



SELLER BEWARE: WARRANTIES IN THE SALE OF REAL ESTATE

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Whether a consumer is purchasing a vehicle from a used car lot or any product online, it is prudent to keep in mind the old axiom “buyer beware.” But in the everyday sale of real estate, it is just as prudent to be guided by the maxim “seller beware.” Most real estate transactions are accomplished by means of a general warranty deed. Even if not spelled out in the deed, the general warranty includes a promise by the seller that there are no outstanding liens, or charges of any kind, against the property (unless specifically spelled out in the deed). And the seller promises to pay all costs, including the purchaser’s attorney fees, incurred by the purchaser to eliminate the liens or charges. As a result of this general warranty in the typical real estate transaction, the seller can benefit from a title examination which will disclose all outstanding liens and charges against the property. The seller can then factor these items, if any, into the selling price or negotiate removal of the liens and charges.

When the general warranty in the sale of real estate has to be litigated in the courts, the outcome may be surprising. If there have been multiple sales of the property over the years, a remote seller may be liable to the current owner for a lien or charge that has not been removed for many years. The usual statute of limitations is fifteen years. However, there is a limit on the remote seller’s liability. His or her liability cannot exceed the amount received for the property. This rule of damages does not consider any increased value of the land at the time of removal of the lien. Thus, if the

remote seller had received \$100,000 for the property, but the lien is \$150,000, the liability is limited to \$100,000. Nor does interest run on the purchaser's damages until he or she pays to remove the lien or charge.

Another somewhat surprising outcome is that, even if the purchaser of the property knew of the outstanding lien or charge, the seller is still liable for the cost of removing it. As the court opinions state, the general warranty "is a security afforded to all subsequent grantees." There is strict liability for any breach of the warranty, regardless of the purchaser's knowledge of the lien or charge.

One final unresolved issue is whether the purchaser's recovery is limited by the amount he or she paid for the property or the amount received by the last in line seller who transferred the property by means of a general warranty deed despite an outstanding lien or charge. A title examination is preferable to finding out the answer to this unresolved issue by litigation through the courts.