



QUITCLAIM DEED

“And if you believe that, I have a bridge I’ll sell you!”

We’ve all heard this shop-worn expression. Its origin is the shenanigans of George C. Parker, who was famous (or, rather, infamous) for selling the Brooklyn Bridge multiple times to new, unsuspecting immigrants at the turn of the century. His hook was that the “purchaser” of the Brooklyn Bridge would be able to charge tolls for incoming and outgoing traffic (at that time, bridge traffic consisted of pedestrian, carriage and railroad traffic) on the bridge. Indeed, the New York City police were kept quite busy removing successive toll booths erected by Mr. Parker’s successive “purchasers” (cf. the legal doctrine of purpresture).¹ Folklore has it that his method of conveyance was – you guessed it -- a quitclaim deed! Mr. Parker’s fraudulent conduct, and not his choice of conveyancing instrument, is what landed him in prison the final eight years of his life.²

So as a little boy, when I heard the adults in the room talk about some joker in New York selling unsuspecting immigrants the Brooklyn Bridge by quitclaim deed, I wondered to myself whether such an instrument gave notice, facially, to the quitclaim grantee that there was some sort of title defect (just kidding).

Quitclaim Deeds in Texas

Anecdotes aside, the quitclaim deed has a far more sobering legacy in Texas. The landmark case of *Threadgill v. Bickerstaff*, 29 S.W. 757 (Tex. 1895) set the tone for this legacy. If a deed is characterized as a quitclaim deed, it spells trouble not only for the grantee under the quitclaim deed (the grantee under deed so characterized is herein referred to as a “quitclaim grantee”), but also for the quitclaim grantee’s grantee, and remote grantees farther downstream. Let’s examine why.³

What distinguishes a quitclaim deed from a warranty deed or a deed without warranty? Turns out that in part, it’s the use of certain “magic words.” In general terms, the law has evolved such that we have distanced ourselves from the harsh and inflexible rules of common law, and modern day courts have likewise frowned upon the requirement of “magic language” in contracts and instruments. This development is buttressed by principles of equity. Quitclaim deeds are exceptions to the rule – when it comes to deeds, words do matter! At common law, the words of quitclaim were “remise, release and forever quitclaim all the right, title and interest of grantor.” In characterizing conveyancing instruments to determine whether or not they’re quitclaim deeds, Texas courts have declared that “all right, title and interest,” “my right title and interest,” “all our interest” and the like in a deed’s granting clause are words of quitclaim. Even titling a deed a “quitclaim deed” can give rise to the need to characterize.

1 George C. Parker. From Wikipedia, the free encyclopedia. (Available https://en.wikipedia.org/wiki/George_C._Parker, accessed April 11, 2019)

2 *Id.*

3 I have relied on two excellent, scholarly articles to provide me with background information for this subject matter: G. Roland Love. Quitclaims* Texas and Beyond. Advanced Real Estate Drafting Course. The State Bar of Texas, March 10-11, 2016, and H. Martin Gibson. The Perils of Quitclaims. North Houston Association of Professional Landmen. November 10, 2016. I wish to thank the authors for giving me permission to use their articles.



WHAT A QUITCLAIM DEED IS – AND, MORE IMPORTANTLY, WHAT IT IS NOT

by Robbie S. Morris
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All of that having been said, as troublesome as this “magic language” in a conveying instrument can be, Texas courts, at least in theory, resort to a more substantive analysis in determining the character of such an instrument. Texas courts have explained that a “deed” transfers the land itself, whereas a “quitclaim” transfers only a chance of title (or chance at title, whichever you prefer), and is “of a dignity less than a conveyance of an estate.” Stated another way, if an instrument purports to convey land, the instrument will be characterized as a deed, whereas if an instrument purports to transfer a person’s interest in land, it will be characterized a quitclaim. The courts’ analyses turn on determining the intent of the parties. The courts have professed that such an analysis will be applied using the “four corners test” – but by its very nature, such an analysis is subjective. Moreover, there are certain “badges” which may relegate an instrument to quitclaim status; use of “magic language,” absence of a warranty and absence of a covenant of seisin, to name a few. This is not an exercise for the faint of heart.

The irony is that a quitclaim deed is sufficient to convey title, if the quitclaim grantor actually holds title at the time he/she executes the quitclaim deed. So what’s all the fuss about? The answer is that a quitclaim deed, and the legal consequences of same, arise in the context of the recording statute. The recording statutes and the concept of recording conveying instruments to establish certainty of title was not a creature of the common law. Under the common law, a conveyance of land was effective upon execution and delivery of the conveying instrument, and the grantee who was first in time won. The recording statutes were enacted to create a mechanism to protect a bona fide purchaser. Texas has codified the recording statute in Section 13.001 of the Texas Property Code (there are three types of recording statutes: race, race-notice and notice. Texas’ recording statute is a notice recording statute). As this section instructs us, a conveyance of real property is void as to a creditor or subsequent purchaser for a valuable consideration without notice (actual or constructive) unless the instrument has been acknowledged and filed for record. “Notice” is the key word here! Because of *Threadgill* and its ilk, where a quitclaim deed appears in the chain of title, a quitclaim grantee is automatically on notice of the possibility of a claim against title. In *Richardson v. Levi*, 3 S.W. 444 (Tex. 1887) the court opined that where a quitclaim deed is involved, the very form of the conveying instrument puts the quitclaim grantee on notice “that he is getting dubious title.”⁴ So the result is that a quitclaim grantee does not qualify as a bona fide purchaser, and all subsequent purchasers take their title subject to the claims against the quitclaim grantor’s title which may exist. The bottom line is that any title which relies on a quitclaim deed in the chain of title cannot be marketable title because, in theory, “it might, theoretically ... be defeated by some unknown claimant.”⁵ To add insult to injury, a quitclaim deed will not qualify as a “duly recorded deed” for purposes of the five-year title by limitations statute, nor can a quitclaim grantee avail himself/herself of the doctrine of estoppel by deed.

Jeremiah, the weeping prophet, asked the rhetorical question “Is there no balm in Gilead?” When it comes to quitclaim deeds, maybe not. Texas Title Examination Standard 4.90 which is entitled “Qualification as Bona Fide Purchaser” abruptly states that “if title is passed by a quitclaim deed, then the grantee and the grantee’s successors are not bona fide purchasers as to claims existing at the time of the quitclaim deed.” The Comment to the Standard contains a screed on quitclaim deeds which is premonitory in nature. It also appears that the passage of time will not “fix” a chain of title damaged by a quitclaim deed. Likewise, a subsequent deed whereby the grantee for valuable consideration and without constructive notice of any claim will not “sanitize” the chain of title, and so stated the court in *Houston Oil Co. v. Niles*, 255 S.W. 604 (Tex. Comm. App 1923).

But wait – there’s more! In *Bryan v. Thomas*, 365 S.W.2d 628 (Tex. 1963), the Supremes appeared to mitigate the harsh consequences of a quitclaim deed, but alas, Texas Courts have duly ignored this precedent. In addition, the Texas Legislature has, on several occasions, proposed legislation (namely, to amend Section 13.001 of the Texas Property Code) to “fix” the problem, but those bills never made it out of committee; what’s more, my colleague who serves on the Real Estate Legislative Affairs Committee of REPTL tells me there’s nothing about quitclaim deeds in the offing for the 86th Texas Legislature. With respect to the Texas Title Examination Standards, there’s a blurb in the “Caution” commentary under Texas Title Examination Standard 2.10 (entitled “Marketable Title Defined”) which seems to mitigate the hard line taken by Texas Title Examination

⁴ G. Roland Love. Quitclaims* Texas and Beyond. Advanced Real Estate Drafting Course. The State Bar of Texas, March 10-11, 2016.

⁵ *Id.*

Standard 4.90 previously discussed; it states that even though an owner “cannot be a bona fide purchaser if the owner derives its title under a quitclaim deed...[n]evertheless, because quitclaim deeds are often found in chains of title, an examiner does not typically question marketability merely because a quitclaim deed is found within the chain of title.” I suppose the message here is that maybe time does heal all wounds! There are two existing “fixes” to the quitclaim problem contained in Texas statutory law. One exists under the Texas Tax Code which addresses the right of redemption of property by a delinquent taxpayer. Section 34.21(j) of the Texas Tax Code states that “A quitclaim deed to an owner redeeming property under this section is not on notice of an unrecorded instrument. The grantee of a quitclaim deed and a successor or assign of the grantee may be a bona fide purchaser in good faith for value under recording laws.” The other statutory “fix” is found in Chapter 34 of the Texas Civil and Practice and Remedies Code which deals with Executions of Judgments. Section 34.046 states that “The purchaser of property sold under execution [at a Sheriff’s sale] is considered to be an innocent purchaser without notice if the purchaser would have been considered under an innocent purchaser without notice had the sale been made voluntarily and in person by the [judgment] defendant.”

A Disclaiming Instrument, not a Conveyancing Instrument

There is, however, a place for quitclaim deeds in real estate law. The meaning of the word “quitclaim” has its origins in root words meaning “disclaimer” and “relinquishment.” The term “quitclaim deed” is itself a contradiction in terms because “deed” has the general meaning of an instrument in writing, duly executed and delivered, conveying real estate, while the word “quitclaim” implies a mechanism of disclaimer rather than conveyance. Thus, it would be more appropriate to refer to a quitclaim deed simply as a “quitclaim” – but in practice, “quitclaim deed” has become the name used to describe such a disclaiming instrument. For all the reasons discussed, quitclaims should not be used for conveying real property, but they can be properly used as curative and collateral instruments where there is some putative claim impinging on one’s title, and the claimant wishes to disclaim the interest, or colorable interest, having given rise to such cloud. But by all means, keep quitclaim deeds out of chains of title!

It should be noted that Texas stands alone in its approach to the legal effect of a quitclaim deed. Other jurisdictions do not adhere to the legal principles which result in such dire consequences. So if you’re dealing with a person in another jurisdiction, and the subject is a quitclaim deed covering land in that jurisdiction, make sure you know what a quitclaim deed actually is, as viewed under the law of such jurisdiction.

The Role of the Title Insurance Company

One of the practical issues facing the Texas real estate practitioner is how quitclaim deeds are viewed by the title insurance industry. The reaction I have received in the past with respect to a quitclaim deed appearing in the chain of title is that a title insurance company will run for the hills. However, this knee-jerk reaction may be tempered by convincing the title insurance underwriter to embark on an analysis which considers things like underwriting risk, the 25-year bare possession title by limitations statute or the mere passage of time. But you must keep in mind, a title insurance company is not in the business of undertaking risk – they’re in the business of eliminating risk.

A Lesson from an Unlikely Source

What’s the takeaway? Don’t be careless in throwing around the term “quitclaim deed” – take the time to educate yourself as to what it really is. If the warranty of title indemnity is what’s giving a grantor heartburn, consider using a deed without warranty so that the chain of title is not irreparably damaged. And a corollary to that is do not blindly insist that your seller client’s purchaser accept a quitclaim deed – I can make a good argument that though couched in terms of a judicial proceeding, Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct militates against a seller’s lawyer insisting that the purchaser



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accept a quitclaim deed, the seller's lawyer knowing that such acceptance would result in irreparable damage to the chain of title. Finally, do not entitle your instrument "Quitclaim Deed," and do not use words in the body of the instrument like "right, title, and interest," "all of my right, title, and interest," or even "all right, title, and interest." As a first-year lawyer, a colorful partner for whom I worked said "Don't use 'right, title, and interest' in a deed – those are words of quitclaim." As an ignorant young lawyer who was doing well to just to recognize an instrument as a deed, little did I know how prescient his instruction was. I'm reminded of a skit on the old television show *Hee Haw* where the patient, seeking medical advice, would tell the doctor, "Doctor, it hurts when I do this," whereupon the doctor would advise, "Don't do that." When it comes to including quitclaim language in a deed which is intended to convey real property, "Don't do that" may be very cogent legal advice!

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With 45 years of legal practice focused on partnering with companies in the real estate industry, Robbie Morris has the experience and know-how to help clients structure real estate deals and solve the numerous problems impacting their businesses. Board Certified in Commercial Real Estate by the Texas Board of Legal Specialization, his practice is primarily focused on guiding both sellers and buyers through a variety of commercial real estate transactions, farm and ranch transactions and high-end residential transactions. Robbie is a trusted resource for clients of all types and sizes, including publicly-traded corporations, developers, lenders, landowners and entrepreneurs.