October 24, 1946

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ARIZONA ATTORNEY GENERAL

Mr. M. C. Burk,
Deputy State Land Commissioner,
Capitol Building Annex,
Phoenix, Arizona.

Re: Warranty Deed containing special warranty

Dear Mr. Burk:

We have your letter of October 4, 1946, requesting an opinion on the validity of a warranty deed form submitted to you in the course of the examinations which your department makes of proposed subdivisions under Chapter 67, Article 17, of the Arizona Code.

You stated that in the body of the deed, which is entitled "Warranty Deed", there is the language "And the Grantor binds itself, its successors and assigns to warrant and defend all and singular the said property unto the said Grantee-heirs and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under it but not otherwise".

The question which you pose is whether or not this limitation in a deed entitled "Warranty Deed" is misrepresentation for which you should take action under Section 67-1733, A.C.A.1939.

A warranty deed is a contract for the sale of real estate which can have a number of legal effects. The warranty or guaranty made by the grantor may be a "general" warranty or a "special" warranty. Reeves, in his work Real Property, Vol. 2, p. 1520, in speaking of covenants which one finds in warranty deeds, has this to say:

> "All those covenants for title, though they are quite numerous and varied in language and import, are divided, nevertheless, into two classes- general and special covenants".

The term "general covenant of warranty" as commonly used, means that the grantor will warrant and defend the title against all claims of all persons. Knight v. Clinkscales, 51 Okla. 508, 152 P. 133. This is, in effect, a covenant of quiet enjoyment,- Keal v. Ikard, 222 Ala. 617, 133 So. 906, and a guarantee that the title is free from incumbrances.- Rives v. James, 3 S.W. (2) 932 (Tex.).

46-130b

On the other hand, a "covenant of special warranty" makes it the grantor's duty to defend the title against claims which he may have created at any prior time. Kenne v. Schoentag, 163 Atl. 833 (Ill.). It limits the grantor's warranty to "claims of all persons whomsoever, by, and through and under him", that is, the grantor. It is apparent, therefore, that there is a vast difference between the general warranty and the special warranty.

It is also apparent that the quotation from the sample deeds submitted to you by subdividers is of the special warranty class. Since, as noted in the quotation from Reeves, either kind of warranty may appear in a warranty deed, it is clear that no misrepresentation or fraud could result from a deed worded in this manner. From the facts you mention the special warranty appears on the face of the deed, and a prospective buyer could in no way be deceived by its appearance under the title "Warranty Deed", for, as mentioned above, this is one of the well-known forms of warranty deed.

Hoping this satisfies your inquiry, we remain,

Very truly yours,

JOHN L. SULLIVAN
Attorney General

WILLIAM P. MAHONEY, Jr.,
Assistant Attorney General

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