The Quitclaim

Description

How many times have you heard someone in the real estate, mortgage or settlement industry say â??Oh, just get a quitclaim deed, no problemâ?•? The speaker, nine times out of ten, knows naught of conveyances in general let alone quitclaims, but is simply repeating what has become the universal remedy to what often is a break in a chain of title but may be a settlement of real property interests in a marital estate or in a partition of or lawsuit disputing title to real property. Typically, any legal analysis or advice is scant or non-existent.

So, is quitclaim a means of conveying title? Quitclaim is defined in Blacks[1] â??as a verb, to release or relinquish a claim, to execute a quitclaim deed of quitclaim; and as a noun, a release or acquittanced given to one man by another in respect of any action of any action that he has or might have against him [and also] acquitting or giving up oneâ??s claim or title.â?• The release is usually accomplished by quitclaim deed defined in Blacks as â??a deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title.â?•

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In Virginia, quitclaim has been for eons of time recognized in the Virginia Code, currently as follows:

> *Whenever in any deed there shall be used the words: â??The said grantor (or the said â?¦â?¦â?¦.) releases to the said grantee (or the said â?¦â?¦â?¦.) all his claims upon the said lands,â?• such deed shall be construed as if it set forth that the grantor (or releasor) hath remised, released and forever quitted claim and by these presents doth remise, release and forever quitclaim unto the grantee (or releasee), his heirs and assigns, all right, title and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or released) or intended so to be, so that neither he nor his personal representative, his heirs or assigns, shall at any time thereafter, have, claim, challenge or demand the lands and premises, or any part thereof, in any manner whatever.**[2]**

So, looking for a nutshell version, a quitclaim deed properly executed and acknowledged, will have the effect of releasing or passing whatever title, claim (to title), or interest of which the grantor is possessed, or entitled to possess, to the grantee. It probably doesnâ??t hurt to follow the language of the statute in drafting. It matters not whether the grantor is or is not in possession of the premises. The states are not uniform in their treatment of quitclaim deeds. Virginia follows the common law in that a quitclaim deed carries no warranty whatsoever.

Without spending too much time, letâ??s look at the lack of warranty. By contrast, those of us who work with title to real property, particularly when insuring, providing coverage or seeking recovery, much prefer warranty deeds. By convention in Virginia, title is conveyed with general warranty. By statute general warranty and English Covenants (of title) are one and the same.[3] Because most ownership of commercial real estate is in one business entity or another in modern times, title to commercial property is conveyed with special warranty. In short, the general warranty passes back through the grantors,

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.

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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 *BF*P 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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