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Divorcing Your Mortgage Educational Series

Understanding the Transfer of Real Estate During Divorce



Divorce Lending Institute

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The basic understanding of the various real estate deeds is a must when transferring title and ownership to real estate during a divorce situation.

A real estate deed is a legal instrument (document), almost always in writing, that passes an interest in real estate from one person to another person. In short, when real estate is sold or given to someone, it is done with a deed. The new owner of the real estate receives their rights to the property and any title warranties given by the previous owner from the deed.

The deed is the most formal type of private instrument and requires not only an executing party (grantor/grantee, transferor/transferee) but also witnesses as signatories, and acknowledgments from a notary public. A deed has therefore a greater presumption of validity and is less rebuttable than other types of real estate documents.

The Complete Guide to Quit Claim Deeds

The quitclaim deed is a type of legal document used to transfer interest in real estate from one person or entity (grantor) to another (grantee). Unlike other real estate deeds, it conveys only the interest the grantor has at the time of the deed's execution and does not guarantee that the grantor actually owns the property or has good title.

Without warranties, it offers the grantee little or no recourse against the seller if a problem with the title arises in the future. This lack of protection makes a quitclaim deed unsuitable when purchasing real estate from an unknown party. It is, however, a useful instrument when conveying property from one family member or spouse to another, and it is commonly used in divorce proceedings or for estate planning purposes.

Title companies may require a quit claim deed in order to clear up what they consider to be a cloud on the title prior to issuing title insurance. Similarly, prior to funding a loan, lenders may ask someone who is not going to be on a loan, such as a spouse, to complete and record a deed quitclaiming their interest.

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COMMON USES FOR QUITCLAIM DEEDS:

- **Real Estate Transfers Between Family Members.** Quit claims are often used to transfer property to and from family members. Transfers between parents and children, between siblings, and between other closely related family members are easily done with this type of deed.
- **Adding Or Removing A Spouse From Title.** Whether resulting from a divorce or a marriage, a real estate owner can use a quit claim deed to add a spouse to or remove a spouse from the title of the property.
- **Transferring Real Estate To An LLC Or Corporation.** With holding of real estate in the protection of LLC's and Corporations becoming more common, so are quit claim deeds. Corporate transfers are usually done with this type of deed as it is generally a transfer between closely related entities.
- **Transferring Real Estate To A Trust.** As with corporate transfers of real estate, transfers to a Trust are equally common. Family planning that deals with property meant to carry on through generations often involves an initial transfer from a family member into a trust.
- **Removing A Cloud On Title For Title Insurance.** In the process of insuring title to real estate title companies may find a "cloud" in the title. Generally this means that there appears to be someone may or may not have an interest in a property that has not been accounted for and it is causing a break in the chain of title. It is common for the company insuring the title to require the person in question to quit claim their interest in the property prior to issuing the title insurance

Warranty Deed

Of all the real estate deeds, **general warranty deeds** provide the most protection to the grantee (buyer). This type of deed guarantees that the grantor (seller) holds clear title to a piece of real estate and has a right to sell it to the grantee. The guarantee is not limited to the time the grantor owned the property as with a special warranty deed; rather, it extends back to the property's earliest title. As such, earlier grantors occasionally find themselves confronted by issues from future grantees. The grantors also guarantee that, during their period of ownership, they did not encumber the property in any way that prohibits its transfer. Incorporate express references to any easements, restrictions, or other agreements of record that relate to the specific parcel of land, into the text of the deed. Providing this information puts the grantee on notice of the warranty's limitations and upholds the covenant against encumbrances.

Grant Deed

A grant deed is a legal document that is used to transfer (convey) rights in real property from one entity or person (the grantor) to another (the grantee). A grant, or bargain and sale deed, contains no express warranties against encumbrances. It does, however, imply that the grantor holds title and has possession of the property. The language used in the granting clause is usually "ABC grants and releases," or "XYZ grants, bargains, and sells," and is often dictated by statute. Because the warranty is not specifically stated, the grantee has little recourse if title defects appear later.

Correction Deed

Once a deed has been recorded, it is part of the public record and cannot be changed. It is possible, however, to amend that record by adding a newly executed deed, usually called correction or corrective deed, deed of correction or, in some states, deed of confirmation. As confirmatory instrument, it perfects an existing title by removing any defects, but it does not pass title on its own. A corrective deed is most often used for minor mistakes, such as misspelled or incomplete names, missing or wrong middle initials, and omission of marital status or vesting information.