

LAWYERS LINK



TRANSFERRING PROPERTY OWNERSHIP IN DIVORCE QUITCLAIM DEED VS. WARRANTY DEED

When settling property in a divorce, choosing the right deed to transfer real property is crucial, as different deeds serve different purposes and offer varying levels of protection and assurance to the new owner. The most common deeds used in

divorce are quitclaim deeds and warranty deeds. Understanding the differences between these deeds and their implications during a divorce can help you make more informed decisions regarding property ownership.

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What is a Deed?

A deed is a physical, written document used to transfer the title (ownership) of real estate from the seller (grantor) to the buyer (grantee). It serves as proof of ownership and is recorded with the local government, making ownership public record. A deed typically includes a legal description of the property, the names of the parties involved, and details about the transaction.

Understanding a Quitclaim Deed

A quitclaim deed is a legal document that transfers whatever ownership interest a person (grantor) has in a property to another person (grantee), without any warranties or guarantees about the title's validity. If there are any existing liens or title issues, the grantee is receiving them as part of the property transfer. Quitclaim deeds are often used in low-risk, non-sale situations, by people who know and trust each other.

Quitclaim Deed in Divorce

Quitclaim deeds are used in divorce to quickly and efficiently transfer one spouse's ownership interest in a property to the other without a formal sale. This allows the spouse awarded the home to gain sole ownership, enabling them to sell or refinance the property without the other's consent. The other spouse is effectively removed from the title.

It is particularly important to understand that while a quitclaim deed transfers ownership, it does not relieve the grantor of any mortgage obligations. If both spouses' names are on the mortgage, they will remain liable for the debt unless the mortgage is refinanced in the sole name of the remaining owner. Failing to refinance could result in both parties being responsible for the mortgage, even though only one owns the property.



Understanding a Warranty Deed

A warranty deed, in contrast, provides greater protection to the buyer or recipient of the property. It protects the buyer against future legal and financial claims related to the property's title by guaranteeing that the seller holds clear title and has the legal right to sell it. It protects against issues like undisclosed liens, judgments, or claims from previous owners, or other defects that may have arisen at any point in the property's history (general warranty deeds).

Warranty Deed in Divorce

A warranty deed is less common than a quitclaim deed in divorce, but there are some scenarios where it might be more appropriate. For example, when one spouse is buying out the other's share of a property and wants to ensure that there are not any undisclosed liens or claims on the property. This provides the buying spouse with protection against any potential title defects.

Another situation where a warranty deed might be more appropriate is when the property has been in dispute or there are questions regarding the title. A warranty deed may offer more security to the spouse receiving the property.

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As with the quitclaim deed, the warranty deed doesn't automatically affect the mortgage obligation. The person whose name is on the mortgage remains legally responsible for the loan regardless of who owns the property. To transfer the mortgage obligation, the new owner must typically refinance the property in their name or formally assume the loan with the lender's approval.

A warranty deed is more complex due to the warranties involved, and may require additional steps, such as a title search, making it less common in the context of divorce.

Determining whether to use a quitclaim deed or a warranty deed when transferring ownership of real property in a divorce should depend on the specific circumstances. The right choice is best determined with a clear understanding of the risks, protections, and implications of each option, and with the advice of professionals.

This information does not, and is not intended to constitute legal advice; instead, all information is for general informational purposes only.



MONTHLY INDUSTRY TERMS

Deed

Written instrument which, when properly executed and delivered, conveys title.

Deed Restrictions

Limitations (covenants) written into a deed to restrict the control, occupancy, or use of a property.

Warranty

In a broad sense, an agreement or undertaking by a seller to be responsible for present or future losses of the purchaser occasioned by deficiency or defect in the quality, condition or quantity of the thing sold. In a stricter sense, the provision or provisions in a deed, lease or other instrument conveying or transferring an estate or interest in real estate under which the seller becomes liable to the purchaser for defect in or encumbrances on the title.

