. Typically, the owner of property will convey his or her own property to himself or herself (and often his or her spouse) for life and convey the remainder interest to his or her heirs, i.e., children, grandchildren, nephews, nieces, etc.

    a. Traditional Life Estate Deeds. With a traditional Life Estate Deed, once an owner, for example, conveys a life estate in his or her property to himself or herself with the remainder interest being conveyed to his or her children, the owner thereafter needs to obtain the agreement of his or her children, the remaindermen, before the owner can sell or mortgage his or her property because the remaindermen are also then considered to be owners of the property. Further, even if the children agree to sell or mortgage the property, they are entitled to a share of the sales or loan proceeds. This type of ownership obviously becomes a problem for the owner if he or she falls out of agreement with his or her children, who may have issues such as financial problems or spouses who do not like or agree with their parents-in-law. Note that if the owner uses other estate planning methods such as Wills or trusts, the agreement of the children is not needed and the disagreement of the children does not control regarding decisions relating to the property, since Wills or trusts do not

place title to property in others, and the owner can simply amend the owner's Will or trust at any time to remove, for example, the children as recipients of the property upon the owner's death.

b. Enhanced or "Lady Bird" Life Estate Deeds. The Enhanced Life Estate Deed got its nickname allegedly when President Lyndon Johnson's lawyers created such a deed to convey land to the First Lady, whose nickname was "Lady Bird" Johnson. What is an "Enhanced" Life Estate Deed? How does it differ from a traditional Life Estate Deed? When an Enhanced Life Estate Deed is given, the holder of the life estate can actually sell, mortgage, or even give away the property without the consent or permission of the remaindermen. Thus, since most Life Estate Deeds are created for and signed by the owners of property who gift the remainder interest, more and more of such owners want to retain more control over the property without giving as many ownership rights to the remaindermen, so they are using Enhanced Life Estate Deeds rather than the traditional life estate deeds.

E. The Quit Claim Deed.

The Quit Claim Deed was not designed, and does not purport, to actually convey any type of ownership in property, much less fee simple ownership. Therefore, as you might guess, it contains no covenants of title. The chief purpose of a Quit Claim Deed is to serve as a tool to clear the titles to property and eliminate title defects. The giving of a Quit Claim Deed is a releasing and transferring, with or without compensation, by a person who has or might have a claim to some right or interest in a property or its ownership (hence the name of this deed, because the giver is giving up or "quitting" his or her "claim" to property), which could be:

a percentage of the ownership,

a joint ownership interest with others,

a spousal homestead right to approve or disapprove the sale or mortgaging of a property,

an inheritance right,

mineral rights,

a right to income, rents, or other profits generated by the property,

a future ownership interest,

an option or right of first refusal to purchase property,

an easement over property,

a license to use property,

a property right or interest pursuant to a contract or agreement,

etc.

Even if the signer or grantor of a Quit Claim Deed is paid, he or she does not guarantee that he or she is conveying any ownership rights in a property, and, as a result, he or she has no liability if no ownership rights are conveyed. Basically, a person who signs a Quit Claim Deed is saying: “Hey, I’m giving you this Quit Claim Deed, but I’m not guaranteeing I own or have a valid claim to any part of the property, or if I do, what kind of ownership it is, but if I have any ownership or claim, whatever it is, I am conveying it to you.” While a Quit Claim Deed does not give many assurances to its recipient, it has the two important characteristics of (1) conveying any interest or claim that the signer or grantor does actually have, while (2) reassuring the signor or grantor that he or she is not incurring any liability by signing the Quit Claim Deed, regardless of what is or is not conveyed by it.

F. Conclusion.

We trust that you have learned a little more about the types of deeds in Florida. If you have any questions regarding deeds, please do not hesitate to call us at 941-741-8224 or e-mail us.

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