

Minnesota Residential Real Estate Purchase Agreements;

Deeds and Title Issues

Minnesota Association of Realtors (M.A.R.) 2012 Purchase Agreement

Lines 57 to 67 of the 2012 version of the Minnesota Association of Realtors (hereinafter, the “Association”), primary purchase agreement (hereinafter, the “Association’s Agreement”), address deeds, marketable title, title evidence, and examination of title.

Deed / Marketable Title; Lines 57-67

Lines 57 to 67 of the Association’s Agreement allow for identification of:

- ◆ **the type of deed** to be provided at closing,
and
- ◆ certain **existing title matters** that:
 - the buyer is willing to accept,
and
 - the seller will not be required to remove prior to closing.

Minnesota Deeds

In Minnesota, a *deed* is a document executed in writing by which a real property owner evidences an intended transfer of real property interests or title to another, which is complete upon either:

- ◆ the delivery of the *deed* to the grantee,
or
- ◆ the filing of the *deed* in the appropriate county real estate office,

depending upon the type of real property to be conveyed.

M.A.R. 2012 Purchase Agreement

Line 58 of the Association’s Agreement allows a choice with respect to the type of deed to be provided by the seller at closing - which will be used to convey marketable title to the purchaser:

1. **A Warranty Deed;**

or

2. **Other: _____ Deed;**

However, the Association's Agreement:

- ◆ does not provide any suggestions as to the other types of deeds which might be appropriate,
and
- ◆ **presumes that the seller will provide a warranty deed**, unless:
 - the seller is aware of the alternatives,
and
 - the agreement specifically provides otherwise.

Similarly, the standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** defaults to a requirement for a warranty deed in the absence of any other choice, by providing as follows:

*Upon performance by Buyer, Seller shall execute and deliver a _____ **Warranty Deed** . . .*

However, since this type of purchase agreement will be prepared by a Minnesota attorney, due consideration will be given to the type of deed to be provided by the seller.

Conveyance

When used in regard to Minnesota real property, the term "**conveyance**" includes all written documents:

- ◆ by which a **real estate interest** is:
 - created,
 - subjected to a mortgage or other encumbrance,
 - transferred to a third-party,or
- ◆ by which the **title to the real property** may **otherwise be affected**,

except for Wills, short-term leases having a term of less than three years, and powers of attorney.

Minnesota Deeds of Conveyance

In Minnesota, *deeds of conveyance* include, but are not limited to:

- ◆ Warranty Deeds;
- ◆ Quit Claim Deeds;
- ◆ Limited Warranty Deeds;
- ◆ Personal Representative's Deeds;
- and
- ◆ Trustee's Deeds.

Depending on:

- ◆ the **type of seller** involved - whether an individual, an estate, or a trustee,
and on
- ◆ the **types of warranties** which the seller is willing to make regarding the status of title,

one of the above types of deeds of conveyance may be preferable to a warranty deed.

If it is determined that a form of deed other than a warranty deed is to be provided at closing, **line 58** of the Association's Agreement should identify the type of deed that will be provided.

A licensed Minnesota attorney can advise:

- ◆ **the seller** as to the type of deed which should be provided,
and
- ◆ **the buyer** as to the consequences of accepting any form of deed other than a warranty deed.

Minnesota Warranty Deeds

The execution, delivery, and filing of a Minnesota Warranty Deed in the appropriate county real estate office will both:

- ◆ **evidence a completed conveyance** of real property from a grantor to a grantee,
and
- ◆ **impose certain statutory covenants of title** upon the grantor for the benefit of the grantee - even if the deed itself contains no recitation of such covenants.

Minnesota Statutes, Section 507.07 provides sample conveyancing language for warranty deeds, similar to the following:

*Buck E. Badger, Grantor, for valuable consideration, **conveys and warrants** to Gold E. Gopher, Grantee, the following described real property located in the County of Hennepin, in the State of Minnesota: . . .*

(i) Warranties of Title

Pursuant to Minnesota Statutes, Section 507.07, Minnesota Warranty Deed grantors:

- ◆ “**convey**” real property title to the grantee,
and
- ◆ provide the following covenants to the grantee relating to the title,
 - not only on their own behalf,
 - but also on behalf of their heirs and personal representatives:
- 1. that the grantor
 - ◆ is **lawfully seized of the premises in fee simple ownership** (the covenant of seisin),
and
 - ◆ has **good right to convey the same** (the covenant of right to convey);
- 2. that the premises are **free from all encumbrances** (the covenant against encumbrances);
- 3. that the grantor warrants to the grantee, and to the grantee's heirs and assigns, **the quiet and peaceable possession thereof** (the covenant of quiet enjoyment);
and
- 4. that **the grantor will defend the title to the real property conveyed** against all persons who may lawfully claim the same (the covenant of warranty).

(ii) Parties Providing the Warranties of Title

The above identified covenants are statutorily imposed:

- ◆ upon all Warranty Deed grantors,
and also
- ◆ upon the grantors’ heirs and personal representatives.

(iii) Breach of Warranties of Title

A breach of any of the statutory title covenants (warranties), can result in a money damages claim by the deed grantee(s) against the deed grantor(s).

(iv) Title Exceptions

The grantor of a Minnesota warranty deed should identify in the deed certain encumbrances or other title matters which the grantee will take title subject to upon delivery or filing of the deed.

Minnesota Statutes, Section 507.20 identifies that with respect to all Minnesota conveyances made pursuant to a deed, **the grantor must disclose to the grantee the existence and nature of all known title encumbrances.**

All of the standard encumbrances identified in the Association's Agreement would be included in this obligation.

Such disclosures are typically made in that section of the deed in which the exceptions to the warranties of title are identified.

Minnesota title companies preparing warranty deeds often ignore this provision by failing to identify any unreleased interests in the exceptions section of the warranty deed.

While there is **no statutory penalty** under Minnesota Statutes, Section 507.20 for failing to disclose the existence and nature of all known title encumbrances, the **statutory implied covenant against encumbrances** imposes a duty of indemnity upon the deed grantor with respect to all damages sustained by the deed grantee, his or her heirs, executors, administrators, successors or assigns, in removing an undisclosed encumbrance.

Therefore, if a warranty deed or limited warranty deed grantor fails to disclose in the deed the existence of an encumbrance of record:

- ◆ the **warranty deed grantor** shall be liable to the deed grantee for all damages relating to the removal of the encumbrance from the record,
and
- ◆ the **limited warranty deed grantor** shall be liable to the deed grantee for all damages relating to the removal of any encumbrance from the record which originated after the limited warranty deed grantor acquired title.

The deed grantor will want the exceptions in the deed to be reasonably broad, such as:

“subject to easements, restrictions, liens, and reservations of record, if any.”

However, the deed grantee may want the exceptions to be **specifically identified**

so that the Seller's title warranties will protect the deed grantee from any title exceptions which the deed grantee either:

- ◆ overlooked
or

- ◆ was not aware.

(v) **M.A.R. 2012 Purchase Agreement**

Lines 60 - 66 of the Association's Agreement identify the following encumbrances or other title matters:

- ◆ to which **title may be subject**,
- and
- ◆ which **should be identified in the seller's deed**:
 - (a) building and zoning laws, ordinances, and state and federal regulations:
 - (b) restrictions relating to use or improvement of the property without effective forfeiture provisions;
 - (c) reservation of any mineral rights by the State of Minnesota;
 - (d) utility and drainage easements which do not interfere with existing improvements;
 - (e) rights of tenants as follows (unless specified, not subject to tenancies):
 - and
 - (f) others (must be specified in writing):

Warranty deeds prepared by Minnesota title companies routinely omit all title exceptions - including the above exceptions which are identified in the Association's Agreement.

Most sellers don't recognize the significance of such omissions.

Even though it may be a rare event that the omission of title exceptions would cause a problem at some point in the future, **warranty deeds**:

- ◆ impose ongoing liability on sellers for a period of time,
- and
- ◆ should be prepared in such a manner that they identify all appropriate title exceptions.

(a) Building and Zoning Laws, Ordinances, and Regulations

The sale of Minnesota real property will always be subject to building and zoning laws, ordinances, and Minnesota and federal regulations.

Therefore, it does no harm to either party to identify such governing laws as exceptions in the warranty deed.

The standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** also identifies such an exception.

(b) Restrictions without Forfeiture Provisions

The use of Minnesota real property may be subject to certain “*restrictive covenants*” which:

- ♦ have been recorded in the county real estate records,
and
- ♦ theoretically could result in a forfeiture of the property to a previous owner - upon breach of such covenants.

Such restrictions - if still enforceable, and other restrictions - the violation of which will not result in forfeiture, may limit the use or development of the property.

Therefore, such restrictions should be identified as title exceptions in any warranty deed.

The standard clause in the Association’s Agreement only requires the buyer to accept such restrictions if their violation would not result in a forfeiture of the property.

The standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** allows for such an exception if it is specifically identified in a separate addendum - thus requiring some consideration by the attorney of the scope of the exception.

(c) Reservation of Mineral Rights by the State of Minnesota

Complete ownership of title to Minnesota real property includes rights to both:

- ♦ the **surface of the land**,
and
- ♦ the mineral assets located **below the surface**.

It’s possible to separate the two, so that:

- ♦ the **surface rights** are owned by one party,
- ♦ while the **mineral rights** are owned by another party.

If Minnesota real property taxes are not paid by a property owner for a certain length of time, ownership of such real property will be acquired by the State of Minnesota.

Once Minnesota real property is acquired by the State of Minnesota by reason of a property owner’s failure to pay real property taxes for a specified length of time, **the mineral rights** will thereafter forever be owned by the State of Minnesota, even if a new owner purchases such property from the State of Minnesota.

That is the condition of title in much of the northeastern part of Minnesota, where many real property titles had at one time reverted to the State of Minnesota by reason of a failure to pay real property taxes.

Therefore, most Minnesota purchase agreements will provide that the transfer of title will be subject to any mineral rights owned by the State of Minnesota.

However, the State of Minnesota is not the only entity that may have acquired the mineral rights to parcels of Minnesota land.

A Minnesota real property owner is permitted:

- ◆ to **convey the surface rights** to a transferee,
- ◆ while **retaining the mineral rights**,

and to subsequently convey the mineral rights to any other person.

With respect to real property located in urban areas - where it is not likely that anyone would ever seek to exploit the minerals assets located under the surface - the issue of retained mineral rights may not be that important.

However, in the northeastern part of Minnesota, mineral rights are relevant, by reason of either current mineral production, or potential mineral production.

Therefore, inquiry should be made as to whether parties other than the State of Minnesota have previously reserved mineral rights, and an appropriate identification of such reservations made in the deed.

The standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** allows for such an exception if it is specifically identified in a separate addendum - thus requiring some consideration by the attorney of the appropriateness of the scope of the exception.

(d) Utility and Drainage Easements

An easement is the right to use one party's land for the benefit of another party.

A utility company must have an easement over a parcel of land in order to provide such land with access to electrical transmission lines, natural gas lines, water pipes, or sewer lines.

Drainage easements allow surface water to drain from a parcel of land owned by one party, across another parcel of land owned by a different party.

Usually, such easements are located on the land in such a manner that they do not interfere with the customary use of the property.

However, that is not always the case, particularly with respect to undeveloped land, where:

- ◆ a utility company may have an easement running over, on, or under, that portion of the real property on which a purchaser intends to construct improvements,

or

- ◆ a neighboring property owner may have the right to drain surface water over that portion of the land on which the purchaser intends to construct improvements.

In those situations, the presence of such easement(s) may interfere with, or otherwise prohibit, the development of the property in the manner intended by the purchaser.

The Association's Agreement standard clause allows title to be subject to utility and drainage easements which do not interfere with existing improvements.

However, such an exception may be too broad when the real property involved is vacant, because no such easements would interfere with existing improvements - by reason of the fact that there are no improvements located on vacant real property.

From a seller's perspective, all Minnesota purchase agreements, and resulting warranty deeds, should be subject to all recorded easements.

However, **from a buyer's perspective**, legal counsel for the buyer should review the scope and location of such easements prior to closing in order to determine the degree to which such easements will interfere with the buyer's intended use of the property.

Nevertheless, if the Association's Agreement is signed by the parties, the buyer will have a limited opportunity to object to any existing easements.

The standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** allows for such an exception if it is specifically identified in a separate addendum - thus requiring some consideration by the attorney of the appropriateness of the exception.

(e) **Rights of Tenants**

If a tenant has the right to occupy Minnesota real property, such a right will not be terminated merely because ownership of the property is transferred to a purchaser.

Nevertheless, the purchaser may have the right to terminate any such lease pursuant to a notice given to the tenant after the purchaser acquires ownership of Minnesota real property.

However any such right to terminate the lease would depend upon the terms and conditions of the lease.

Therefore, any purchase agreement, and all warranty deeds, with respect to Minnesota real property should identify the rights of all tenants who occupy all or any part of the property.

The standard purchase agreement for residential real property produced by the **Minnesota State Bar Association Real Property Section** allows for an exception for the rights of tenants, if such rights are specifically identified in a separate addendum - thus requiring a proper recitation by the attorney of the existing leases.

(f) Other Encumbrances

There may be other recorded or unrecorded real estate interests which encumber Minnesota real property which the seller cannot unilaterally terminate.

All such encumbrances should be identified prior to sale, and listed as permitted exceptions:

- ◆ **on the purchase agreement** - at lines 66 and 67 of the Association's Agreement,
and
- ◆ **on any warranty deed.**

The seller may require legal counsel in order to properly identify such encumbrances.

The buyer should retain legal counsel in order to evaluate the consequences of any such encumbrances which will remain after the buyer acquires the property.

Minnesota Quit Claim Deeds

A Minnesota Quit Claim deed does not provide any of the statutory covenants of title which are provided by a Minnesota Warranty Deed.

In addition, the interest conveyed by the grantor in a Minnesota Quit Claim deed:

- ◆ is limited to that which the grantor held at the time of execution of the deed,
and
- ◆ does not extend to any title interest acquired thereafter - unless the deed contains an *"after-acquired title"* clause.

Therefore, a Minnesota Quit Claim deed typically conveys to the grantee only the grantor's **present right, title, and interest in the real property**, but does not provide any warranties of title to the real property.

Minnesota Statutes, Section 507.07 provides sample conveyancing language for Quit Claim Deeds, similar to the following:

Buck E. Badger, Grantor, for valuable consideration, conveys and quitclaims to Gold E. Gopher, Grantee, all interest in the following described real property located in the County of Hennepin, in the State of Minnesota: . . .

(i) Quantity of Title Conveyed

Minnesota Statutes, Section 507.06 provides that a Quit Claim and release (deed) shall be sufficient to pass all of the estate - including a *fee simple title* - which the grantor could convey by a “*deed of bargain and sale*”.

Historically, at common-law a “*deed of bargain and sale*” was a form of deed:

- ◆ effective to convey **real property title** to a grantee, and was not limited to conveying **the interests of the grantor in the real property**;
but
- ◆ without providing any warranties of title.

A *fee simple title* is the most complete title ownership interest recognized in Minnesota.

Therefore, a Minnesota Quit Claim Deed will convey the same quality of title to the grantee as would a warranty deed - other than any after-acquired title interests - but without the benefit of any covenants of title.

(ii) M.A.R. 2012 Purchase Agreement

If a seller is going to provide a Quit Claim Deed at closing, the “**Other**” box should be checked on line 58 of the Association’s Agreement, and the words “*Quit Claim*” inserted thereafter.

Minnesota Limited Warranty Deeds

Minnesota Limited Warranty Deeds - often used by banks and railroads - represent a compromise between general warranty deeds, and quit claim deeds, since they provide:

- ◆ fewer covenants of title than a general Warranty Deed,
- ◆ but greater covenants of title than a Quit Claim Deed.

The grantor of a Minnesota Limited Warranty Deed:

- ◆ covenants that the grantor did not do anything to adversely affect the title to real property,
- ◆ but does not covenant that there are no unresolved title issues originating prior to the ownership of the real property by the grantor.

Minnesota Limited Warranty Deeds often contain an *after-acquired title* provision.

Minnesota Uniform Conveyancing Forms provide sample conveyancing language for limited warranty deeds, similar to the following:

Buck E. Badger, Grantor, for valuable consideration, conveys and quitclaims to Gold E. Gopher, Grantee, the following described real property located in the County of Hennepin, in the State of Minnesota: . . .

This deed conveys after-acquired title.

Grantor warrants the grantor has not done or suffered anything to encumber the property, EXCEPT:

Therefore, the grantor of a Minnesota limited warranty deed provides no covenants regarding title matters which existed before the grantor received ownership of the property.

Most residential real estate transactions do not allow for the provision of a Limited Warranty Deed at closing, because the Association's Agreement defaults to a Warranty Deed requirement, although a Limited Warranty Deed certainly would be advisable from the seller's perspective.

(i) M.A.R. 2012 Purchase Agreement

If a seller is going to provide a Limited Warranty Deed at closing, the "Other" box should be checked on line 58 of the Association's Agreement, and the words "*Limited Warranty*" inserted thereafter.

Minnesota Personal Representative's Deed of Sale

Minnesota Personal Representative's Deeds of Sale are often used to convey title to someone who purchases real property from an estate.

Minnesota Uniform Conveyancing Forms provide sample conveyancing language for Personal Representative's Deeds of Sale, similar to the following:

Buck E. Badger, as Personal Representative of the Estate of I. O. Wa, Decedent, Grantor, conveys and quitclaims to Gold E. Gopher, Grantee, the following described real property located in the County of Hennepin, in the State of Minnesota: . . .

Note that there are:

- ◆ **no covenants of title** provided by a Minnesota Personal Representative's Deed of Sale, and
- ◆ no *after-acquired title* provision.

However, if a purchase agreement for Minnesota real property sold by a Personal Representative on behalf of an estate requires a warranty deed at closing, the Personal Representative may be

obligated to provide the purchaser with a warranty deed, which would include all of the statutory covenants of title.

Such an obligation should be avoided by the Personal Representative by including an appropriate provision in the purchase agreement to only require the Personal Representative to provide a Minnesota Personal Representative's Deed of Sale at closing.

(i) M.A.R. 2012 Purchase Agreement

If a seller is going to provide a Personal Representative's Deed at closing, the "**Other**" box should be checked on line 58 of the Association's Agreement, and the words "**Personal Representative's**" inserted thereafter.

Minnesota Trustee's Deeds

Minnesota Trustee's Deeds are often used to convey title to someone who purchases real property from one or more trustees acting on behalf of beneficiaries of a trust.

The Minnesota Uniform Conveyancing Forms provide sample conveyancing language for Trustee's Deeds, similar to the following:

Buck E. Badger, as trustee of the South E. Dakota Trust dated January 1, 1901, Grantor, conveys and quitclaims to Gold E. Gopher, Grantee, the following described real property located in the County of Hennepin, in the State of Minnesota: . . .

Note that there are:

- ◆ **no covenants of title** provided by a Minnesota Trustee's Deed,
and
- ◆ **no *after-acquired title*** provision.

However, if a purchase agreement for Minnesota real property sold by trustees requires a warranty deed, the trustees may be obligated to provide the purchaser with a warranty deed, which would incorporate all of the statutory covenants of title.

The trustees should avoid such an obligation by including an appropriate provision in the purchase agreement to only require the trustees to provide a Minnesota Trustee's Deed at closing.

(i) M.A.R. 2012 Purchase Agreement

If a seller is going to provide a Trustee's Deed at closing, the "**Other**" box should be checked on line 58 of the Association's Agreement, and the word "**Trustee's**" inserted thereafter.

Spousal Signature Requirements

In Minnesota, both spouses must generally sign any conveyance with respect to real property which is owned exclusively by either spouse, in order to release any non-title marital interest a spouse may have in the real property.

That is why line 58 of the Association's Agreement requires that any deed given to the buyer by the seller be joined in by the spouse, if any, of the property owner.

Minnesota Real Property Purchase Agreements

While Minnesota "*fill in the blank*" real property purchase agreement forms are routinely completed by licensed Minnesota real estate brokers and salespersons on behalf of their clients - it may be advisable in your situation to either:

- ◆ have a Minnesota real property purchase agreement **prepared by a licensed attorney**,
- or
- ◆ **have a licensed attorney review** any Minnesota real property purchase agreement prepared by a real estate broker or salesperson - before it is signed by the parties.

The vast majority of Minnesota real property transactions are completed using a real property purchase agreement prepared by a Minnesota real estate broker or salesperson.

Most of the time, the transaction closes, and things work out just fine.

However, there is much that can go wrong with Minnesota real property purchase agreements, and mistakes can be difficult to correct.

Minnesota attorneys may prepare a real property purchase agreement in a different manner than a purchase agreement which was prepared by a Minnesota real estate broker or salesperson, in order to better serve the client.

Minnesota real estate brokers provide a valuable public service, but they have an interest in protecting the broker from liability in the transaction, and the Association's standard documents may reflect such interests.

Some of the larger Minnesota real estate brokers may even have an interest in promoting the services provided by related title insurance companies.

On occasion, the interests of a Minnesota real estate broker may not be completely consistent with the interests of its clients.

However, even if a Minnesota real estate broker is acting consistent with the interests of its clients, unless a Minnesota real estate broker or salesperson is also licensed as a Minnesota attorney, they are not permitted to give legal advice.

Unauthorized Practice of Law

Minnesota real estate brokers and salespersons are limited in the advice that they can provide to their clients, since M.S. Section 481.02, Subd. 1 provides in part as follows:

481.02 UNAUTHORIZED PRACTICE OF LAW.

Subdivision 1. Prohibitions.

It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, . . . by word, sign, letter, or advertisement, to hold out as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, . . . , or, for a fee or any consideration, to prepare for another person, . . . any other legal document, except as provided in subdivision 3.

M.S. Section 481.02, Subd. 3a carves out a limited exception for Minnesota real estate brokers and salespersons, by providing as follows:

Real estate closing services.

Nothing in this section shall be construed to prevent a real estate broker, a real estate salesperson, or a real estate closing agent, as defined in section 82.55, from drawing or assisting in drawing papers incident to the sale, trade, lease, or loan of property, or from charging for drawing or assisting in drawing them, except as hereafter provided by the Supreme Court.

M.S. Section 82.81, Subd. 11 also prohibits Minnesota real estate brokers and salespersons from discouraging the use of Minnesota attorneys, by providing as follows:

Prohibition against discouraging use of attorney.

Licensees shall not discourage prospective parties to a real estate transaction from seeking the services of an attorney.

Conclusion

Please contact Minnesota Attorney Gary C. Dahle for assistance with the preparation, or review, of any Minnesota real property purchase agreement, or any deed or title issues relating to any Minnesota real property purchase agreement.

If you have an e-mail account, and a good Internet connection, Attorney Gary C. Dahle can assist you in any Minnesota County.

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Legal Disclaimer

Information provided herein is only for general informational and educational purposes. The laws regarding Minnesota real property purchase agreements involve many complex legal issues. **If you have a specific legal problem about which you are seeking advice, either consult with your own attorney or retain an attorney of your choice.**

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