



Read Your Deed

Real estate closings involve many documents of varying degrees of importance. However, the most fundamental document in any real estate closing, the deed, is often not signed by the buyers, and thus often overlooked.

If the deed reflects the buyer's marital status, it is essential that it be correct. There have been cases in which the deed stated that two buyers were married to each other, but in actuality, they were not. This error can create tremendous implications in states that recognize common law marriage, because a couple that lives together and hold themselves out to the public as married may be considered to be legally married. Acceptance of a deed stating that they are married may be construed as holding themselves out to be married.

In community property states, property acquired during the marriage is generally presumed to be community property. If a grantee claims that the property was his or her sole and separate property, the burden of proof is on the grantee. One way of overcoming this community property presumption is a recital in the deed that the property is the grantee's sole and separate property. Title companies have received claims against title as a result of the failure of the vesting deed to include the appropriate sole and separate property language. For example, a spouse could claim interest or even children of a deceased spouse could assert a claim in the property.

If buyers intend to take title as joint tenants with right of survivorship, use of the proper language is essential. Language that may be sufficient to create a joint tenancy in one state may be inadequate in another state. Using inadequate language can cause title to pass to the heirs of the deceased rather than the intended surviving joint tenant.

In a bygone era, the deed was hand crafted by an attorney representing the buyer or seller, and reviewed and approved by both parties. Today, the deed is more often prepared by escrow or the title company by inserting the appropriate data into the necessary fields without requiring direct consultation with the grantees. This sometimes results in unintended consequences as a result of all parties not reviewing and approving.

Please contact your Progressive Title Sales Representative with any questions.

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