



# PREVENTIVE LAW SERIES

## REAL ESTATE DEEDS



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A deed is a legal document that transfers ownership of real property (land and structures like houses that are built on the land) to a new owner. Two common types of deeds are grant deeds and quitclaim deeds. These deeds have different warranties associated with them. A quitclaim deed is a simpler procedure that carries more risk for the new owner. A grant deed is more complex, but less risky for the new owner.

Please note that real property law is state-specific and can be quite different from state to state. This handout serves as a general overview of grant and quitclaim deeds. For more specific information on deeds or whether you may have legal rights to compensation from a prior owner who deeded a property to you, please consult with an attorney.

### **GRANT DEEDS**

In order to qualify as a grant deed, the conveyance (transfer) may NOT be a gift or be a quitclaim deed. There are seven covenants (or warranties) that are generally contained in grant deeds. When you sign one of these deeds, you are “promising” that all of the following exists:

#### **THE SEVEN COVENANTS**

1. **Seisin** - promises that the person transferring the ownership is actually the owner of the property.
2. **Good title** - guarantees that there are no liens on the property.
3. **Covenant against encumbrances** - promises that the person transferring the ownership has no outstanding liens, mortgages, judgment liens, tax liens, leases, easements, or other encumbrances against the property.
4. **Right to Convey** - promises that the person transferring the property has the right to transfer that property. This right comes into play if the person transferring the property is not the owner, but still can rightfully transfer the property.
5. **Quiet enjoyment** - promises that there is no defective title that will cause problems for the new owner's ability to use and enjoy their property.
6. **Covenant of warranty** – promises that the person transferring the property will compensate the buyer (person receiving the property) if any person evicts the buyer from possession. For example, if it turns out that someone else actually owns the land and that true owner shows up and evicts someone who just bought the property from a false owner, the false owner would be obligated to pay compensation to the buyer. The covenant of warranty is rarely used in California, but is quite common in other states.
7. **Covenant for further assurances** – promises that the person transferring the property will do everything necessary to confirm that no one else has any claim to the property.

If you purchase real estate and find that any of the above promises appear to be broken, even if the promises are not written in any contract or deed, you may have a claim and should consult an attorney.

### **QUITCLAIM DEEDS**

A quitclaim deed passes only the transferor's current interest in the property and makes **no** warranties of title in the property. In other words, unlike with grant deeds, the transferor makes **no** warranties that the title is good, clear, and marketable. The transferor will, however, remain liable for any mortgages, unless the new owner refinances.

A common situation in which a quitclaim deed is used is in the division of real property in a divorce action, as an incident of the divorce. This allows one spouse to quitclaim his/her interest in the property to the other. It is a simple procedure and releases the transferor's interest in the property. After the document is executed and filed, the transferor no longer owns the property.

#### **HOW TO COMPLETE A QUITCLAIM DEED**

1. Obtain a QUITCLAIM DEED form. The San Diego County Recorder's Office has the document needed on its website: <https://arcc.sdcounty.ca.gov/Documents/QD.pdf>. You may also be able to obtain a quitclaim deed from a real estate agent, a title company, or a real estate attorney.
2. The document must be executed properly. This requires that the document be notarized and a legal description of the property is included in the deed.
3. The document must be filed, or recorded, in the County Recorder's Office where the land is located.
4. The new owner has a duty to notify the tax assessor of the change in ownership using a Preliminary Change of Ownership Report form (available at above website under Reappraisal forms).

Real estate laws are state-specific. NOTE THAT THE QUITCLAIM DEED FORM AVAILABLE AT THE SAN DIEGO COUNTY RECORDER'S OFFICE IS SPECIFIC TO SAN DIEGO COUNTY CALIFORNIA. If you are from another jurisdiction it will be necessary to confirm the format of the quit claim that is required in your jurisdiction.

#### **RESOURCES**

**San Diego County Recorder's Office:** (619) 236-3771; [arcc.sdcounty.ca.gov](https://arcc.sdcounty.ca.gov)

Cal. Civil Code §§ 1113, 1114 (2013)