

## **How a Lady Bird Deed Works**

These deeds are also called “enhanced life estate” deeds. With a standard life estate deed, you could name a beneficiary to inherit your property while you keep ownership of it for your lifetime, but with significant restrictions. You wouldn’t have the right to sell or mortgage the property, and you might also be liable to the beneficiary you named if you greatly decreased the value of the property—for example, let a house fall into serious disrepair.

By contrast, an enhanced life estate deed (the Lady Bird deed), lets you:

- avoid probate of the property
- keep the right to use and profit from the property for your lifetime
- keep the right to sell the property at any time
- avoid making a gift that might be subject to federal gift tax
- avoid jeopardizing your eligibility for Medicaid
- in some states, prevent the property from being sold, after your death, to repay the cost of Medicaid benefits you received

## **General Warranty Deeds**

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A general warranty deed guarantees that the grantor (seller) has good title to the property and has the right to sell it. This warranty basically ensures a buyer that she will receive good legal title. Many years of unbroken "chains" of title with grantors (sellers) conveying general warranty deeds to grantees (buyers) typically ensures that future owners will face no title challenges. Procuring title insurance to defend any challenges is typically easy.

## **Special Warranty Deeds**

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Special warranty deeds guarantee that the grantor (conveyor) owns the property and has had no title problems during his period of ownership. This document offers buyers more protection than a quitclaim deed, which makes no warranties that the grantor actually owns the property, nor does it guarantee that the seller has the legal right to sell. Therefore, special warranty deeds are better than a quitclaim document, but not as secure as general warranty deeds. Commercial real estate transfers, sometimes involving trusts, corporations, partnerships or LLCs, use special warranty deeds if local practice permits and commercial lenders agree.

## **The Difference Can Be Critical**

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The primary difference in the two deeds may appear subtle, possibly even minor. However, this difference could be legally critical to successful ownership. Sellers offering special warranty deeds only guarantee ownership and no title problems during their ownership. Should title issues exist from a prior owner, some of which might be "pending" for many years, buyers have no specific protection against possible ownership challenges. When buying residential property with a mortgage, most lenders will mandate a general warranty deed and a paid-up title insurance policy. Receiving a special warranty deed will often prohibit eligibility for a "clean" title policy, without exclusions of some coverage. This condition is usually unacceptable by mortgage lenders and makes a closing impossible.

## **Q. What is Title?**

**A.** Title is the sum of all elements that provide the legal right to control and to dispose of property. It can also refer to a legal document, such as a deed, that serves as evidence of ownership in the property.

## **Q. What is the difference between a quitclaim deed, and a warranty deed?**

**A.** A quitclaim deed conveys only whatever interest the Grantor has in the property, without making warranties about rights that other people may have in the property. It is usually used when granting land between two people that are well acquainted, such as between divorcing spouses or family members. In contrast, a warranty deed conveys title to a grantee with a guarantee of good clear title to the property free from any interests held by other people. Warranty deeds are the traditional form of deed used in residential home sales between unrelated parties, as it provides a degree of protection to purchasers that the quitclaim deed does not offer.

## **Q. What types of property ownership are there?**

**A.** As a property or homeowner, your deed defines the form of ownership and how the title for the property changes upon the death of an owner. The most common types of ownership are: sole ownership; joint tenancy; right of survivorship; tenancy in common; and tenancy by the entirety.

## **Q. What does the term "Fee Simple" mean?**

**A.** Fee simple refers to the most extensive interest that a person can have in a parcel of land. The holder of a fee simple has complete ownership with unconditional powers of disposition during the owner's life, and upon death the property descends to the owner's designated heirs.

## **Q. What is sole ownership?**

**A.** Sole ownership is exclusive ownership. An ownership so complete that no other person has any interest in the property.

## **Q. What is joint tenancy?**

**A.** Joint tenancy is an undivided interest in property, taken by two or more joint tenants. The interest must be equal, accruing under the same conveyance, and beginning at the same time. Upon the death of a joint tenant, the interest passes to the surviving joint tenants, rather than the heirs of the deceased. This type of ownership is commonly used by couples who want the surviving partner to receive ownership of the deceased share of the property.

However, some states have statutory provisions which deem joint tenancies to be severed upon the death of one joint tenant, unless the joint owners have agreement in writing stating otherwise. Other states have abolished the recognition of joint tenancy all together and will treat all instances of joint tenancy as tenancy in common. It is important to understand how a specific state statutory provisions will affect the ownership rights of both joint tenants and tenants in common and then plan your affairs accordingly.

## **Q. What is right of survivorship?**

**A.** Right of survivorship is the right of a survivor to receive the property of the deceased. In general, it is the difference between joint tenancy and tenancy in common. Note that some states do not recognize joint tenancy or do not deem tenancies to be severed upon the death of an owner

### **Q. What is tenancy in common?**

**A.** An undivided ownership in real estate by two or more persons. The interest need not be equal, and in the event of the death of one of the owners, there is no right of survivorship in that owner's interest. Instead, the deceased interest will pass to his or her heirs.

### **Q. What is tenancy by the entirety?**

**A.** A form of ownership by husband and wife whereby each owns the entire property. Neither spouse can deal the property without the consent of the other. One main benefit is that the creditors of one spouse cannot enforce against the property held in tenancy by entirety unless the non-debtor spouse dies first. In the event of death of one spouse, the survivor owns the entire property without the need for probate. However, it will be difficult to transfer the property if one spouse disappears or becomes incompetent since the other spouse cannot sever tenancy by entirety unilaterally.

### **Q. What is Survivorship Community Property?**

**A.** This is a form of joint tenancy available only to spouses in certain states. Each spouse owns 50% of the property as well as any debts that each spouse may have incurred. Upon the death of one spouse, the survivor will receive the deceased interest without probate. However, community property provides less protection to individuals than tenancy by the entirety since debtors can enforce against the property because debt is also considered community property.

### **Q. How does joint tenancy differ from tenancy in common?**

**A.** Joint tenancy is a form of co-ownership where the surviving joint tenant immediately acquires a fee simple interest in the property upon the death of the other joint tenant. Tenancy in common is a different form of co-ownership, where the survivor does not acquire the deceased tenant's interest, but instead the deceased's interest passes according to his or her will. A tenancy in common is presumed to be created by a deed transferring property to 2 or more people, who are not husband and wife. The best way to achieve joint tenancy is through the use of a Survivorship Deed.

### **Q. Who should I list as the Grantor?**

**A.** The Grantor is the person who bestows or gives the possession of something. In the case of a transfer of property by deed, the Grantor is the person who gives interest that he or she holds in the property to someone else. Generally, the Grantor section should include everyone whose name is currently on the title of the property that is being transferred.

### **Q. Who should I list as the Grantee?**

**A.** The Grantee is the person who receives the grant. In the case of a transfer of property by deed, the Grantee is the person who receives interest of the property from the Grantor and should include everyone, whose name will be on the title of the property once it has been transferred.

Be aware that a person can be both a Grantor and a Grantee on a deed. For example, if John Smith currently holds title to a home and he wants to convey half interest of that family property to his wife, Mary Smith, John Smith would be listed as the Grantor, and John Smith and Mary Smith would be listed as the Grantee.

### **Q. What is a notary public?**

**A.** A Notary Public is a state-appointed official who is authorized to authenticate certain legal documents, such as declarations, acknowledgments, deeds, mortgages, and other contracts. Most real estate deeds are notarized by attorneys.

### **Q. What does the term "Homestead Property" mean?**

**A.** Generally speaking, Homestead Property is real estate occupied by a person as his or her home or dwelling place.

### **Q. What are encumbrances?**

**A.** Encumbrances are legal rights or interests in land that limit the fee simple title to property. They can include: zoning ordinances, mortgages, easements, liens, charges, pending legal challenges, restrictive covenants, and unpaid taxes. Encumbrances do not prevent property transfers from occurring, but the Grantee must be aware that encumbrances will continue to exist after the land is transferred from the Grantor to the Grantee.

### **Q. What does the term "Grantee's assigns" mean?**

**A.** Grantee's assigns refers to any person that the Grantee transfers the property to, after having received the property from the Grantor.

### **Q. What are documentation/ documentary transfer stamps?**

**A.** Some counties and/or states require that these stamps be placed on a deed to evidence that it complies with the local land recording laws. These stamps will be attached at the time of recording, and there is nothing that the parties need to do prior to recording the deed to satisfy this requirement.

### **Q. What is the consideration?**

**A.** The consideration entered on a deed document should be the actual value paid by the Grantee to the Grantor in monetary terms. If no consideration is being provided, such as in the case of a gift, then 10.00 can be entered as the standard consideration.

### **Q. What is a Well Disclosure Certificate?**

**A.** A Well Disclosure Certificate is required to be attached to a deed in the state of Minnesota if the property being transferred contains new wells that were not listed on the previous Well Disclosure Certificate. This document does not need to be included with a deed if the property does not contain any wells, or if all of the wells have already been disclosed on a prior certificate.

### **Q. What is the County Recorder's Office?**

**A.** This office is referred to by different names in different states, such as County Clerk's Office, Register of Deeds, or Land Registry Office. It is where quitclaim and warranty deeds are registered.

### **Q. What is a Real Estate Sales Validation Questionnaire?**

**A.** It is a form created by the Kansas Department of Revenue that is designed to help study the relationship between assessed and market values of property. It is a required form for real estate transactions involving land located in Kansas, unless the property qualifies for an exemption.

**Q. What is the Trust date?**

**A.** This is the date on which the trust was formed.

**Q. Should I use a special or a general warranty deed?**

**A.** A general warranty deed will open you up to more potential liability than a special warranty deed, so you should only use a general warranty deed where you are extremely confident that no one else will make a claim against the property. A special warranty deed should be used when you are sure that no one will make a claim through your title, but are unsure as to whether there may be prior and superior claims against the property.

**Q. What are my liabilities under special and general warranty deeds?**

**A.** Under a special warranty deed, you are liable only for claims that arise through your title (third party interests that arose while you had title to the property). Under a general warranty deed, you are taking responsibility for any claims that arise against the title to the land, regardless of when the other claims arose.

**Property Information****Q. Where can I obtain the legal description of my property?**

**A.** You should be able to obtain the complete legal description of your property from the County Recorder's Office by providing your municipal address or tax parcel number.

**Q. What is the tax parcel or parcel identification number and how do I find out what the specific number is for my property?**

**A.** This number is a 10-12 digit number that identifies ownership and assessed values of property for taxation purposes. The number can be obtained from your Tax Statement, Revaluation Notice, or Personal Property Listing Form.

**Q. How do I find out information regarding prior grants?**

**A.** Information pertaining to prior grants of your property (such as the book and page number it was recorded on) can be obtained from the County Recorder's Office.

**Q. Can I have more than one Homestead property?**

**A.** No, if you own and reside in more than one property, you must select one of these properties which will be considered your homestead.

**Q. What is the Tax Map Key Number and how can I find the Tax Map Key Number for my Hawaiian property?**

**A.** The state of Hawaii uses Tax Map Key Numbers to identify the location of Hawaiian property. It is a five digit number where the first number represents which island the land is on, the second shows the zone of the island, the third indicates the section within a zone, the fourth number is the parcel, and the fifth is the plat where the land is located. You can find your Tax Map Key Number on your property assessment notice, or by contacting the Real Property Assessment Division of your county.

## **Property Transfers**

### **Q. Can I transfer property to a trust?**

**A.** Yes, the warranty deed can be used by individuals and/or corporations to transfer property to a trust. To transfer property to a trust using the warranty deed, you will need to know the name of the trust, when it was created, and the number and name of the trustee(s).

### **Q. Is a deed to a trust the same legal document as a "Deed of trust?"**

**A.** No, a deed to a trust is a warranty deed where property is transferred from an individual or corporation to a trust. The term "Deed of Trust" refers to a document utilized in some states that serves the same role as a mortgage, whereby a trustee holds land as security for a debt. No title to land is actually transferred in a Deed of Trust.

### **Q. Can I use a warranty deed to transfer rights of survivorship?**

**A.** No, you need to use a survivorship deed to transfer rights of survivorship, where the parties will hold the property as joint tenants, with the survivor taking a fee simple interest in the property upon the death of the other party.

### **Q. Do I need to use a warranty deed even if I am transferring the property to someone as a gift?**

**A.** Regardless of the consideration you are receiving, you must file a deed with the County Recorder's Office to show that title has been transferred. You would use \$10.00 as the consideration.

### **Q. Can I use a warranty deed to transfer property to my Limited Liability Corporation?**

**A.** Yes, for the purposes of deeds, a limited liability corporation is treated the same as an ordinary corporation, and can be either the Grantor or the Grantee.

### **Q. Can I use a warranty deed to transfer a portion of my property to someone else?**

**A.** Yes, you can do this by listing yourself as the Grantor, and both you and the other person as the Grantees. Each Grantee would receive an equal share of the property. For example, if there are three Grantees including yourself, then each Grantee will receive a one-third interest in the property.

### **Q. I am the personal representative of a deceased person, and I am required to transfer his property to his heirs as part of probate. Can I use a warranty deed to make this sort of land transfer?**

**A.** No, personal representatives should use a Personal Representative, Transfer on Death, or Beneficiary Deed to convey land to the heirs of the deceased individual.

### **Q. Why have I not been given the opportunity to choose a special warranty deed as opposed to a general warranty deed?**

**A.** Your state only recognizes general warranty deeds, and does not allow Grantors to transfer real estate using special warranty deeds.

## **Signing and Recording**

### **Q. Why is there a large margin at the top of deed documents?**

**A.** The County Recorder who will file the document requires a 2-3 inch margin at the top of the document so that they can affix a stamp, filing number or some other form of information to help identify and record the deed. Do not write in this space.

### **Q. Can I get my deed notarized in a different state than where the land is located?**

**A.** Most states recognize notarization of land transfers by officials from other states, but you should contact the County Clerk's Office where the land is located to be sure that they will allow transfers of property located within their borders to be notarized in another state. Our deeds allow for inter-state notarization by enabling you to select in which state you will have the deed notarized, regardless of the location of the property.

### **Q. Does the Grantee need to sign the deed?**

**A.** No, most states do not require that the Grantee sign a warranty deed. However, some states and counties require that the deed be signed by the Grantee in addition to the Grantor.

### **Q. After the deed has been recorded at the County Recorder's Office, who should it be sent to?**

**A.** Usually, the deed would be sent to the Grantee after it has been recorded. However, any person or corporation can be designated as the recipient of the recorded deed, such as the Grantor, a Title Insurance company, or another interested party.

### **Q. Does a warranty deed have to be notarized in order to be valid?**

**A.** Yes, after the Grantor signs the deed, they must get it signed and stamped by a notary public to verify that the Grantor's signature is authentic before it can be filed with the County Clerk's Office.

### **Q. What do I do with a warranty deed after it has been signed by the Grantor and a Notary Public?**

**A.** After a deed is signed and notarized, it should be filed at the land records office in the county where the property is located. This office is referred to by different names in different states, but is usually called the County Clerk's Office, County Recorder's Office, Register of Deeds, or Land Registry Office.

### **Q. Do I need to have witnesses when I sign a deed?**

**A.** Currently, only Arkansas, Georgia, Michigan, Ohio, South Carolina, and Vermont require that witnesses sign deeds in addition to a notary public in order for deeds to be valid. However, in some states, specific counties require that deeds be witnessed. You should check with your local county recorder's office to determine if witnesses are required.