



Ballard Escrow News

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Deed Differences

By Greg Lawless

From the Real Estate Dictionary:

Devisee

One to whom real estate is given by a will.

Heir

One who by law, *rather than by a will*, receives the estate of a deceased person.

Probate

The legal process by which a will is reviewed to determine whether it is valid and authentic. For the purpose of real estate closings, probate confirms heirs and extinguishes debt. Any creditor who fails to come forward during the probate process is prohibited from future claims against the deceased's assets.

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Most Purchase and Sale Agreements provide that property will be conveyed by a Statutory Warranty Deed. Although that is the normal conveyance document, sometimes other deeds surface throughout a real estate transaction. For example, often if a sale is done through an estate a Special Warranty or Bargain and Sale Deed is utilized. Finally, often to clear title a Quitclaim Deed is the method of conveyance. The three Deeds are very confusing because on the face of things they all look basically the same. They are all pre-printed forms typically coming from a title company and the only difference appears to be the first line of the deed that defines it either as a Statutory Warranty Deed, a Quitclaim Deed or a Bargain and Sale Deed. In truth there is an enormous difference between the three and it is important to understand those differences.

Each of the deeds has pre-defined warranties given by statute. So until you look at the statute you cannot really tell what the person signing the deed is promising. The deed that gives the most guarantees to the recipient is the Statutory Warranty Deed. The warranties in that deed are defined in RCW 64.04.030 and it gives very broad warranties and guarantees to a purchaser. The statute has been interpreted by the Washington Courts to convey five specific warranties:

1. the warranty of seisin, which warrants that the grantor holds a fee simple estate, meaning an unencumbered interest in the real property;
2. the warranty of the right to convey, guaranteeing that the grantor has the right to convey the estate to the grantee;
3. the warranty against encumbrances, guaranteeing that title is free and clear of encumbrances at the time that it was conveyed;
4. the warranty of quiet possession, guaranteeing that the grantee and their successors will own the property and will not be subject to claims of any third parties; and
5. the warranty to defend, promising that the grantor will do all that is necessary to defend the grantee's title.

Those promises and covenants last for an extended period of time. The "present covenants," which are warranties 1 through 4, are breached at the time of conveyance and the Statute of Limitations starts on the date that the deed was signed. However, the duty to defend, which is warranty number 5, may be breached or become effective after conveyance,

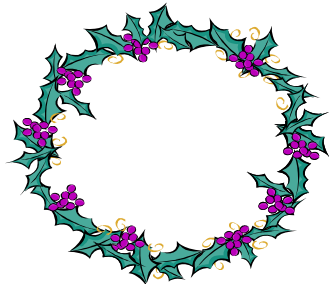
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meaning it could extend significantly beyond the 10 year Statute of Limitations period.

The second form of deed is usually called a Special Warranty Deed, however under the Washington statute there is no such thing, it is actually technically called a Bargain and Sale Deed, but functionally they are the same. The warranties in the Bargain and Sale Deed are set forth in the RCW 64.04.040. There are only two covenants or warranties arising from the Bargain and Sale Deed. The first is the warranty of seisin promising that the grantor owns the fee simple estate and the second is the warranty against encumbrances promising that title is free of encumbrance at the time the property is conveyed.

The Quitclaim Deed is the third deed and its description is set forth in RCW 64.04.050 and upon reading that statute you will discover there are no warranties whatsoever in a Quitclaim Deed. In preparing a real estate transaction often the form of the deed is assumed and not negotiated when in truth the nature of the deed that is given to the buyer has tremendous impact on both seller and purchaser.



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MARKET MESSAGE

By Shelley Smith



As we've watched the media fill our lives with stories of foreclosure and banking disasters, we hoped and truly believed that our Emerald City would be spared from the problems created by sub prime lending and Wall Street investment failures. We have seen splashy headlines drilled into our psyche 24 hours a day. These reports have, unfortunately, affected consumer confidence. What we should keep in mind however, is that these negative reports fail to distinguish the Pacific Northwest region in general and Seattle, in particular, from the rest of the country. In truth, in areas such as California, Las Vegas, Arizona, Florida and parts of the Midwest, we have seen deep cuts into real estate values. This economic downturn is a result of over exaggerated real estate valuations and predatory lending practices. In the areas most affected, home values have risen to levels of 200% or even 400% over a very short period of time. By comparison, Seattle shares little in common with the most devastated market regions around the country. We have seen significant increases in real estate values but the levels of escalation are closer to 100% to 150%. The Puget Sound region is not over valued today and the foreclosure rates are low. It is true that real estate values have dropped some, but the levels of decline are minimal. Our market is suffering more as a result of the slippage in consumer confidence than from truly adverse market factors.

Buyers in Seattle have been waiting the better part of a decade for the market to shift away from a seller dominated market toward a buyer's market. Buyers can finally achieve some level of concessions from sellers and it is safe to say, at least for now, that we are in a buyer's market. The levels of inventory in the residential sector have risen sharply in the last few months. Homes are remaining on the market in excess of 60 days. Bidding wars are few and far between and pricing is softer. This is without a doubt a shift in our local real estate economy. But, this downturn may be short lived. The regions in our country most affected by this crisis have little to offer their home buying public in comparison to our Puget Sound region. As a result, those markets lack buyers. We enjoy unsurpassed natural beauty, a strong job market, a growing economy and a diverse cultural environment. These uniquely Seattle features make our region one of the most sought after regions for living in the country. All predictions indicate that the Northwest region will continue to grow over the next decade. When growth occurs, prices continue to climb. We may have slowed to take a breath, but we should not expect drastic downturns in pricing. With recent decline in the federal reserve interest rate, borrowers will again find low interest rate financing with rates expected to return to the high 5% to low 6% levels for owner occupied homes. 100% financing is now available on owner occupied properties, and 95% financing is available on investment properties so long as full loan documentation is provided.

The key to our resurgence is based on consumer confidence. Talk with your clients and your neighbors about the true facts causing the secondary market scandal. Differentiate our region from those regions around the country that are truly in trouble.

We need to educate and encourage our buyers to take advantage of the market and buy now while inventory is higher, bidding wars are few, and it is possible to obtain reasonable seller concessions. At the same time, counsel your sellers to expect values to steady and increases to diminish to single digit levels. Buyers who are undaunted and unafraid to look at our market with a longer term perspective will truly be rewarded by buying now.

Please let us know if you have topics to suggest or questions you'd like answered in our next newsletter!

Please email: Maureen@ballardescrow.com

ARE YOU CONFUSED BY THE TITLE POLICY OPTIONS?

When we receive the preliminary commitment for title insurance, we are given a history or a log of documents recorded over the life of the property. When completing a sale, it is necessary, or certainly highly advisable, for the buyer to acquire title insurance to ensure that the new owner has the opportunity to review issues of record in advance of closing. With title insurance, the buyer may avoid surprises involving the use, ownership and liens of record against the property being acquired. The primary purpose of title insurance is to eliminate the risk and prevent loss arising out of past events.

Over the past few years, we have seen new variations in the types of title policies available in our marketplace. As the policy types have changed, it is useful for all real estate professionals to upgrade our knowledge so that we may advise our clients as to the types and forms of title insurance available. In doing so, we may assist our clients in selecting the type most suitable to their particular property type and use.

The American Land Title Association's (ALTA) Owner's Policy dated October 17, 1992 was the form most commonly issued in Washington. Beginning in 1998, a new policy type became available in Washington, the 2003 ALTA Homeowner's Policy. Beginning in 2006, an entirely new form of owner's policy began to be issued, the 2006 ALTA Owner's Policy. In the industry, we see the title policies broken into three general categories: 1) the standard form or the 1992 ALTA Owner's Policy which is now being replaced by the 2006 ALTA Owner's Policy; 2) the 2003 ALTA Homeowner's Policy; and 3) the extended form which is typically the 2006 ALTA Owner's Policy, or an earlier version ALTA policy, with some of the standard exceptions from coverage eliminated.

The 2003 ALTA Homeowner's Policy is available only to natural persons and covers structures containing one to four residential units. The 2003 ALTA Homeowner's Policy is far more comprehensive than the 1992 ALTA Owner's Policy or the new 2006 ALTA Owner's Policy. The 2003 ALTA Homeowner's Policy costs 10% more than the 1992 or the 2006 ALTA Owner's Policy.

The only policy that is more comprehensive than the 2003 Homeowner's policy is the extended coverage policy.

While the cost for the extended coverage policy is somewhat more expensive, it is not prohibitively so, but unless there is a recent survey of record, the title companies will require that a survey be completed before they will issue the extended coverage policy. The cost for the survey is significant and the time to complete a survey can take several weeks to months. The additional cost and time required to complete the survey will prompt most purchasers to decide against the extended coverage policy.

If the property qualifies for the 2003 Homeowner's policy, the homeowner will derive basically the same coverage as the extended coverage policy and no survey is required prior to issuing the policy. However, in the event of a claim under the 2003 Homeowner's policy, the title company may require that the property be surveyed at the claimant's expense and the 2003 Homeowner's policy may also have a deductible and a cap on the coverage amount, depending on the risk covered. As the deductible and the cost for the survey may be required only if and when a claim is filed, and claims as a percentage of policies issued represent a very small percentage, for most homeowner's, paying the additional 10% for the 2003 Homeowner's policy is money well spent for the superior protection provided. In contrast, the extended coverage policy has no deductible and coverage is limited only by the policy amount purchased.

Properties that do not qualify for the 2003 Homeowner's policy include commercial properties, entity-owned properties and residential properties greater than 4 units. Anyone who has done or will be doing a survey should always be informed of the extended coverage policy. This group would generally include developers. Any subdivision or major development will require a survey for the permitting process. Therefore, it is advisable to consider the extended coverage policy when dealing with developers. The cost for the survey can be substantial and the time to complete the survey can take several weeks to several months. Taking the time required into account early in the negotiations is crucial to allow the buyer to complete the survey prior to closing to take full advantage of the extended coverage policy. Surveys may reveal problems and it is far better to know about them in advance and possibly forego acquiring the property, than to have to bear the ongoing carrying costs and potential legal costs while sorting out the title issues uncovered.

