

## General Note on Use – Deeds Subcommittee

The preferred approach in drafting the property description on a deed or other instrument (including mineral interests) is to use the precise language from the vesting ~~instrument~~deed, a copy of which can often be obtained via an Owners and Encumbrances Report from a title company. In addition, the precise name of the prior grantee should be used as the name of the grantor for the subsequent deed. Every deed needs to include an address for ~~the~~ grantee (to provide an address for purposes of mailing of tax notices pursuant to C.R.S. §38-35-109(2)) and must be acknowledged. It is also important to ~~state~~clarify whether multiple grantees are taking title as joint tenants, ~~or tenants in common~~. If not specified in the deed the default is tenancy in common.

There are four basic types of deeds: general warranty deed (which warrants title to the property both prior to and after the grantor acquired title to the property), special warranty deed (which warrants against title defects during the period of time the grantor owned the property), bargain and sale deed (which contains no warranties of title, but does convey any after-acquired title to the property), and quitclaim deed (which contains no warranty whatsoever and does not convey after-acquired title). Personal representative, trustee, and guardian deeds should beare bargain and sale deeds. General warranty deeds are addressed at C.R.S. §38-30-113(2), and special warranty deeds and bargain and sale deeds are addressed at C.R.S. §38-30-115. When transferring real property to a granteean heir, devisee or trust beneficiary, title insurance mightean be recommended to the grantee beneficiary regardless of the type of deed being utilized to make the transfer. With respect to the transfer of any real property, particularly if there are circumstances that can be problematic , including prior deeds drafted by a party without professional assistance, it is a good practice to also advise the grantee as to the need for transfer of casualty and liability insurance protection.

A Real Property Transfer Declaration (TD-1000) can be completed and submitted at the time of sale of real property so that the appropriate allocation between use tax and documentary fee can be made and collected.

Practitioners may want to review “Which Deed Should I Use?”, 48 Colo. Law. 34 (Jan. 2019).