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GRANT DEED VS QUITCLAIM DEED

The deed of conveyance

Part I of III

A married individual's real estate is his separate property. The property will be conveyed to a buyer by grant deed.

To insure marketable title to the property as against any potential claim of the seller's spouse, the spouse, at the request of the title insurance company, joins in the signing of the grant deed as "the spouse of the grantor."

The spouse signs the grant deed for the sole purpose of releasing any community property interest the spouse may possibly have acquired as a result of the marriage—even though the spouse has acquired no interest in the real estate.

Later, the buyer discovers an unrecorded lease which was not part of the terms in the purchase agreement nor referenced in the grant deed. As a result, the buyer incurs money damages to relocate the tenant. Meanwhile, the seller dies, but not the spouse who joined in the conveyance.

The buyer now seeks to collect his tenant relocation expenses from the seller's spouse for breach of an implied covenant in a grant which warrants the grantor has not encumbered the property, such as creating the undisclosed lease.

The spouse who joined in the conveyance claims she cannot be liable for the breach of the covenant against further encumbrances since she never had an interest in the property conveyed, and believes the buyer's only remedy is against the seller who is dead.

Is the spouse liable for the breach of the implied covenant against encumbrances imposed on individuals signing as grantors under a grant deed conveyance?

Yes! The covenants implied in a grant deed impose a personal obligation on each grantor, whether or not the grantor has an interest in the real estate to convey by the grant deed delivered to the buyer.

Since the spouse's participation as a grantor in the conveyance of the real estate was voluntary and not entered into through mistake or fraud, the spouse as a grantor breached the implied covenant against further encumbrances by failing to state the property was subject to the lease. [Evans v. Faught (1965) 231 CA2d 698]

The spouse could have avoided the exposure to liability under the implied covenants in a grant deed had she signed a quitclaim deed to either the seller or the buyer. A quitclaim deed does not contain or carry with it the implied covenants of warranty of title and against encumbrances created during the grantor's period of ownership.

The granting clause

The two types of deeds commonly used to convey a real estate interest are:

- grant deeds; and
- quitclaim deeds.

To pass a fee simple interest in real estate, only the word **grant** need be used in the conveyance. No precise words of conveyance are necessary in a deed to convey a fee simple ownership. [Calif. Civil Code §1092]

The word "grant" contained in a grant deed indicates the grant of a fee simple interest to another, unless the deed states a lesser interest is conveyed.

A quitclaim deed customarily uses the words "remiss, release and otherwise quitclaim," but does not contain the word grant.

A quitclaim is not intended to pass fee simple in the real estate conveyed, but only the grantor's interest in the properly, if any.

The words used to convey property are evidence of the role the individual conveying title undertakes after the deed has been signed and delivered.

To convey real estate with covenants, a grant deed is used. To simply convey any interest in real estate an individual may hold, a quitclaim deed is used.

Grant deed covenants

The covenants, sometimes called ***warranties***, implied in a grant deed include:

- The interest conveyed in the real estate has not been transferred to another, except as disclosed in the grant deed; and
- The real estate has not been encumbered by the grantor, except as disclosed in the grant deed. [CC §1113]

Grant deed covenants are **implied**, and are not separately bargained for and agreed to as a provision to be included in a grant deed conveyance.

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If a grant deed covenant is breached by the seller, the buyer (grantee) may recover his losses from the seller for breach of the implied covenant, just as if the covenant had been written into the grant deed. [CC §1113]

The covenant against conveyances

Consider a seller who owns real estate and with it appurtenant water rights held in other real estate.

The seller enters into a purchase agreement with a buyer. The seller agrees to convey to the buyer the title to both the real estate and the water rights.

The seller executes a deed to the buyer in which he grants to the buyer the real estate and the water rights held in other property.

However, before the grant deed is delivered to the buyer, the seller conveys the water rights to another individual.

After closing, the buyer learns of the seller's previous conveyance of the water rights and seeks damages for the seller's breach of the implied covenant in the grant deed against previous conveyances.

The seller is liable to the buyer for the value of the water rights since the seller breached the implied covenant in the grant deed by previously conveying his interest in the water rights before delivery of his grant deed to the buyer. [**Lyles v. Perrin** (1901) 134 C 417]

The covenant against conveyances does not imply the grantor has title to the property, called the ***covenant of seisin***. A grantor who conveys property he does not hold title to is not liable for breach of implied covenant against conveyance, or any implied covenant, since the covenant against prior conveyances only represents the grantor has not previously conveyed the property.

Instead, the grantor may be liable to the grantee for damages caused by his misrepresentation of title, failure of consideration or breach of his agreement to convey real estate. Further, the grantee may seek rescission of the transaction in which the real estate was sold. [CC §1689]

The covenant of seisin —that the grantor holds title to the real estate being conveyed—is now entirely unused as having been replaced by title insurance.

Covenant against encumbrances

Real estate encumbrances include taxes, assessments and all liens, voluntary or involuntary, attached to the real estate. [CC §1114]

Encumbrances which are contained in the warranty against encumbrances implied in the grant deed include:

- CC&Rs such as covenants and use restrictions running with the land;
- Building restrictions;
- A reservation of a right-of-way;
- An easement;
- An encroachment;
- A lease;
- A trust deed; and
- A pendency of a condemnation action; [***Evans***, supra]

However, an encumbrance does not include physical changes in property, generally called ***improvements***, which can easily be seen on the property and place the buyer on notice.

For example, a water district constructs a large levee across an owner's property after the owner grants the district an easement. The water district owns and is in possession of the levee.

The owner conveys the real estate to a buyer by grant deed. The grant deed does not state the levee or the water district's interest was created during the grantor's ownership or in any way restricts the implied covenant against encumbrances. The buyer believes he has purchased the property free and clear of any encumbrances and is unaware the water district owns the levee. The buyer is unable to use the property as planned, due to the water district's ownership of the levee. The buyer seeks damages from the seller for breach of the implied covenant against encumbrances. However, encumbrances do not include visible, physical, and permanent burdens on the real estate. Improvements affecting the physical condition of the property are open and notorious. A buyer accepts the property subject to the physical encumbrances since he has notice of them.

Physical improvements are not considered an encumbrance under the statute against encumbrances since the improvements only affect the physical condition of the property. [***Evans***, supra]

Conversely, consider a buyer who is aware of an existing lease on the property which the seller entered into as the landlord. The unrecorded lease is not referenced in the purchase agreement or the escrow instructions. The buyer never agrees in writing to take title subject to the existing lease. Further, the grant deed to the buyer does not state the buyer is taking title to the legally described real estate ***subject*** to the existing lease.

The buyer seeks to collect from the seller the expenses the buyer incurred to relocate the tenant, claiming the seller breached the implied covenant against encumbrances.

The seller claims the buyer cannot collect the tenant's relocation expenses since the buyer was aware of the lease when he accepted delivery of the seller's grant deed.

However, the buyer's knowledge of the lease does not bar recovery for his tenant relocation expenses based on the seller's breach of the implied covenant against further encumbrances since the buyer is entitled to rely on the grant deed (and the purchase agreement). The seller has the duty under the implied covenant to deliver title clear of the lease he created. [***Evans***, supra]

Covenants personal to grantor/grantee

The implied covenants of a seller to a buyer in his grant deed do not run with the land. They are only for the **personal benefit** of the buyer, not future owners who are called ***remote grantees***.

Thus, being personal to the seller (grantor) and the buyer (grantee), the implied covenants in a grant deed can only be enforced by the buyer (grantee) named in the deed, and cannot be enforced by remote grantees who are successor's to the buyer.

For a **covenant to run** with the land and affect all remote grantees, the original seller must state in his conveyance that successors (remote grantees) are bound by the covenants and restrictions contained in the deed. [CC §1468]

Covenants running with the land bind all future owners of the property whether they take title by deed or court order.

The **implied covenants** in a grant deed are warranties to only the buyer (grantee) that the seller (grantor):

- Has **not previously conveyed** the interest in the property he is conveying; and
- Has **not encumbered** the property.

For example, an owner encumbers real estate with a first trust deed lien. The owner then sells the property to a buyer who agrees in the purchase agreement and escrow instructions to take title subject to the first trust deed.

Title is conveyed by grant deed to the buyer.

However, the grant deed does not note the title is subject to a first trust deed created by the seller. Later, the property is resold by the buyer to a **remote buyer**. The purchase agreement and the escrow instruction with the remote buyer disclose the existence of the first trust deed. Also, the remaining balance of the first trust deed note is included in the terms for payment of the purchase price. The grant deed states the remote buyer takes title "subject to all encumbrances of record." However, on a search of the record title, the remote buyer discovers the first trust deed lien he took over was not referenced in the grant deed conveyance from the prior owner of the property who created the trust deed lien.

The remote buyer seeks to recover money for the amount of the debt secured by the trust deed from the prior owner for breach of the implied covenant against encumbrances. The remote buyer claims he has damages since the first trust deed created by the prior owner was not referenced in the prior owner's grant deed to the grantee who later resold the property to the remote buyer.

Is the remote buyer entitled to recover for the breach of the implied covenant against encumbrances contained in the prior owner's grant deed to the individual who resold the property to the remote buyer?

No! The covenant implying the real estate is free from further encumbrances created by the seller is a **personal covenant**, held by and for the benefit of his grantee only, and does not run with the land for the benefit of a subsequent owner. Thus, the remote buyer cannot maintain an action for breach of implied covenants since the trust deed encumbrance existed before the individual who resold the property to the remote buyer acquired title to the property.

Further, the remote buyer was aware of the first trust deed as it was referenced in the purchase agreement and escrow instructions. While a buyer's knowledge of an encumbrance does not always bar an action for the seller's breach of implied covenants, the buyer is not entitled to be **unjustly enriched** for the seller's breach of the covenant against encumbrances when the buyer agrees in writing to take title subject to the encumbrance. [**Babb v. Weemer** (1964) 25 CA2d 546]

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