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## Challenging a Quitclaim Deed



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## Challenging a Quitclaim Deed

The next-door neighbors convinced your aunt to sign over the deed to her house. Your stepfather's long-lost son came to visit and walked away with a quitclaim deed to the family cottage. What do you do when you suspect someone did something "fishy" to get his or her name on a deed?



A quitclaim deed is a legal tool that allows one person to release the interest they have in a piece of property. In most states, quitclaim deeds are difficult to overturn. To do so, you need to be able to prove the document was invalid in some way, that the

signer was incompetent or that someone exercised undue influence to compel the person to sign.

### 1. Notarization:

In order to be recorded in the register of deeds, a quitclaim deed must have been executed before a notary public. The notary's job is to



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ensure the signatures are valid and that the signatory appears to be acting freely and voluntarily.

The notary should not notarize a deed if he or she has "compelling doubt" about the signatory's understanding of the transaction.

However, the notary is not responsible for making any judgments about the legality or accuracy of a deed.

If the quitclaim deed hasn't been notarized, then it isn't official and can't be filed with the local recorder's office. Note, however, that once a quitclaim deed is notarized, it is still considered legal even if it isn't filed.

## 2. Undue influence:

Challenging a deed often involves suspicion of undue influence. That suggests that the signatory to a deed has been improperly coerced. It could be that the beneficiary threatened the signatory or otherwise manipulated them.

Proving undue influence can be a challenge. Cases typically require medical records and experts who can testify as to the victim's mental state. Because family members may not discover the deed transfer right away, it may be necessary to look back at records that are many years old.

## 3. Mental capacity:

Similarly, transfers can be challenged based on lack of mental capacity. When someone signs a deed, that person must have a minimum knowledge of what they are doing and a capacity to act of their own free will.

Lack of mental capacity can be found in a variety of situations, such as mental deterioration due to age, brain damage caused by illness or accident, mental illness, cognitive disabilities or drug impairment.

Notaries

are not always able to determine such incapacity, and some people may present as mentally capable for the few minutes it takes to sign a deed. Proving incapacity can be shown with witness testimony or medical records, or both.

#### 4. Forgery:

A forgery occurs when the proper signatory did not actually sign the deed. That means someone else forged the signature on the document and either fooled the notary or arranged for a false notarization. Proving a forgery usually requires a professional handwriting analysis.

When challenging a deed, it's best to have an experienced real estate attorney work with you. The attorney can help determine whether the deed is false and manage any subsequent litigation.

### **OFFICE LOCATIONS**

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