

When Conveying Real Property, What Is the Difference Between a General Warranty Deed, a Special Warranty Deed, and a Quit Claim Deed?

A general warranty deed, a special warranty deed and a quit claim deed are three types of deeds commonly used to convey real property in Wisconsin. The major difference between these deeds is the warranties, or guarantees, they provide to the grantee and its successors regarding the title being conveyed. Such warranties of title relate solely to the quality of the grantor's ownership in and to the property, and not the condition of the land itself or any improvements located thereon.

Pursuant to Wisconsin law, a general warranty deed is construed to contain the following four warranties of title: (1) the grantor at the time of conveyance has the interest in the property it purports to convey; (2) the grantor has the right, power and authority to convey the property; (3) the property is free from all encumbrances except as may be set forth in the deed; and (4) the grantor will forever guaranty and defend the title and quiet possession of the property against all lawful claims originating prior to the conveyance. When using a general warranty deed, the grantor warrants against title defects created both by itself and all prior titleholders. In other words, the grantor in a general warranty deed provides a guaranty to the grantee that (i) it has not personally done anything that would adversely affect title to the property, and (ii) no prior titleholders have done anything that would adversely affect title to the property.

A special warranty deed, on the other hand, is construed under Wisconsin law to contain the same warranties of title as those set forth in the general warranty deed, except that the grantor warrants only against title defects created by, through or under grantor, and does not warrant the status of title of, or any title defects created by, prior titleholders.

In contrast to a general or special warranty deed, a quit claim deed does not contain any warranty or covenants of title. This type of deed is simply a mechanism in which to convey whatever title, interest or claim the grantor may have in certain property, if any. Quit claim deeds are typically used only in conveyances between related parties or to clear any questionable claims against title.

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In addition to general and special warranty deeds and the quit claim deed, other commonly used deeds include the personal representative's deed and the trustee's deed. These deeds are used for purposes of conveying real property held by an estate (personal representative's deed) or in a trust (trustee's deed), and are both similar to a quit claim deed in that they are free from any warranties of title made by the personal representative of an estate or a trustee of a trust.

Whenever real property is conveyed, it is important to fully understand the type of deed being used and the implications of the warranties of title provided thereunder. The attorneys at Reinhart can assist in determining the proper type of deed to use when conveying real property and help in protecting both grantors and grantees of property from the warranties of title set forth in deeds.

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