



7 Reasons Why You Need an Attorney for a Quitclaim Deed Transaction

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7 REASONS WHY YOU NEED AN ATTORNEY FOR A QUITCLAIM DEED TRANSACTION

Written by Charles B. Jimerson, Esq. – 3/26/19

Quitclaim deeds are often viewed as quick, easy mechanisms for transferring title in real property from one party to another. However, if the parties fail to properly consider all relevant issues, a quitclaim deed transaction may have undesirable consequences. Fortunately, many of these consequences can be avoided by hiring an experienced real estate attorney.

What is a Quitclaim Deed?

By executing a quitclaim deed, the existing owner of real property conveys his interest in that property to the deed's recipient. June Sand Co. v. Devon Corp., 23 So.2d 621, 623 (Fla. 1945). Because the deed contains no covenants of title, the owner does not guarantee the property interest conveyed to the recipient is valid or free from encumbrances. Id. Therefore, if problems with the title arise, the recipient has little recourse against the owner. Id.

Factors Affecting Quitclaim Deed Transactions

To avoid undesirable consequences, a party contemplating a quitclaim deed transaction should consider the following issues:

1. No Property Interest

A seller who does not possess a valid interest in certain property cannot transfer an interest in that property by quitclaim deed. Id. In this situation, the purchaser risks paying for the property without receiving valid title to the property in return. While this situation seems easily avoidable, issues with the property's title can be difficult to detect.

For example, in June Sand Co., the owner executed a quitclaim deed transferring his interest in certain property to a corporation. 23 So.2d at 622. However, the corporation later discovered the State of Florida had repossessed the property because the previous owner had failed to pay property taxes. Id. The Florida Supreme Court held the corporation merely "stepped into the shoes" of the owner and thus, received no interest in the property. Id. at 623.

2. Documentary Stamp Taxes

In Florida, documents that transfer an interest in real property are subject to documentary stamp taxes. Fla. Stat. § 201.02(1)(a). Usually, the amount of the tax is based on the consideration paid for the property. Id. If no consideration was paid for the property, but the property was subject to a mortgage, the amount of the taxes is based on the mortgage balance. Dep't of Revenue v. Pinellas VP, LLC., 3. So. 3d 361, 363 (Fla. 2d DCA 2009). Each party should independently determine whether the tax applies because both parties are liable for paying the tax. Id. at 363.

3. Capital Gains Tax

When an owner sells certain property, he must pay capital gains taxes on any profits realized from the sale. Estate of Levine v. Commissioner, 634 F.2d 12, 15 (2d Circ. 1980). Additionally, when an owner makes a gift of

mortgaged property, the IRS may determine a sale occurred and require him to pay capital gains taxes. Id. at 15. In this situation, the amount of the tax is calculated by subtracting the owner's adjusted basis in the property from the mortgage balance assumed by the gift's recipient. Id. To avoid penalties, the owner must determine whether a sale occurred and report this information to the IRS.

4. The Homestead Tax Exemption

When a homeowner's property serves as his permanent residence, the property may qualify for Florida's homestead exemption. Fla. Stat. § 196.031(1)(a). This exemption can reduce the property's assessed value by as much as \$50,000. Id. If a quitclaim deed transaction results in a change of ownership, the exemption will be lost. [1] However, some transactions allow the owner to transfer property without losing the exemption. Id. For example, if only the existing owner claims the exemption before and after the transaction, the exemption will not be lost. Id.

5. The Save Our Homes Cap

Once a home qualifies for a homestead exemption, the property appraiser will reassess the property's value, annually, each January 1. Fla. Stat. § 193.155(1). The Save Our Homes Cap prevents each annual reassessment from exceeding three percent of the previous year's appraised value or the percentage change in the Consumer Price Index, whichever is lower. Id. Like the homestead exemption, a change of ownership will cause the home to lose its cap.

In Florida, a change in ownership is defined as any sale, foreclosure, or transfer of legal or beneficial title. Fla. Stat. § 193.155(3)(a). Generally, if there is no change in

beneficial ownership, the cap will not be lost. Id. For example, transferring the home to the owner's revocable trust or spouse will not cause the owner to lose the cap. Id. In contrast, the cap will be lost when one of two unmarried joint owners dies and both have received the homestead exemption. Id.

6. Gift Tax Consequences

An owner may use a quitclaim deed to gift property to another for less than full value. However, if the amount of the gift exceeds the annual exclusion amount, which is currently \$15,000, the donor must report the gift to the IRS. 26 U.S.C. § 2503(b)(2). If the donor retains some interest in the property, such as a life estate, the IRS will likely determine that a gift did not occur, and no taxes will be due. 26 U.S.C. § 2036. In this situation, the IRS may consider the donor's retained property interest when calculating his gross estate for estate tax purposes. 26 U.S.C. § 2037.

7. Community Associations

Community associations often place ownership restrictions on properties they govern.^[2] For example, an association may require potential owners to pass a background check and obtain association approval prior to purchasing a property. If potential owners do not abide by these restrictions, the association may prevent the transaction from being consummated.

Conclusion

Quitclaim deeds can be a valuable resource for quick hitter, one-off real estate transactions. However, to hit a home run, one must properly consider the issues that may arise. If you are considering transferring property via a Quitclaim deed or

challenging a wrongful transfer, contact an experienced real estate attorney to investigate these issues and ensure the transaction is results in a legally prudent outcome.

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[1] Robert A. Hoonhout, *Taking the "Quick" Out of Quitclaim Deeds*, Dec. 2017 Fla. B. J. 47, 48.

[2] Robert A. Hoonhout, *Taking the "Quick" Out of Quitclaim Deeds*, Dec. 2017 Fla. B. J. 47, 50.

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