

TRANSFERS AFTER ACQUISITION



The topic of transferring property after acquisition and the effect of the transfer on title insurance coverage comes up fairly frequently. The typical scenario is one where a person buys a piece of property and receives an owner's title insurance policy to protect his or her interests. After the acquisition, the owner wants to transfer the property for any number of reasons, whether it is for estate planning, investment, or family purposes. We often get the question, "what happens to the title policy?"

To help clarify how transfers after an acquisition of a property may affect your title insurance policy we have broken up this article into hypothetical situations and the answer to those situations.

PROBLEM A

Owner of the property wants to quitclaim the property to her LLC. Does this transfer invalidate her title insurance policy?

ANSWER A

No. If the owner quitclaims the property into an LLC that is wholly-owned by the owner then the title policy continues in full force and a Form 107.9 endorsement is not required. If, however, the owner quitclaims the property into an LLC that is not wholly-owned by the owner, then a Form 107.9 endorsement would be required to name an additional insured. NOTE: A similar result will occur when dealing with a corporation. If the stock, shares, memberships, or other equity interests are wholly owned by the owner of the property then the title policy continues in full force and a Form 107.9 endorsement is not required. If, however, the owner quitclaims the property into a corporation where its stock, shares, memberships, or other equity interests are not wholly owned by the owner, then a Form 107.9 endorsement would be required to name an additional insured.

PROBLEM B

Owner of the property wants to quitclaim the property to her trust. Does this transfer invalidate her title insurance policy?

ANSWER B

No. If the trust is created by a written instrument (e.g. Trust Agreement) and the owner of the property is the settlor of the trust, then the policy will continue in full force and a Form 107.9 endorsement is not required. If, however, the owner quitclaims the property into a trust where she is not the settlor, then a Form 107.9 endorsement would be required to name an additional insured.

PROBLEM C

A married couple owns a property together as joint tenants. The husband wants to quitclaim his interest in the property to his wife. Does this transfer invalidate the title policy?

ANSWER C

No. In this situation the property is owned by both the husband and the wife. Removing one of the owners from the property does not affect the remaining owner's title policy.

PROBLEM D

Barry Buyer purchases a property and subsequently gets married. He wants to add his now wife to title. Does this transfer invalidate his title policy?

ANSWER D

No. Barry can either quitclaim to himself and his wife or use a warranty deed (special or general) to do so. For his wife's interest, however, he would need to obtain a Form 107.9 endorsement that would name an additional insured to the policy. The effective date of the policy would not be updated to the new conveyance. However, any title defects that may be on record after the initial purchase by Barry and before his transfer to himself and his wife, would not be covered.

Please also note that most title insurance policies contain language substantially similar to the below:

The coverage of this policy shall continue in force as of the Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by the purchase from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the title.

Long story short, it is better to deed with a warranty deed (special or general) than to transfer the interest via quitclaim deed.

These situations are very fact specific and as always you should consult with an attorney as to the appropriate steps to protect yourself and your investment in real property.

GLOSSARY OF TERMS

Form 107.9 Endorsement: Title insurance endorsement that amends the existing title insurance policy by adding an additional insured to the coverage.

Quitclaim or Quitclaim Deed: A deed and/or conveyance that is effective in passing title. It conveys only the grantor's present interest, if any, but does not constitute a representation that the grantor has any interest in the land, or valid title, or any title, to the property conveyed.

Settlor: The individual who places property (real and personal) into a trust for the benefit of the beneficiaries of the trust. Synonyms may include "Trustor", "Grantor" or "Donor".