

Legal Effects of Various Deeds in Michigan

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There are three types of deeds commonly used in Michigan:

1. **Warranty Deeds** - guarantee to the buyer that there are no exceptions to the title and that the buyer is receiving full interest in the property.
2. **Quitclaim Deeds** - only convey to the purchaser the interests in the property held by the seller and do not purport to transfer title free and clear of any exceptions or encumbrances.
3. **Covenant Deeds or Deed “C”** - only guarantee the title is clear, subject to some limitation.

Reference is often made to other types of deeds, but the reference is more properly made to covenants within the deed.

Warranty Deeds:

Statutory provisions:

Warranty deeds are the most common type of deed in use today.

For a deed to be considered a warranty deed it must use the term “warrant” in the body of the conveyance.

Covenants

MCL 565.151: must covenant the following things:

- (1) that the grantor is lawfully seized of the premises
- (2) the grantor has good right to convey the premises
- (3) the grantor guarantees quiet possession of the premises
- (4) that the same are free from all encumbrances
- (5) that the grantor will warrant and defend the title against all lawful claims

Covenants of Seisin and Right to Convey

Covenants of Seisin are personal covenants that run with the land and covenant for the ownership of the land in fee simple. These covenants only tend to be broken at the time of conveyance, because once the property is conveyed the grantor has little ability to effect the grantee’s ownership in fee simple.

Covenants of the right to convey are generally used when property is transferred under power of attorney or other representative capacity. The right to convey covenant normally takes the form of a statement by the seller that they have the power and right to dispose of the property. This power is consistent with the rights exercised under fiduciary-type deeds.

Covenant Against Encumbrances

Covenants against encumbrances warrant that no claims constituting a burden on the title exist. Encumbrances are anything that places a burden on the title, including: a right of way, conditions that may result in forfeiture of the interest, rights to remove timber, dower interests, mortgages, leases, tax special assessments, easements, and any other right decreasing the value of the property.

Covenants against encumbrances should not be confused with covenants to defend, as no requirement to defend should be read into the covenant against encumbrances. *However*, if the grantor does not defend he may be liable for damages suffered by the grantee.

Like covenants of seisin, covenants against encumbrances are personal covenants that do not run with the land and as such do not pass to assignees of the grantee

Damages for breach of the covenant against encumbrances varies depending on the type of encumbrance. If the encumbrance is permanent the measure of damages is the differences between the actual fair market value of the property with the encumbrance and what the value of the property would have been on the date of the conveyance, had no encumbrance existed. If the encumbrance is rectified damages are the injuries sustained during the period that the encumbrance existed along with the cost of removing the encumbrance. Further, unless actual damages are shown, the grantee is limited to nominal damages.

Covenant for Quiet Enjoyment

This covenant is seldom seen in the context of deeds today, rather it is more commonly seen in leases. The covenant for quiet enjoyment provides that the grantee will not be evicted or have his possession disturbed by any person having a better title or claim to the property.

Covenant of Warranty

A covenant of warranty is an agreement by the warrantor that he will warrant and defend the title against all lawful claims.

The covenant of warranty does run with the land and is not severable, however some authority supports the proposition that the covenant of warranty should be construed no more broadly as a covenant for quiet enjoyment.

Damages for breach of the covenant of warranty vary depending on the factual situation of the breach of the covenant. For example, if the grantee has to remove the persons in possession of the property, the only recoverable damages are the costs for the removal of the possessing parties. However, if the grantee later determines that the grantor did not have good title to convey to the grantee, the grantee is entitled to recover his consideration and interest, even if the grantee's possession has not been disturbed. Similarly, costs incurred defending title are recoverable, up to and

including attorney fees. The statute of limitations on claims of a breach of the covenant of warranty is ten years.

Quitclaim Deeds:

A quitclaim deed conveys nothing more than the grantor's interest in the described property, no other conveyance or covenant is included.

Quitclaim deeds are described by statute as well, "[a] deed of quit claim and release, of the form in common use, shall be sufficient to pass all the estate which the grantor could lawfully convey by a deed of bargain and sale." MCL 565.3.

Quitclaim deed is the best sort of deed when you do not want to go to the trouble of a title search and/or wish to protect yourself from potential liabilities for liens on the property.

A grantee who is given a quitclaim deed for a piece of property already conveyed by the grantor has a piece of paper that, quite literally, is not worth the paper it is printed on. On the other hand a warranty deed to property that has been conveyed by quitclaim already transfers nothing at all, but a claim for a breach of the warranties would lie in this case.

Covenant Deeds (Deed "C") / Limited Warranty Deeds

In 1931, Michigan enacted a statute making limited warranty deeds, or at least the forms for such, illegal:

Use of words "warranty deed" or similar words - Any person who shall print, sell or keep for sale any blank forms of deeds containing the words "warranty deed" or "warranty-deed-covenant-own-acts," or any similar words printed or written thereon, unless such deed is in fact an absolute warranty deed, and any person who shall knowingly use any such deed for the purpose of conveying title unless the same is an absolute warranty shall be guilty of a misdemeanor. MCL 750.275.

While limited warranty deeds are considered illegal in Michigan, practitioners often get around this issue through the use of a "Deed C" or covenant deed. A Deed C is a deed that includes covenants pertaining to the grantor, in essence expanding upon a quitclaim deed's burdens on the grantor, without going as far as a warranty deed. Potentially a Deed C can contain all of the covenants mentioned above, creating something that could be called a "full" Deed C. Alternatively, it could contain none of the above creating a "quitclaim" deed c. This type of deed is a very versatile, and because of its versatility a Deed C can be very dangerous.

Fiduciary Deeds

A fiduciary deed is most likely to be found when trustees or personal representatives are conveying property. These deeds, or more correctly the covenant within the deeds, do not bind the fiduciary personally, rather they bind the trust or estate.

An effective example would be to think of the individual signing the deed as an agent of the estate or trust, which they are, thereby binding only the estate or trust. However, as a practical matter a fiduciary should avoid giving warranties whenever possible to protect the resources entrusted to him or her.

Different Forms of Taking Title

Joint Tenancy

In Michigan, there is a presumption against the creation of joint tenancies in favor of tenancies in common. The words “as joint tenants” or “as joint tenants and not tenants in common” are probably necessary for a deed be considered a deed of joint tenancy.

The term “jointly” has not been considered adequate to overcome the presumption that co-tenants hold property in common.

The right of survivorship is included in the joint tenancy and as such when a joint tenant dies the title vests in all of the other joint tenants. Joint tenants each hold an equal undivided share in the property and stand in fiduciary relationship to one another. Further, a joint tenancy will be disjoined if one of the parties conveys his interest to a third party, resulting tenants in common.

Joint Tenants With Full Rights of Survivorship

Joint tenancy with full right of survivorship is essentially the same as a joint tenancy, except that the right of survivorship may not be severed by a conveyance. In other words, a joint tenancy with full right of survivorship may also be thought of as a “joint life estate with dual contingent remainders.”

This means that a conveyance by one or more of the joint tenants with full right of survivorship to a third party will give the third party and the remaining joint tenants life estates and the right to use the property; however, on the death of all but one of the original joint tenants, the title to the property vests in the surviving joint tenant or his grantee.

Tenants in Common

Presumed form of concurrent ownership in Michigan.

There is no right of survivorship in a tenancy in common, rather the interests of a tenant in common passes to his/her heirs upon death. The right that passes is considered to be an undivided share, which is usually quantified in the form of a percentage. These shares are presumed to be equal and if a grantor wishes them to not be equal express statements to that effect must be made.

Tenants in common each have a right to possession of the whole. However, if the tenant does so he may be liable to the other tenants in common for damages. If a tenant in common redeems property from a mortgage foreclosure sale, the tenant is entitled to recover a pro rata share of the amount of the redemption price.

Tenants by Entireties

Tenants by the entireties have no separable interest from the other tenant.

A tenancy by the entireties is presumptively created when a husband and wife take title to real estate as co-owners. This tenancy can only exist when the parties to it are husband and wife and cannot retroactively be created by a subsequent marriage.

If the parties are not married even the words “tenants by the entireties” will only create a tenancy in common.

Ladybird Deeds or Enhanced Life Estate Deeds

A ladybird, enhanced life estate deed, or a transfer on death deed is a modified quitclaim or warranty deed that grants a life estate to the grantor and the remainder to a named person or persons.

The life estate that is created does not operate as a traditional life estate does. However, because the holder of the life estate can sell or otherwise encumber the property without the consent of the remaindermen. This allows for much greater flexibility on the part of the holder of the life estate.

The ladybird deed should be considered more of an estate planning device than a deed per se. While it has all of the regular aspects of deeds the true use of the ladybird deed is to avoid the probate of the property which it describes.