DIY DEEDS
(DONE DIRT CHEAP)

By D. Chalgian© 2022

Back in the day, when I started practicing law, clients would often come in with the notion that they needed a "quitclaim" deed (or "quick claim" deed as some would call it). I never understood why that term seemed so magical to people, but it did. And so, I would spend time in client meetings figuring out if they needed a deed at all, and then explaining what the difference was between a quitclaim deed and other common types of deeds.

Today, clients come in similarly excited about needing a "ladybird" deed. As it was with the quitclaim deed in years past, so it is with the ladybird deed these days. People just seem to like the name or the notion of it.

DIY Deeds

These and other experiences have taught me that many people think they know something about real estate. What I have also learned is that, in most cases, what they know is usually just enough to be dangerous.

In my years of practice, I have seen many cases (too many to count) in which legal fees have been incurred cleaning up real estate problems that came about because someone decided that they didn't need a lawyer to prepare a deed.

Basics

Deeds are documents that are signed by a "grantor" (the person who owns the real estate to begin with) which conveys some interest (or all) of a specific parcel of real estate to someone else. That someone else, the recipient of the deed, is called a "grantee".

Deeds come in a variety of types and convey a variety of interests. Keeping it as simple as possible (without getting into such things as division rights, mineral rights, legal descriptions, taxes, execution requirements, etc.), I will attempt explain the basics of deeds by offering a superficial discussion of three aspects of deeds. Those aspects are: warranties, joint tenancies and life estates.

Warranties

The warranty part of the deed has to do with the question: What does the grantor promise about what the grantor actually owns?

When the grantor gives a "Warranty Deed" the grantor promises that s/he in fact owns the property legally described

in the deed, and that s/he has the legal right to convey the property to the grantor.

A "Trustee Deed" or "Personal Representative's Deed" is used by someone who has become the trustee of a trust that owns real estate, or who has been appointed personal representative of a probate estate that holds real estate. When real estate is conveyed pursuant to a "Trustee Deed" or "Personal Representative's Deed" the grantor represents that the property is owned by them in their fiduciary capacity, and that during the period of time that the property has been under their control they have done nothing to alter the status of the ownership of the property. But, as to matters predating their becoming Trustee or Personal Representative, they make no promises.

With a "Quitclaim Deed," the grantor makes no promise that s/he even owns the property. Rather, the grantor merely promises that if, and to the extent, they have any interest in this property, they convey any such interest to the grantee.

Joint Tenancies

"Tenancy" refers to the nature of the ownership interest that the grantee receives.

A person can own property individually, or they can own it with others. Many mistakes come up in the context of joint ownerships.

The nature of a joint ownerships may be expressed in the deed, or if unstated, may be imposed by law.

When more than one grantee is named, they may own the property as traditional joint tenants. These joint tenants are not prohibited from conveying their interests to others, and when they do, they break the joint tenancy and create a "tenants in common" interest. Whereas in a traditional joint tenancy the co-owners each have an "undivided interest," joint tenants owning as tenants in common each own a separate percentage interest in the property. What's more, in a traditional joint tenancy, if one joint tenant dies, his or her interest in the property passes to the other surviving joint owner(s). Whereas, a tenants in common interest does not pass to surviving joint owners but instead becomes part of the deceased owner's estate.

There are significant exceptions to the explanation of traditional joint tenancy and tenants in common interests stated above. One exception is if there are two grantees and they are married to each other. In that case, we say they own the property as "tenants by entireties" and neither of them can convey the property without the cooperation of the other. Likewise, if the deed conveys the property to more than one grantee and expressly says that the grantees take as "joint tenants with full rights of survivorship," the ability of those joint owners to convey the property to others is severely restricted.

Life Estates

In a traditional life estate deed, there is a person who owns the property for their life (the "life tenant"), followed by a person (or persons) who take ownership upon the death of the life tenant. The person(s) receiving the property at the life tenant's death is called the "remaindermen." Once a traditional life estate deed is in place, the life tenant cannot convey the property without the cooperation of the remaindermen, except that they can convey their life estate interest which would terminate when they die.

A ladybird deed is a life estate deed with a twist. The twist is that the life tenant reserves the right to change who the remaindermen is, and to sell (or give away) the property without the cooperation of the remaindermen. Essentially, a ladybird deed functions like a revocable beneficiary designation on real estate.

Conclusion

Over the years I have seen DIY deeds displaying mistakes made with respect to each of these three categories, and not uncommonly, more than one. Real property tenancies and warranties are confusing, which is why "Real Property Law" is commonly the first class in law school. And yet, for some unknown reason, nonlawyers frequently elect to give deed drafting a try.

Finally, I hope you found this article illuminating. And yet, even if you read and understood every word, I would still strongly encourage you to have an attorney assist you anytime you are involved in a real estate transaction.

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