

REAL ESTATE: COMMONLY ASKED QUESTIONS

This booklet deals with real estate. I have found that, in general, people have common questions about real estate. Therefore, in an attempt to make this information about real estate clear to you, I am presenting it in a question and answer format.

WHAT IS A WARRANTY DEED vs. QUIT CLAIM DEED?

When real estate is sold and the title to the property is transferred to the buyer, a warranty deed is used the vast majority of the time. With a warranty deed, the seller actually gives the buyer a "warranty" of good title. In other words, the seller warrants that he owns the property and that there are no mortgage liens, tax liens, judgment liens or other objectionable clear title exceptions against the property. The concern with a warranty deed is that, if there are problems with the title, the buyer will probably not discover them until he sells or refinances the property, which may be years after the closing. By that time, the seller may be dead, whereabouts unknown or simply have no money to pay your loss. For these reasons, title insurance is

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standard procedure in almost all real estate transactions (see below).

A special warranty deed is the same as a general warranty deed except the seller is warranting against title problems that occurred during his period of ownership ONLY (not prior owners). Banks often used special warranty deeds when they are selling property that it obtained through a mortgage foreclosure.

With a quitclaim deed, the seller makes no warranties of good and clear title. For example, say I offered to sell you the Empire State Building for \$1,000.00 and, upon receipt of your money, I gave you a quitclaim deed. When you finally realize that you really don't own the Empire State Building, you would not have any legal action against me since I made no warranty of good title or even a warranty that I owned it.

WHAT IS TITLE INSURANCE?

Title insurance is an actual insurance policy that is paid for at the time of the real estate closing. It is a one- time premium.

An owner's title insurance policy insures the buyer that the buyer is getting good and clear title to the property and that there are no mortgage liens, tax liens, judgment liens or other exceptions to clear title. Under the standard real estate contract for sale and purchase, the seller pays for the owner's title insurance. It will protect the buyer as long as the buyer owns the property. It will not protect subsequent buyers. Obtaining an owner's policy is standard procedure in real estate sales closings and, if you are the buyer, you should insist on receiving it.

A mortgagee title insurance policy insures the lender that it is getting a valid first mortgage on the property with no prior mortgage liens, tax liens, judgment liens or other exceptions. Under the standard real estate contract for sale of property, the buyer pays for the mortgagee title insurance since it is an expense associated with borrowing money. It will protect the lender as long as the loan is outstanding. It will not protect subsequent lenders and, therefore, each time you refinance your property, you must pay for a new mortgagee title policy. A mortgagee policy is standard procedure in all real estate transactions where a new bank or other commercial loan is used. A

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mortgagee policy is typically not issued when real estate is being purchased and an existing mortgage is being assumed by the buyer or where the seller is holding a purchase money mortgage.

WHAT IS A LIFE ESTATE DEED?

A life estate deed states that you have the sole use and benefit of the property during your lifetime and, upon your death, it will go to the persons stated in the deed (the “remaindermen”) without the need for probate. This deed cannot be changed at a later date. The life estate holder is required to maintain the property and pay all taxes, maintenance, taxes and mortgage (if any).

WHAT IS AN ENHANCED LIFE ESTATE?

An enhanced life estate deed also states that you have the sole use of the property during your lifetime and, upon your death, it will go to the persons stated in the deed (the “remaindermen”) without the need for probate. However, this type of deed CAN be changed at a later date without the signature or consent of the remaindermen.

WHAT IS THE FIRST STEP IN BUYING OR SELLING A HOUSE?

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The first step is the preparation and signing of a Contract for Sale and Purchase. For houses, the contract is often the preprinted contract form which has been created by the Florida Association of Realtors in conjunction with the Florida Bar (known as the "FAR/BAR" contract). The contract will almost always have addendums attached to cover issues that are special to your particular transaction. Any language in an addendum is controlling over the preprinted language in the contract. When all of the contract blanks have been filled in and it has been signed by the buyer and seller, there is a binding contract. The FAR/BAR contract does a nice job of covering all of the issues between the parties, from the obvious (the purchase price) to the not so obvious (what happens if the house is damaged by fire between the signing of the contract and the closing).

Typically, the buyer will have the contract prepared (usually by a real estate agent or attorney) and will then sign it and then present it to the seller with a good faith deposit (\$1,000.00 would be typical). The seller then has a certain number of days (depending on how that particular clause is filled in) to accept or reject the contract. If the buyer is offering to purchase the property for \$75,000.00

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and the seller wants \$78,000.00, the seller simply crosses through the \$75,000.00 and writes in \$78,000.00. The seller then signs the contract, initials the change and gives the contract back to the buyer. Now there is no binding contract unless the buyer agrees to the change and initials the change acknowledging the new purchase price. Or the buyer may make another change, for example, crossing out \$78,000.00 and writing in \$76,500.00. The contract may go back and forth like this several times until all parties have agreed to all changes and initialed them.

After the contract for sale and purchase has been signed, a real estate closing takes place (usually several weeks later) where monies and documents change hands. At the closing, the seller will receive the balance of the monies due and the buyer will receive title to the property.

WHAT EXPENSES ARE INVOLVED IN BUYING OR SELLING A HOUSE?

The typical contract provides that the seller pays two major expenses: documentary stamps on the deed (presently \$.70 per hundred dollars of purchase price) and title insurance (please call my

title company, Edgewater Title at 407-423-7331, for a premium quote).

The typical contract also provides that the buyer pays the documentary stamps on the mortgage (presently \$.35 per hundred dollars of mortgage amount), intangible tax on the mortgage (\$.002 times the mortgage amount) and all expenses associated with borrowing the money, for example, survey, origination fees, discount points, lender's fees, etc.

WHAT DOES "RECORD" IN THE PUBLIC RECORDS MEAN?

At the closing, the closing agent will keep the original deed and mortgages and record them in the public records of the county where the property is located. They will be delivered to the recording clerk, who will stamp an official records book number and page number on the document and then microfilm it. The document is then returned to the closing agent, who then returns it to the buyer. Do not be concerned if you ever lose your original deed. Because it has been recorded, you can get a certified copy of your deed out of the public records

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and this certified copy will be just as valid as the original deed.

DO I NEED AN ATTORNEY TO REPRESENT ME AT CLOSING?

Let me start by saying that, I believe, in all situations you should have an attorney review your contract for sale and purchase before you sign it. If the contract has been properly prepared to protect your interest as a buyer or seller, then everything else should fall into line and, therefore, you probably don't need an attorney at closing. If your negotiations to buy or sell are going hot and heavy and your real estate agent tells you not wait to have your attorney review the contract before signing it, then simply do an addendum to the contract making the contract contingent upon your attorney's review within two working days.

If I had to pick who needs an attorney the most at closing, the buyer or the seller, I would pick the buyer. This is obviously because the buyer is making a large investment and, therefore, I think needs the extra protection an attorney brings to the closing. In some cases, people simply feel more comfortable having their attorney at closing and, if

this makes them sleep better at night, I think it is money well spent.

I AGREED ORALLY TO SELL MY HOUSE FOR \$75,000. IS THIS A BINDING CONTRACT?

No, in Florida, any agreement to buy and sell real estate must be in writing.

IF I GET SUED, CAN THE CREDITOR TAKE MY HOME?

Article 10, Section 4 of the Florida Constitution states that no creditor can take the home of an individual or place a lien against it. This would include creditors such as doctors, hospitals, credit cards and automobile accidents. This would not be true where you gave a voluntary lien against your home to your mortgage lender, or your homeowner's association. Also, the IRS can take your home for unpaid income taxes.

WHAT SHOULD I DO NOW?

For more information about real estate, watch Attorney Tom Olsen answer commonly asked real estate questions on his videos at LawTube.com

QUESTIONS, COMMENTS, SUGGESTIONS?

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Did you read something in this booklet that was not clearly explained? Do you have a question about this topic that was not answered? Have you found a typographical error or a legal inaccuracy in this booklet? Please contact me with your questions, comments or suggestions. Your thoughts and suggestions are greatly appreciated.