

CHAPTER 18

PROPERTY

HOUSE BILL 19-1098

BY REPRESENTATIVE(S) Gray, Arndt, Bird, Buentello, Duran, Exum, Galindo, McKean, Snyder, Valdez D., Van Winkle;
also SENATOR(S) Lee, Crowder, Gardner, Marble, Priola.

AN ACT

CONCERNING DEEDS FOR THE CONVEYANCE OF REAL PROPERTY, AND, IN CONNECTION THEREWITH, ESTABLISHING REQUIREMENTS FOR TITLE INSURANCE ENTITIES THAT PREPARE DEEDS AND ESTABLISHING FORMS FOR THE PREPARATION OF DEEDS IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 38-30-113 as follows:

38-30-113. Deeds - short form - acknowledgment - effect. (1) (a) A deed for the conveyance of real property ~~may be~~ **IN** substantially ~~in~~ the following form **AND** THAT INCLUDES THE WORDS "AND WARRANT(S) THE TITLE TO THE SAME", OR SUBSTANTIALLY SIMILAR LANGUAGE, IS A WARRANTY DEED WITH COVENANTS OF WARRANTY:

....., whose street address is, City or Town of, County of and State of, for the consideration of dollars, in hand paid, hereby sell(s) and convey(s) to whose street address is, City or Town of, County of and State of, the following real property in the County of and State of Colorado, to wit: with all its appurtenances and warrant(s) the title to the same, subject to

Signed this day of, 20.....

.....

~~(b) Such deed may be acknowledged in accordance with section 38-35-101. Failure to state the address or the county or state of residence of the grantor or~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

~~grantee shall not affect the validity of such deed.~~ A DEED FOR THE CONVEYANCE OF REAL PROPERTY IN SUBSTANTIALLY THE FOLLOWING FORM AND THAT INCLUDES THE WORDS "AND WARRANT(S) THE TITLE TO THE SAME AGAINST ALL PERSONS CLAIMING UNDER ME", OR SUBSTANTIALLY SIMILAR LANGUAGE, IS A SPECIAL WARRANTY DEED WITH COVENANTS OF WARRANTY AS TO THE GRANTOR'S PERIOD OF OWNERSHIP OF THE PROPERTY:

....., WHOSE STREET ADDRESS IS, CITY OR TOWN OF, COUNTY OF AND STATE OF, FOR THE CONSIDERATION OF DOLLARS, IN HAND PAID, HEREBY SELL(S) AND CONVEY(S) TO WHOSE STREET ADDRESS IS, CITY OR TOWN OF, COUNTY OF AND STATE OF, THE FOLLOWING REAL PROPERTY IN THE COUNTY OF AND STATE OF COLORADO, TO WIT: WITH ALL ITS APPURTENANCES AND WARRANT(S) THE TITLE TO THE SAME AGAINST ALL PERSONS CLAIMING UNDER ME, SUBJECT TO

SIGNED THIS DAY OF, 20.....

.....

(c) ~~Every deed in substance in the above form, when properly executed, shall be a conveyance in fee simple to the grantee, with covenants on the part of the grantor as set forth in subsection (2) of this section.~~ A DEED FOR THE CONVEYANCE OF REAL PROPERTY IN SUBSTANTIALLY THE FOLLOWING FORM THAT DOES NOT INCLUDE WORDS OF WARRANTY HAS THE SAME FORCE AND EFFECT AS A BARGAIN AND SALE DEED AT COMMON LAW, BUT WITHOUT COVENANTS OF WARRANTY, AND PASSES THE AFTER-ACQUIRED TITLE OF THE GRANTOR:

....., WHOSE STREET ADDRESS IS, CITY OR TOWN OF, COUNTY OF AND STATE OF, FOR THE CONSIDERATION OF DOLLARS, IN HAND PAID, HEREBY SELL(S) AND CONVEY(S) TO WHOSE STREET ADDRESS IS, CITY OR TOWN OF, COUNTY OF AND STATE OF, THE FOLLOWING REAL PROPERTY IN THE COUNTY OF AND STATE OF COLORADO, TO WIT: WITH ALL ITS APPURTENANCES

SIGNED THIS DAY OF, 20.....

.....

~~(d) Repealed.~~

(d) A DEED FOR THE CONVEYANCE OF REAL PROPERTY IN SUBSTANTIALLY THE FOLLOWING FORM THAT DOES NOT INCLUDE WORDS OF WARRANTY AND WITH THE WORD "QUITCLAIM(S)" SUBSTITUTED FOR "CONVEY(S)" IS A QUITCLAIM DEED WITHOUT COVENANTS OF WARRANTY THAT PASSES NO AFTER-ACQUIRED TITLE OF THE GRANTOR:

....., WHOSE STREET ADDRESS IS, CITY OR TOWN OF

....., COUNTY OF AND STATE OF, FOR THE CONSIDERATION OF DOLLARS, IN HAND PAID, HEREBY SELL(S) AND QUITCLAIM(S) TO WHOSE STREET ADDRESS IS, CITY OR TOWN OF, COUNTY OF AND STATE OF, THE FOLLOWING REAL PROPERTY IN THE COUNTY OF AND STATE OF COLORADO, TO WIT: WITH ALL ITS APPURTENANCES

SIGNED THIS DAY OF, 20.....

~~(2) The words "warrant(s) the title" in a warranty deed as described in subsection (1)(a) of this section or in a mortgage as described in section 38-30-117 mean that the grantor covenants:~~ ANY DEED DESCRIBED IN SUBSECTION (1) OF THIS SECTION MAY BE ACKNOWLEDGED IN ACCORDANCE WITH SECTION 38-35-101 OR 24-21-515. FAILURE TO STATE THE ADDRESS OR THE COUNTY OR STATE OF RESIDENCE OF THE GRANTOR OR GRANTEE DOES NOT AFFECT THE VALIDITY OF THE DEED.

~~(a) That at the time of the making of such instrument he was lawfully seized of an indefeasible estate in fee simple in and to the property therein described and has good right and full power to convey the same;~~

~~(b) That the same was free and clear from all encumbrances, except as stated in the instrument; and~~

~~(c) That he warrants to the grantee and his heirs and assigns the quiet and peaceable possession of such property and will defend the title thereto against all persons who may lawfully claim the same.~~

(3) Such covenants shall be binding upon any grantor and his heirs and personal representatives as fully as if written at length in said instrument EVERY DEED IN SUBSTANCE, IN A FORM DESCRIBED IN SUBSECTION (1) OF THIS SECTION OR IN ANY OTHER FORM PERMITTED BY COLORADO LAW, REGARDLESS OF WHETHER THE DEED RECITES VALUABLE CONSIDERATION OR WHETHER VALUABLE CONSIDERATION HAS BEEN GIVEN FOR THE DEED, WHEN PROPERLY EXECUTED, IS A CONVEYANCE TO THE GRANTEE, WITH COVENANTS ON THE PART OF THE GRANTOR, IF ANY, AS SET FORTH IN SUBSECTION (4) OF THIS SECTION. SUBJECT TO ANY RESERVATIONS SPECIFICALLY SET FORTH IN A DEED, THE FORM OF DEED USED BY THE GRANTOR DOES NOT AFFECT THE ABSOLUTE NATURE OF THE FEE SIMPLE CONVEYANCE OF THE PROPERTY BEING CONVEYED AND IS NOT DEEMED TO CONVEY ANY LESSER ESTATE OR INTEREST SIMPLY BY VIRTUE OF THE FORM OF DEED USED OR WHETHER THE GRANTOR PROVIDED ANY WARRANTIES OF TITLE IN THE DEED.

(4)(a) THE WORDS "WARRANT(S) THE TITLE" IN A WARRANTY DEED AS DESCRIBED IN SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION OR IN A MORTGAGE AS DESCRIBED IN SECTION 38-30-117 MEAN THAT THE GRANTOR COVENANTS:

(I) THAT, AT THE TIME OF THE MAKING OF THE WARRANTY DEED, THE GRANTOR WAS LAWFULLY SEIZED OF AN INDEFEASIBLE ESTATE IN FEE SIMPLE IN AND TO THE PROPERTY DESCRIBED IN THE DEED AND HAS GOOD RIGHT AND FULL POWER TO

CONVEY THE PROPERTY;

(II) THAT THE PROPERTY DESCRIBED IN THE DEED WAS FREE AND CLEAR FROM ALL ENCUMBRANCES, EXCEPT AS STATED IN THE WARRANTY DEED; AND

(III) THAT THE GRANTOR WARRANTS TO THE GRANTEE AND THE GRANTEE'S HEIRS AND ASSIGNS THE QUIET AND PEACEABLE POSSESSION OF THE PROPERTY AND THAT:

(A) WITH RESPECT TO A WARRANTY DEED OR MORTGAGE, THE GRANTOR WILL DEFEND THE TITLE TO THE PROPERTY AGAINST ALL PERSONS WHO MAY CLAIM THE TITLE; AND

(B) WITH RESPECT TO A SPECIAL WARRANTY DEED, THE GRANTOR WILL DEFEND THE TITLE TO THE PROPERTY AGAINST ALL PERSONS WHO MAY CLAIM THE TITLE BUT ONLY AS AGAINST ANY PERSONS CLAIMING TO HOLD TITLE BY, OR THROUGH, THE GRANTOR.

(b) A COVENANT DESCRIBED IN SUBSECTION (4)(a) OF THIS SECTION IS BINDING UPON THE GRANTOR AND THE GRANTOR'S HEIRS AND PERSONAL REPRESENTATIVES AS FULLY AS IF IT WERE WRITTEN AT LENGTH IN THE WARRANTY DEED.

(5) (a) A WARRANTY DEED OR SPECIAL WARRANTY DEED INTENDED TO INCLUDE A LIMITATION ON THE WARRANTY OF TITLE PURSUANT TO SUBSECTION (4)(a) OF THIS SECTION MAY USE THE WORDS "SUBJECT TO STATUTORY EXCEPTIONS" OR INCLUDE A DIFFERENT LISTING OR DESCRIPTION OF EXCEPTIONS AS THE GRANTOR AND GRANTEE MAY AGREE. THE WORDS "STATUTORY EXCEPTIONS", WHEN USED IN ANY DEED, MEAN THAT THE GRANTEE ACCEPTS TITLE TO THE CONVEYED PROPERTY SUBJECT TO:

(I) REAL ESTATE TAXES FOR THE CALENDAR YEAR IN WHICH THE CONVEYANCE OCCURRED AND SUBSEQUENT YEARS THAT ARE NOT YET DUE AND PAYABLE;

(II) ALL MATTERS THAT ARE DISCLOSED OR THAT WOULD HAVE BEEN DISCLOSED BY AN IMPROVEMENT SURVEY PLAT, AS DEFINED IN SECTION 38-51-102 (9), OF THE CONVEYED PROPERTY OR COULD HAVE BEEN ASCERTAINED BY AN INSPECTION OF THE CONVEYED PROPERTY AND WHICH MATTERS WERE NOT CREATED OR OTHERWISE KNOWN BY THE GRANTOR; AND

(III) ALL MATTERS RECORDED IN THE REAL ESTATE RECORDS OF THE COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE CONVEYED PROPERTY IS LOCATED.

(b) IF A WARRANTY DEED OR SPECIAL WARRANTY DEED INCLUDES A BLANK AFTER A REFERENCE TO "STATUTORY EXCEPTIONS" BUT NO ADDITIONAL MATTERS ARE SPECIFICALLY LISTED IN THE BLANK, THE BLANK IS DEEMED TO BE DELETED FROM THE WARRANTY DEED OR SPECIAL WARRANTY DEED, AND THE TITLE CONVEYED IS SUBJECT ONLY TO THE STATUTORY EXCEPTIONS.

SECTION 2. In Colorado Revised Statutes, add 38-30-116.5 as follows:

38-30-116.5. Preparation of deeds - definition. (1) IN CONNECTION WITH THE

ISSUANCE OF A POLICY OF TITLE INSURANCE, BUT SUBJECT TO THE TERMS OF THIS STATUTE, A LICENSED TITLE INSURANCE ENTITY MAY PREPARE DEEDS FOR THE CONVEYANCE OF REAL PROPERTY IN ACCORDANCE WITH THE FORMS DESCRIBED IN SECTION 38-30-113 (1).

(2) A DEED PREPARED BY A LICENSED TITLE INSURANCE ENTITY CONTAINING A COVENANT OF WARRANTY AS PROVIDED IN SECTION 38-30-113 (1)(a) OR (1)(b) MUST:

(a) INCLUDE A LIMITATION ON THE WARRANTY OF TITLE PURSUANT TO SECTION 38-30-113 (4)(a); AND

(b) USE THE WORDS "SUBJECT TO STATUTORY EXCEPTIONS" AND NO OTHER TERMS OR DESCRIPTIONS, UNLESS THE PREPARING LICENSED TITLE INSURANCE ENTITY IS OTHERWISE INSTRUCTED IN WRITING BY BOTH:

(I) THE GRANTOR OR AN AUTHORIZED AGENT FOR THE GRANTOR; AND

(II) THE GRANTEE OR AN AUTHORIZED AGENT FOR THE GRANTEE.

(3) WHEN PREPARING A DEED PURSUANT TO THIS SECTION IN WHICH THE PHRASE "SUBJECT TO STATUTORY EXCEPTIONS" IS USED, A LICENSED TITLE INSURANCE ENTITY SHALL NOT DISCLAIM, LIMIT, OR SEEK INDEMNIFICATION AGAINST LIABILITY FOR ANY NEGLIGENCE BY THE LICENSED TITLE INSURANCE ENTITY.

(4) AS USED IN THIS SECTION, "LICENSED TITLE INSURANCE ENTITY" MEANS A TITLE INSURANCE ENTITY, AS DEFINED IN SECTION 10-11-102 (11).

SECTION 3. In Colorado Revised Statutes, 38-30-117, **amend** (3) as follows:

38-30-117. Mortgages - short form - acknowledgment - effect. (3) Every mortgage in substance in the above form, when properly executed, ~~shall be~~ is a mortgage to secure the payment of the money ~~therein~~ specified IN THE MORTGAGE, with covenants as expressed in ~~section 38-30-113 (2)~~ SECTION 38-30-113 (4)(a), but if the words "and warrant(s) the title to the same" are omitted, no such covenants ~~shall be~~ ARE implied.

SECTION 4. In Colorado Revised Statutes, **repeal** 38-30-115 as follows:

38-30-115. Deeds - bargain and sale - special warranty. ~~A deed executed according to the form in section 38-30-113 with the words "and warrant the title to the same" omitted therefrom shall have the same force and effect as a bargain and sale deed, without covenants of warranty, at common law and will pass the after-acquired title of the grantor; and the words "and warrant the title against all persons claiming under me" when included in such deed shall be a covenant that the grantor will warrant and defend the title to the grantee and his heirs and assigns against all persons claiming to hold title by, through, or under the grantor.~~

SECTION 5. In Colorado Revised Statutes, **repeal** 38-30-116 as follows:

38-30-116. Deeds - quitclaim. ~~A deed executed according to the form in section~~

~~38-30-113 with the word "quitclaim" substituted for "convey" and the words "and warrant the title to the same" omitted therefrom shall be a deed of quitclaim and shall have the same effect as a conveyance as quitclaim deeds now in use.~~

SECTION 6. Applicability. This act applies to deeds for the conveyance of real property that are executed on or after the effective date of this act.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 7, 2019