

## Recording Deeds in Michigan

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A Deed is a written legal document which one uses to transfer or convey title to real property. Some of the more common types of deeds include:

- **Quit Claim Deed** – A quit claim deed transfers to the grantee any and all of the legal rights the grantor has in the parcel of real property. The quit claim deed makes no warranty about the extent of the grantor’s interest in the parcel of real property.
- **General Warranty Deed** – A general warranty deed transfers to the grantee all of the legal rights the grantor has in the parcel of real property and explicitly warrants that the grantor has good title to the parcel.
- **Special Warranty Deed** – A special warranty deed transfers to the grantee all of the legal rights the grantor has in the parcel of real property but warrants only what the deed specifically states is warranted.
- **Fiduciary Deed** – A fiduciary deed is a deed used to transfer property when the grantor is a fiduciary such as a trustee, guardian, conservator, or executor acting in his official capacity. A fiduciary deed usually only warrants that the fiduciary is acting in his appointed capacity and within his allotted authority.
- **Trust Deed** – A trust deed is a written instrument which transfers property to a trustee to secure an obligation such as a promissory note or a mortgage. The trustee has the power to sell the real property in the case of a default on the obligation.

Michigan, like all states, uses a recording system to establish whether an interest holder in real property has “perfected” its interest in that property. The register of deeds is the official filing and recording office for all legal documents affecting real property. The register of deeds office of the appropriate county must accept and record all instruments evidencing a Michigan real estate transaction. The only condition is that the submitted instrument conform with certain statutory requirements. [Mich. Comp. Laws §565.201](#). Those requirements include the following:

(a) The name of each person purporting to execute the instrument must be legibly printed, typewritten, or stamped beneath the original signature or mark of the person.

(b) A discrepancy may not exist between the name of each person as printed, typewritten, or stamped beneath their signature and the name as recited in the acknowledgment or jurat on the instrument.

(c) The name of any notary public whose signature appears upon the instrument must be legibly printed, typewritten, or stamped upon the instrument immediately beneath the signature of that notary public.

(d) The address of each of the grantees in each deed of conveyance or assignment of real estate, including the street number address if located within territory where street

number addresses are in common use, or, if not, the post office address, must be legibly printed, typewritten, or stamped on the instrument.

(e) If the instrument is executed before April 1, 1997, each sheet of the instrument must be all of the following<sup>1</sup>:

- (i) Typewritten or printed in type not smaller than 8-point size.
- (ii) Not more than 8-1/2 by 14 inches.
- (iii) Legible.
- (iv) On paper of not less than 13 (17x22—500) pound weight.

(f) If the instrument is executed after April 1, 1997, each sheet of the instrument must comply with all of the following requirements:

- (i) Have a margin of unprinted space that is at least 2-1/2 inches at the top of the first page and at least 1/2 inch on all remaining sides of each page.
- (ii) Displays on the first line of print on the first page of the instrument a single statement identifying the recordable event that the instrument evidences.
- (iii) Is electronically, mechanically, or hand printed in 10-point type or the equivalent of 10-point type.
- (iv) Is legibly printed in black ink on white paper that is not less than 20-pound weight.
- (v) Is not less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.
- (vi) Contains no attachment that is less than 8-1/2 inches wide and 11 inches long or more than 8-1/2 inches wide and 14 inches long.
- (vii) Does not purport to evidence more than 1 recordable event.

Once accepted, the register of deeds must certify upon each instrument the time when it was received. In the case of competing interest holders, the time certified by the register of deeds becomes important in establishing which party will prevail as the record title holder of the property.

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<sup>1</sup> Rules (e) and (f) do not apply to instruments executed outside of Michigan or to the filing or recording of a plat or other instrument, the size of which is regulated by law.

Michigan is what's known as a "race-notice" jurisdiction. That means that if two purchasers buy the same real property, the second purchaser can win the "race" with the first purchaser if the subsequent purchaser is first to record its interest with the register of deeds office. Michigan's "race-notice" statute requires the subsequent purchaser to be a "bona fide purchaser for value", or in other words to have no actual or constructive notice of the competing interest in order to prevail. Hence, a subsequent purchaser of real property in Michigan will prevail over the first purchaser of the same property only if the subsequent purchaser is ignorant of the competing interest AND is first to record its interest in the property.

The "race-notice" statute only provides a means of allocating rights between a first and subsequent purchaser of real property. Both purchasers may still have legal claims of fraud or breach of contract against the seller notwithstanding the statute. However, this scenario should serve as a lesson that any purchaser or transferee of real property in Michigan should timely file their deed in order to minimize or eliminate the possibility of this result.

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