



Which Type of Real Estate Deed is Right for Me?

Understanding real property deeds is a crucial aspect of the buying process. Each deed type comes with different levels of protection, which is why it is paramount to understand your options and whether and to what extent the deed you choose protects you and your interests. Our attorneys break down six common types of deeds used in Ohio real estate transfers and how each protects your rights as a buyer.

What is a deed?

Before we get into the different types of deeds, it is essential to understand what deeds are. A deed is a legal document that effectuates the transfer of real property ownership. All deeds must contain a legal description of the subject property, the names of the transferor and transferee, and a reference to a prior instrument of record wherein the property subject property was transferred. It is signed by the transferor, notarized, and recorded in the county where the real estate is located. In Ohio, legal ownership of real property transfers when the deed is delivered (actually or constructively) to the transferee.

Six Commonly Used Deeds in Ohio

1. General Warranty Deed

The most common deed used in Ohio is a General Warranty Deed. From a transferee's perspective, it is preferable because the transferor makes certain warranties concerning the transferred property. In a General Warranty Deed, the transferor guarantees that the property is free and clear from encumbrances unless otherwise stated in the deed. Essentially, the transferor is taking responsibility for title passing to the transferee and anything that might negatively impact the transferee's title to the property. Such warranties are not limited to title

defects that arose while the transferor owned the property. They also extend to any defects in title that occurred before the transferor's ownership of the property.

2. Limited Warranty Deed

Unlike a General Warranty Deed, when using a Limited Warranty Deed, a transferor does not warrant against title defects that arose before the transferor's ownership. Instead, as the name would imply, the transferor's warranty is "limited" to matters that occurred during the period of the transferor's ownership. This type of deed is more commonly used in commercial transactions.



3. Quit Claim Deed

With a Quit Claim Deed, the transferor makes no warranties concerning the transferred title. Because the transferor is making no warranties, a transferee has no recourse against the transferor if there are defects in the title. Simply, the transferee takes whatever interest the transferor had to convey in the property, subject to any defects that might impact the title. Quit Claim Deeds can give rise to problems under existing title insurance policies and rarely has a protected use. Beware of

this commonly misunderstood and misused type of deed.

4. Fiduciary Deed

Any deed drafted for individuals transferring property in their capacity as a fiduciary, including property sold from an estate by an executor or administrator or from a trust by a trustee, is considered a Fiduciary Deed. This type of deed promises that the fiduciary has the authority to transfer the property in their capacity as fiduciary but does not make any promises that the title is free of defects.

5. Joint and Survivorship Deed

A Survivorship Deed is a deed conveying title to real estate in the names of two or more persons as joint tenants with rights of survivorship. Survivorship provisions can be added to any of the previously mentioned deeds.

Upon the death of one of the owners of a jointly-held property, if survivorship provisions were not included, the default ownership between two individuals would be referred to as "tenants in common." With this type of ownership, the deceased individual's will or the probate court may control who receives the decedent's interest in the property upon their death. If survivorship provisions are included, the deceased individual's interests are automatically vested in the property's other joint owner(s). For example, if two transferees of property took the title with a deed as joint tenants with rights of survivorship, upon the passing of the first individual, the second individual would own the entire interest in the property. Upon the death of the second individual, the property would, by default, become the property of such the second individual's estate. This deed type is commonly used between spouses, but the owners are not required to be spouses. In addition, it does not limit the number of individuals who can own a property jointly as survivorship tenants.

6. Transfer on Death Designation Affidavit

Before 2009 this was called a Transfer on Death Deed but is now referred to as a Transfer on Death Designation Affidavit. Like the Survivorship provisions discussed above, this is another method that individuals use to transfer property upon death

while avoiding some of the hassles of probate.

Essentially, this document names one or more specific individuals the property owner wishes to become the owner(s) upon the owner's death. There is no limit to the number of named beneficiaries. The affiant can name individuals as "contingent" beneficiaries who take title to the property should one named beneficiary die before the property owner. Since the beneficiaries do not take title to the property until the owner passes away, beneficiaries who pass away prior to the property owner do have any ownership rights in the property. Let's look at a property owner who designates two individuals as beneficiaries in a Transfer on Death Designation Affidavit. If one of the selected individuals dies, the surviving beneficiary will become the sole owner of the property upon the death of the property owner. Additionally, if all the beneficiaries predecease the owner, and no contingent beneficiaries are named, then the affidavit fails, and the property will, by default, be included in the owner's estate. A Transfer on Death Designation Affidavit can be revised or rescinded by the owner at any time and for any reason before the owner's death,

Some of the above deeds are more common than others in specific scenarios, but there is no one-size-fits-all approach to transferring your real estate. The way the property is transferred has legal implications for the transferee and the transferor. Therefore, regardless of which side of a transaction you find yourself on, you should consult with your Carlile Patchen & Murphy attorney to protect your interests.