

and special warranty begin and ends with the current grantor. From an insuring standpoint, in theory, the general warranty is superior because, a party perusing the warranty is not compelled to stop at with his grantor. For insurers, this cuts two ways. If seeking recovery on a warranty, it theoretically beneficial. If defending a claim, any insurer in the chain may have liability. What comfort does the insurer have insuring on a quitclaim deed? The answer is â??not muchâ??. When will insurers insure under a quitclaim deed? Obviously, in the case where the insurer, under the policy, has â??curedâ?· a defect by obtaining a quitclaim deed, it may be compelled to cover the next transaction down the line. In cases of dissolution of marriage and the treatment of the typical tenancies, the Family Law Bar has for a number of years resorted to the use quitclaim deeds as between their clients which sometimes raise other questions, but are routinely insured. Likewise, in trusts and estates, quitclaim deeds are sometime used to transfer properties between spouses and to trusts without due consideration to the effects.

With the foregoing discussion, why can quitclaim deeds be so nettlesome? First and probably foremost, a quitclaim deed indicates trouble. The circumstances are always important, and should be understood by anyone who is going to hang his hat on a quitclaim. If the title isnâ??t clear of record and the grantor doesnâ??t know what he has, then who does know? If a property owner decides to transfer title to a property to a trust by quitclaim deed, what can be the negative effect? First, assuming he holds under a general warranty deed and title is insured, he may have created a problem with his title insurer who liked his general warranty deed and based coverage on it. Generally, title insurers continue coverage by addendum, but may not want to do so without the same quality of warranty. He has broken the chain of warranties, probably without a thought, and probably without any counsel.

In contrast to the foregoing example of the uses of a quitclaim deed, there are numerous examples where such deeds are actually used in fraudulent schemes of various types. There may be some pheromone exuded by the quitclaim deed that is irresistible to the nefarious. A question that sometimes arises in litigation is whether a purchaser who takes title under a quitclaim deed can be a *bona fide* purchaser. An example of a scenario where this question would arise could be in an action to set aside a fraudulent conveyance.^[4] Notice, actual or constructive, is the underpinning of the purchaserâ??s *bona fides*. Some argue that, by its very existence, a quitclaim deed is a red flag indicating a problem with title. That view is extreme, but in circumstances where other badges of fraud are present, it could be argued that the *BFP* was on inquiry with a duty to look behind the quitclaim deed. Generally, courts will look closely at all of the facts and circumstances of a transfer, where or not by a quitclaim deed, to determine whether a transfer is fraudulent and should be set aside.

I submit that a quitclaim deed in a chain of title, where the reason for its use is not apparent of record, can without more, constitute a cloud on title possibly putting a subsequent owner (or insurer) to the task of quieting title to the property. For cautionâ??s sake, a quitclaim deed should not be used casually, and if it is used as necessity or last resort, thought should be given to the effect on future transfers.

^[1] *Blackâ??s Law Dictionary*, Sixth Edition, West Group, 1990

^[2] Va. Code Â§ 55-75. Effect of certain words of release in a deed

^[3] See Va. Code Â§ 55-70, *et seq.*

^[4] See Va. Code Â§Â§ 55-80, *et seq.*

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Dick Craig, of Briglia Hundley, PC, practices with the firm's litigation group and has a strong background in real estate and title insurance law. He concentrates in the resolution of defects in the title to real property and title insurers, the rights of property owners and the security rights of mortgage lenders and holders. He represents borrowers and lenders with the sale, purchase and financing of real estate.

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