
She Did What With the Family Farm? - Top Ways to Challenge a Deed in Michigan

By Nicholas E. Papisifakis, Jonathan M. Martone, Mallory A. Kallabat, Thomas E.F. Fabbri / Jun 22, 2017

A deed is a legal instrument commonly used to transfer title in real property (i.e. a residence, parcel of land, or family cottage). Although deeds are typically straightforward, certain legal requirements are necessary to effectuate the transfer. Namely, the deed instrument should describe the premises being transferred, identify the grantor (the person conveying title), the grantee (the intended recipient of the real property interest being conveyed pursuant to the deed), conveyance language (language describing the grantor's intent to convey the real property and the type of conveyance being made), the consideration being exchanged (the money being exchanged) and the warranties and representations as to the quality of title being exchanged.

In addition to the required language in the conveyancing document, the grantor must sign and deliver the document. Merely signing a conveyancing document does not create a conveyance; the document must be delivered. Although not required to effectuate a conveyance or transfer, recording a deed gives rise to a presumption of delivery, which shifts the burden of proof onto the party challenging delivery. Additionally, and depending upon the state where the property is located, recording of a deed may be necessary to satisfy that jurisdiction's "race/notice" statutes and otherwise protect the property against claims of interest asserted by Bona Fide Purchasers. The purpose of the delivery requirement is to show the grantor's intent to convey the property described in the deed.

On occasion, facts and circumstances exist that support a legal action to challenge a conveyance of real property. From a legal perspective, the validity of a deed may be challenged for the following reasons:

- The deed instrument fails to meet the formal written requirements necessary to effectuate the conveyance;
- The deed instrument was not properly delivered or not delivered at all;
- The grantor lacked the capacity to execute the deed at the time of execution;
- The deed was the result of "undue influence" by a third party;
- The deed was induced by fraud or misrepresentation;
- The deed was induced by coercion or duress;
- The deed is a forgery; or
- The creation of the deed was the result of a mistake of fact (i.e. a deed could be invalidated where a settlor is illiterate and unfamiliar with legal documents and executed the document without understanding its legal effect).

Although contesting a deed can be a complicated and difficult process, in some instances, legal action becomes necessary and, in such situations the assistance of an experienced attorney is essential in order to provide you with the guidance, advice and expertise required to properly contest a deed in probate court. For a consultation with a Clark Hill attorney regarding a probate litigation matter, please call Thomas M. Dixon at (313) 965-8587, Thomas E.F. Fabbri at (248) 988-5856, Mallory A. Kallabat at (248) 530-6342, Jonathan M. Martone at (248) 988-1823, or Nicholas E. Papisifakis at (248) 530-9132. For more information on probate related litigation matters, visit clarkhill.com.