

Farm Management

Understanding deeds



Country Counsel

BY ROBERT MOORE

DEEDS are some of the most important legal documents we use. There is no more important asset to a farm than land, so it is important that deeds are drafted and executed correctly. Errors in deeds can cause major problems for current and future owners. The following discussion will, hopefully, offer a better understanding of deeds and land transfers.

Under Ohio law, deeds must be signed by the person transferring the land, and their signature must be notarized. The notarization is meant to help prevent fraudulent transfers by confirming the identity of the signer(s). The deed must also contain the name(s) of the buyer and seller, and a legal description (survey) of the property. The deed should also be recorded to put

everyone on notice as to the current owner of the property and the land's title history.

Different types of deeds exist, and it is important to understand the differences:

■ **Quit claim deeds** transfer whatever interest the seller has without guarantees. The seller is saying, "I transfer whatever I own, but I do not guarantee I own anything." This deed is often used if the transfer is within a family or into newly formed business entities. A buyer should generally not take a quit claim deed.

■ **General warranty deeds** guarantee the seller has good title, and the buyer will own and possess all rights and title to the property. If a title issue arises after the sale, the seller will be liable to the buyer for any problems. Here, the seller is saying, "I guarantee I am selling you good title and I will be liable for any title issues that arise after the sale." This liability is often offset by buying title insurance. Most sales of farmland involve a general warranty deed.

■ **Limited or special warranty deeds** are more often used in commercial real

estate. The seller is guaranteeing that he or she has had good title while owning the property. The seller is saying, "I guarantee that while I have owned the property, I have had good title, but I do not guarantee anything prior to my ownership." Title insurance can also help alleviate liability.

Buyers should always consider getting title insurance. If a title issue arises, the title insurance company will pay for all legal costs to address the issue and will compensate the buyer for any damages. Title insurance is set by a formula, so it will cost the same regardless of what title company is used. Title insurance on a \$1 million purchase will cost about \$3,500, plus \$100 for lender insurance. If the purchase is being financed, the lender will almost always require title insurance. The payment of the premium is negotiable: Sometimes the seller pays, sometimes the buyer pays, and sometimes the cost is divided.

Recording deeds is important as it results in constructive notice of the transfer. Recording puts everyone on notice of the

transfer, even if they do not search for the deed at the recorder's office. For example, Bob sells his farm to Joe, and the deed is recorded. A month later, Bob convinces Bill to buy the same farm, but Bill does not do a title search and does not realize the farm was already sold. Bill was on constructive notice that the farm had already been sold, so Joe has superior title rights. However, if the deed had not been recorded, Bill could claim he was a bona fide, innocent buyer and could have superior title rights to Joe. The buyer should always make sure that the deed is recorded in a timely manner after the sale is finalized.

Clearly, different issues are involved with deeds. It is important to understand these issues and ensure the deed accurately reflects the intent of the party. Deeds should be drafted by attorneys to help ensure they are done correctly. What may seem like a minor detail on a deed can end up being a major issue.

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