



## Closing Deeds

Fern Epstein, Principal  
[fepstein@horizonlandservices.com](mailto:fepstein@horizonlandservices.com)  
© 2008 Horizon Land Services LLC

Depending upon the type of transfer transaction that is happening at the closing table, various forms of deeds are available—each one conveying different interests and guarantees that may have subsequent consequences and remedies after closing has occurred.

For the usual transfers from individuals and corporate entities the Bargain and Sale Deed is executed at closing. There are two forms of this instrument. One sets forth covenants against the grantor's acts, and the other is without covenants thereby allowing the grantor (the individual(s)/entities) transferring property rights to convey without any representations or warranties that the property has not been further encumbered by an act of the grantor. Should a Bargain and Sale Deed with Covenants be used at closing and subsequent to the closing it is discovered that the grantor had, for example, made an agreement with an adjoining owner that was adverse to the subject property, the grantee (individual(s)/entities receiving title to the property) has recourse against the grantor pursuant to the terms of the instrument and can litigate same.

An older form of deed that is still used on occasion is the Warranty Deed. This instrument conveys title to the premises free and clear of the acts of the grantor, the grantor warranting title to the premises that:

“said party of the first part is seized of the said premises in fee simple, and has good right to convey same, that the party of the second part shall quietly enjoy the said premises; that the said premises are free from incumbrances, except as aforesaid; that the party of the first part will execute or procure any further necessary assurance of the title to said premises; and that said party of the first party will forever warrant the title to said premises”

This form of deed provides the broadest possible protection for a grantee, although transferors are often unwilling to guarantee more than what is minimally acceptable to close title. This form of conveyance was found more prevalent in the 1800s when owners were commonly known as holding title to the land, and the likelihood of committing fraud was not as widespread as it has proven itself in present day. Also it should be noted that grantees in today's market may not be as insistent on a full warranty deed given the protection they receive under their owner's title insurance policy.

Other forms of deeds used especially with estate transfers are Executor's Deed's and Administrators Deeds. An Executor's Deed is used when a decedent's Last Will and Testament has been probated in Surrogate's Court in the county where the property is located and the court has appointed an Executor for the estate. An Administrator's Deed is used when the decedent dies without a Will and an individual is appointed by the court to administer the decedent's estate. One important aspect of these instruments is that there is a recital contained in the template of the deed which encompasses and conveys the complete interest of the Executor/Administrator by language that the first part “has

power to convey or dispose of, whether individually or otherwise”, should he have an interest in the property as an heir at law or a specific devisee.

A Quitclaim Deed is used primarily when the interest of the grantor is not specific such as an heir at law. If an individual in the chain of title is listed on a deed as an owner but the name was never found in any of the prior deeds, a Quitclaim form of Deed is used to convey title to the premises. One of the distinguishing features of the Quitclaim Deed is that it does not contain any warranties nor, for that matter, any representation by the grantor that he has even an interest in the subject premises. It merely states that if the grantor does have an interest, any interest, in the real property in question, then said interest is being conveyed.

It should be noted that the one recital that should be included in all deeds is the Section 13 Lien Law language, covenanting:

“that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose”

This language is essential in the instrument as it protects the grantee/purchaser against any mechanic’s liens that might come up after the closing date by assuring the grantee that the proceeds of the sale will be first used to pay any outstanding liens for work done on the premises for which a lienor has filed a valid claim.

Regardless of the deed form being used it is always prudent to include in the body of the instrument a “same as” clause. This clause helps to further identify the property by referring to the prior deed by which the grantor obtained title to the premises. In effect the “savings clause” can cure what may be a defect in a property description as sometimes occurs in the case of typos or when a particular course description is accidentally left out of a deed.

The form of deed chosen for a closing is essential. If the wrong form is used and the necessary language appurtenant to that transfer is not included, the transfer could potentially be subject to judgment creditors of the seller/grantor. Also, there will not be the proper warranties to allow the curing of title defects arising from the failure of the instrument to protect the individual/entity—essential with today’s inflated market prices.