

Grant Deeds and Quitclaim Deeds: Their Use and Abuse

by Dale S. Alberstone, Esq.

I venture to say that at least 90% of all real property conveyed in California is transferred by the use of a grant deed. Probably 9% is conveyed by a quitclaim deed and the remaining 1% by court order or some other infrequently used document.

The instrument of preference, particularly of escrow and title companies, is the grant deed. This month's column will focus on proper use and potential pitfalls of grant deeds and quitclaim deeds.

GRANT DEEDS

Customarily, a grant deed is a one-page document which contains the name of the grantor, the name of the grantee and the legal description of the property. The distinguishing feature in the legalese of the grant deed is the use of the word "grant". If the word "grant" is not included in the instrument, then it is not a grant deed.

There are generally three methods by which a grantor can protect himself when using a grant deed.

Typically, a grant deed will contain language similar to the following: "John Smith hereby GRANTS to Mary Singer the following described real property in the City of Los Angeles, County of Los Angeles, State of California: Lot 10 in block 1 of Tract No....."

Only the grantor's signature must be notarized for the document to be recorded. However, the conveyance is valid even without recordation upon the delivery of the deed from the grantor to the grantee. Recordation is not a condition to validity, although it is a condition to a title company's issuance of a policy of title insurance in the grantee's name.

A grant deed contains two implied warranties: (1) The grantor did not previously convey the property, or any interest therein, to anyone else and (2) at the time of the conveyance, the property is not burdened by any encumbrances "done, made or suffered by the grantor". (See *Civil Code* Section 1113.)

The first warranty is obvious in some respects, and deceptive in others. The obvious part is that the grantor did not convey the property to someone else prior to the present conveyance. If he did, or he does not possess title at the time of the present conveyance, then the doctrine of "After Acquired Title" will apply. That doctrine says that if the grantor later acquires title to property which he previously purported to grant to the grantee, then title automatically then passes to the grantee when the grantor receives title. (*Civil Code* Section 1106.)

What is not so obvious is the fact that the warranty provides that the grantor did not convey an interest, other than title, in the property to someone else. A lease, for example, would be a conveyance of an interest and, therefore, might violate the warranty.

The second implied warranty (i.e. free from encumbrances) also needs explanation. If the grantor had previously conveyed an easement across the property, such as for ingress and egress to and from a neighbor's property, then that easement would constitute a breach of the implied warranty in the grant deed. Similarly, if the grantor allowed a lender to record a trust deed against the property during the grantor's ownership, then the grantor must remove the trust deed as of the time of the conveyance. Otherwise, the grantor will be in breach of the warranty implied in the grant deed.

As another example, if the grantor allowed a restriction in the use of his property to be recorded during the grantor's ownership, then that restriction would constitute an encumbrance against the property and violate the grant deed.

Even if the grantor has informed the grantee of the encumbrance which the grantor placed against the property, the grantee's knowledge does not negate the warranty in the grant deed. As explained in *Evans v. Faught* 231 C.A.2d 698, a grantee is entitled to rely on the implied covenant even if he had actual knowledge of the encumbrance if the encumbrance was a cloud on the title as opposed to a physical condition apparent from a view of the premises.

There are generally three methods by which a grantor can protect himself when using a grant deed. First, if the encumbrance is one which can be removed, the grantor should do so at or prior to the close of escrow. For example, if a first trust deed loan exists against the property, the grantor can pay (usually through escrow) the balance due on the loan, in exchange for the lender's reconveyance of the deed of trust concurrently with the close of escrow.

Second the grantor can include an express exception to the warranty by stating in the deed that the conveyance is "subject to all covenants, restrictions, conditions, easements, leases and other encumbrances of record."

Third, the grantor can specify in the grant deed the specific encumbrances to which the grant deed is subject.

What is important to remember is that a grant deed contains warranties concerning the title of the property, and specifically, the fact that a grantor has not encumbered the property, or allowed it to be encumbered, during his ownership unless that encumbrance is removed prior to the recordation of the deed.

QUITCLAIM DEEDS

The second most frequently used deed in California is a quitclaim deed. Unlike a grant deed, a quitclaim deed contains no warranty. The effect of a quitclaim deed is that it transfers to the grantee whatever interest, if any, the grantor has at the time.

If the grantor does not own the property at the time of the quitclaim deed, then the quitclaim does not transfer any interest. Unlike a grant deed, if the grantor later acquires title to the property, the doctrine of "After Acquired Title" will not apply. That means that the grantor will retain ownership of the property.

The most frequent use of a quitclaim deed is in connection with a financing arrangement whereby a lender makes a loan of money to one spouse who owns the property as his/her sole and separate property. The lender will require the non-owner spouse to execute a quitclaim deed as a condition to the lender making the loan to the spouse that owns the property. The reason for that requirement arises out of *Family Code* Section 1102. In general, that section provides that if the property is community property, both spouses are required to execute the mortgage or deed of trust. Since lenders are uneasy about representations that property is the separate property of one spouse, lenders typically require a quitclaim deed to be delivered by the non-owner spouse to the owner spouse in order to prevent the non-owner spouse from later contending that the property was, in fact, community property, rather than separate property.

What is important to remember about a quitclaim deed is that it transfers whatever interest, if any, the grantor has at the time of its execution, without any implied covenant concerning title or encumbrances.

CONCLUSION

A grantee who is purchasing property from a grantor should insist on receiving a grant deed rather than a quitclaim deed. In addition, the grantee should obtain (or receive from the grantor) a policy of title insurance in which a title company insures the condition of the title that the grantee is receiving, regardless of any warranty that the grantor may make in the deed.

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The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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