

Warranty Vs Quitclaim

What problems could I run into if I sell someone some real estate and convey the land with a warranty deed in michigan? I want to use a quitclaim deed but they want a warranty deed.

It sounds like you're in a bit of a negotiation with your buyer! While a warranty deed offers more protection to the buyer, it does come with potential pitfalls for you as the seller in Michigan. Let's break down some of the problems you could encounter:

The Core Issue: Promises About the Property's History

A warranty deed in Michigan makes several legally binding promises (called covenants) to the buyer about the title to the property. These promises essentially guarantee that the title is free and clear of undisclosed encumbrances and that you have the right to sell the property. Here are the key covenants in a Michigan warranty deed and the problems they could create for you:

- **Covenant of Seisin:** You promise that you own the property and have the right to convey it.
 - **Potential Problem:** If there are any defects in your ownership history (even if you weren't aware of them), the buyer could sue you for breach of this covenant. For example, if a prior deed in the chain of title was improperly executed, your ownership could be challenged.
- **Covenant Against Encumbrances:** You promise that there are no undisclosed liens, mortgages, easements, or other encumbrances on the property.
 - **Potential Problem:** If there are any hidden encumbrances that weren't disclosed (even if you didn't know about them), the buyer could sue you to clear the title or for damages. This could include things like unrecorded easements, past-due property taxes, or undisclosed liens.
- **Covenant of Quiet Enjoyment:** You promise that the buyer's possession and enjoyment of the property will not be disturbed by anyone with a superior claim to the title.
 - **Potential Problem:** If a third party with a legitimate superior claim to the property arises and disrupts the buyer's ownership, you could be held liable.
- **Covenant of Warranty:** You promise to defend the buyer's title

against all lawful claims and demands.

- **Potential Problem:** This is a broad promise that essentially means you'll stand behind the title. If any title issues arise in the future (even if they originated before you owned the property), you could be responsible for legal fees and potentially have to compensate the buyer for their losses.

Specific Scenarios and Potential Problems:

- **Unknown Title Defects:** Even with a title search, there's always a small chance of a hidden title defect from the distant past that wasn't discovered. With a warranty deed, you become liable for these even if you had no way of knowing about them.
- **Boundary Disputes:** If there are discrepancies in the property lines or disputes with neighboring landowners that weren't apparent, the buyer could hold you responsible under the warranty deed.
- **Unrecorded Easements:** A previous owner might have granted an easement (like a right-of-way) that wasn't formally recorded. This could impact the buyer's use of the property, and you could be liable for not disclosing it.
- **Liens or Judgments Against Previous Owners:** If there were liens or judgments against previous owners that weren't properly cleared, they could potentially affect the current title, and you could be held responsible under the warranty.
- **Mistakes in Public Records:** Errors in the county's property records, while rare, can create title issues down the line, and the warranty deed puts the responsibility on you.

Why You Prefer a Quitclaim Deed:

A quitclaim deed, on the other hand, transfers whatever interest you *currently* have in the property without making any guarantees about the quality of the title. Essentially, you're saying, "Here's whatever I own, if anything." This shields you from liability for past title defects or encumbrances that you might not even be aware of.

Negotiating with the Buyer:

Since the buyer wants the added security of a warranty deed, here are some things you could consider:

- **Title Insurance:** Encourage the buyer to purchase owner's title insurance. This policy protects *their* investment in case of title problems. While it doesn't directly protect you from your obligations under the warranty deed, it gives the buyer a direct avenue for recourse and might make them more comfortable. You could even offer to contribute to the cost of the title insurance.

- **Special Warranty Deed:** This is a compromise where you warrant the title only against defects that arose *during your ownership*. You wouldn't be liable for issues that existed before you took ownership. This offers the buyer more protection than a quitclaim deed but less than a general warranty deed.
- **Full Disclosure:** Be as transparent as possible about the property's history and any potential issues you are aware of. Document everything you disclose in the purchase agreement.
- **Indemnification Clause:** You could try to negotiate an indemnification clause in the purchase agreement where the buyer agrees to hold you harmless for specific potential title issues that you disclose. However, buyers are often hesitant to agree to this.

In summary, conveying property with a warranty deed in Michigan exposes you to potential liability for any past or present title defects, even those you were unaware of. While it offers the buyer significant protection, it places the burden of ensuring clear title squarely on you. Carefully consider the risks and explore alternative solutions like title insurance or a special warranty deed to mitigate your potential problems.

It would be wise to consult with a real estate attorney in Michigan to discuss your specific situation and the best way to proceed. They can help you understand the legal implications and negotiate the terms of the deed and purchase agreement.