



## DIVORCING YOUR MORTGAGE

August 2017 Issue

### DID YOU KNOW??

#### This Month in History

**August 1, 1944** - Anne Frank penned her last entry into her diary. "[I] keep on trying to find a way of becoming what I would like to be, and what I could be, if...there weren't any other people living in the world." Three days later, Anne and her family were arrested and sent to Nazi concentration camps. Anne died at Bergen-Belsen concentration camp on March 15, 1945, at age 15.

**August 2, 1776** - In Philadelphia, most of the 55 members of the Continental Congress signed the parchment copy of the Declaration of Independence.

**August 5, 1861** - President Abraham Lincoln signed into law the first Federal income tax, a 3 percent tax on incomes over \$800, as an emergency wartime measure during the Civil War. However, the tax was never actually put into effect.

**August 5, 1962** - Film star Marilyn Monroe died at age 36 from an overdose of sleeping pills. She made 29 films during her career and came to symbolize Hollywood glamour.

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### Transfer of Ownership in Real Estate During Divorce

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.

## 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.

Traditionally, general warranty deeds include six common law covenants of title. Those six covenants can be separated into two categories: present covenants and future covenants.

### Present Covenants:

**Covenant of seisin:** the grantor promises that he/she holds valid title to and possession of the property.

**Covenant of right to convey:** the grantor guarantees that he/she may legally convey both title to and possession of the property.

**Covenant against encumbrances:** the grantor legally declares the property to be free of any liens (encumbrances) unless stated in the deed.

### Future Covenants:

**Covenant of warranty:** the grantor will protect and defend the buyer against anyone who claims a superior title to the property.

**Covenant of quiet enjoyment:** the grantee will be able to access and use the property without restrictions.

**Covenant of further assurances:** the grantor will take reasonable actions necessary to resolve defects in the title.

Unless the state statutes include a specific deed form and/or rules that define the protections covered by a warranty deed, each of the covenants should be identified in the habendum clause of the deed.

## 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.



The grant deed must also include a legal description of the property, which includes boundaries and/or parcel numbers. Grant deeds do not need to be recorded to be valid; however, it is in the grantee's best interest to record the deed at the country recorder's office in the county where the property is located.

The law recognizes a grant deed in writing. Hence, it must be an original and filed with the proper government authority. The deed must indicate the involved parties, which is both the grantor (seller) and the grantee (buyer). It must clearly state a legal description of the property being transferred. Guarantees and responsibilities must be stated in the deed as well. These guarantees indicate that the grantor owns the property free and clear, and the seller assumes the responsibility for settling any future claims. If there is a time limit on the guarantees, it must also be incorporated in the deed. The finished copy of the deed must be duly signed by the parties and notarized according to law.

The grantor settling any future claims on the property is the main criterion of writing a grant deed. However, this depends on the stipulated period, i.e., for the duration of time when the grantor maintains the rights to the property before the deed comes into effect. This clause is akin to general warranty deeds in some states, while a limited warranty deed for others.

## 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 correction deed confirms the covenants and warranties of the prior deed. It needs to refer to that instrument by indicating its execution and recording date, the place of recording, and the number under which the document is filed. It also must identify the error or errors by type before supplying a correction. The body of this new deed contains the same information as the original deed and thus confirms the conveyance of title. Generally, all parties who signed the prior deed must sign the correction deed in the presence of a notary, who will acknowledge its execution.

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. It can also be used for obvious errors in the property description. For example: errors transcribing courses and distances; errors incorporating a recorded plat or deed reference; errors in listing a lot number or designation; or omitted exhibits that supply the legal description of the property. A correction deed can also amend defects in the execution or acknowledgement of the original deed.

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## WHY YOU NEED A CERTIFIED DIVORCE LENDING PROFESSIONAL (CDLP) ON YOUR PROFESSIONAL DIVORCE TEAM.

A professional divorce team has a range of team players including the attorney, financial planner, accountant, appraiser, mediator and yes, a divorce lending professional. Every team member has a significant role ensuring the divorcing client is set to succeed post decree.

A Certified Divorce Lending Professional brings the financial knowledge and expertise of a solid understanding of the connection between Divorce and Family Law, IRS Tax Rules and mortgage financing strategies as they all relate to real estate and divorce. Having a CDLP® on your professional divorce team can provide you the benefit of:

- A CDLP is trained to recognize potential legal and tax implications with regards to mortgage financing in divorce situations.
- A CDLP is skilled in specific mortgage guidelines as they pertain to divorcing clients.
- A CDLP is able to identify potential concerns with support/maintenance structures that may conflict with mortgage financing opportunities.
- A CDLP is able to recommend financing strategies helping divorcing clients identify mortgage financing opportunities for retaining the marital home while helping to ensure the ability to achieve future financing for the departing spouse.
- A CDLP is qualified to work with divorce professionals in a collaborative setting.
- A CDLP can provide opportunities in restructuring a real estate portfolio to increase available cash flow when needed.
- A CDLP maintains a commitment to remaining educated and up to date in the ever changing industry guidelines and tax rules as they pertain to divorce situations.
- A CDLP is committed to providing a higher level of service to you and your divorcing clients.

The role of the CDLP is to help not only the divorcing client but the attorney and financial planner understand the opportunities available as well as the challenges divorce can bring to mortgage financing during and after the divorce. When the CDLP is involved during the divorce process and not after the fact, many potential financing struggles can be avoided with valuable and educated input from the Certified Divorce Lending Professional.

“Nothing matters more in winning than getting the right people on the field. All the clever strategies and advanced technologies in the world are nowhere near as effective without great people to put them to work.” - Jack Welch, *Winning*

## CDLP Certified

Certified Divorce Lending Professional

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