

ALAGOOD & CARTWRIGHT, P.C.

WHERE DETAILS MATTER

ISSUE 1

NOVEMBER, 2012

Statute of Limitations In a Personal Injury Lawsuit

by: Brian T. Cartwright

If you have been in an automobile accident, you need to know that there are time deadlines, called statutes of limitation, that you must file your suit in or your claims will be forever barred. Generally speaking, under current law, if you are 18 years or older at the time of the accident and not of unsound mind, you have two years from the date of the accident to file suit. Even if you file suit within the statute of limitations, however, you still must use diligence in serving the defendant. If it is determined based upon the facts of your case that you failed to use diligence in serving the defendant, and the defendant is not served until after the statute of limitations has expired, then your claims will be barred and you will not be able to recover.



A&C: Out and About

The employees and firm of Alagood & Cartwright, P.C., have been busy this year in the office and in the community. Just recently, Brian Cartwright and Michelle Beecher participated in the "Wills for Heroes" presented by the Denton County Bar Association. Brian and Michelle drafted Will packages for Denton County Police and Firefighters, including their spouses. This is the second year that Michelle has participated and the first year for Brian. They also participated in the execution of the Will Packages on Saturday, October 13th. We'd like to thank our local "heroes" for all they do for our community! We appreciate you!



**This Newsletter is published by
Alagood & Cartwright, P.C.
It is for informational purposes
only and no legal advice is
intended.**



QUESTION AND ANSWER:

Should I Use a Quitclaim Deed?

by R. Scott Alagood

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ANSWER: RARELY, IF EVER

A Quitclaim Deed in Texas is somewhat of an oxymoron. Believe it or not, a Quitclaim Deed is really not a Deed. To understand the reasons why, you must know a little background about the type of deed typically used in Texas to transfer real property.

There are three basic types of Deeds in Texas which are used to convey real property*: (1) General Warranty Deed; (2) special Warranty Deed; and (3) Deed Without Warranty. Each of these Deeds primarily accomplishes the same thing. That is, they actually convey the interests owned by the Grantor in the real property being conveyed. The typical words of grant used in a Deed to show intent to convey are "grant, sold, and conveyed". However, other words such as "transfer" or "alienate" may suffice. Words such as "release", "wish", or "dedicate" have either caused confusion as to the Grantor's intent to have been held ineffective as words of conveyance. The use of the proper words of grant will imply that certain warranties exist by law.

There are differences between the three basic types of Deeds. Each Deed "warrants" the grant in differing manners. A warranty is effectively a contractual promise by the Grantor that the interest being conveyed in the Deed is the full and complete interest described. A General Warranty Deed "warrants" the conveyed interest against any prior conveyance of an interest not just by the Grantor. A Special Warranty Deed limits the warranty against any conveyance of an interest, but only if it occurs "by, through, or under" the Grantor. That is, the Grantor is only warranting against matters that he or she may have conveyed to others but not matters that someone else may have conveyed to others. A Deed Without

Warranty is just what it says it is. There is no warranty, and thus no contractual promise by the Grantor that he or she will stand behind the promised conveyance. However, since the Deed Without Warranty uses the "words of grant", it is a Deed regardless of its lack of warranty and transfers the interest described therein.

To the contrary, a Quitclaim Deed under Texas law does NOT constitute a conveyance of real property. A quitclaim conveys only the Grantor's rights in the described property, if any. A Quitclaim on its face conveys doubts about the Grantor's interest in the property and a Buyer or Grantee is automatically put on notice about these doubts. As such, a Quitclaim is not a Deed and cannot be used to establish title to a particular parcel of real estate, whether by the Grantee of the Quitclaim or anyone else claiming under him.

Also, a Quitclaim Deed does not contain any warranty of title. As such, the Buyer or Grantee receives nothing more than a chance at title. There are several disadvantages through the use of the Quitclaim that are not present when using a true Deed:

- 1) No express warranty of title nor implied warranties of title;
- 2) A person claiming under a Quitclaim cannot rely on the 5 year statute of limitations to establish title.
- 3) A Buyer or Grantee claiming under a Quitclaim cannot avail themselves of the benefits of the Texas recording statutes that protects innocent purchasers against prior unrecorded Deeds; and
- 4) The after-acquired title doctrine cannot be invoked by a Quitclaim Grantee to claim an interest in real property obtained by the Quitclaim

Grantor after the date of the Quitclaim.

Effectively, a Quitclaim Deed only acts as an "estoppel" or defense against the Quitclaim Grantor who is claiming an interest in the real property quitclaimed to the Quitclaim Grantee. Therefore, the use of a Quitclaim Deed should typically be limited to situations where a Buyer or Grantee can otherwise stand on his or her own title but needs to make sure that another potential claimant will not have a valid claim to defeat such Grantee's claim in the same real property. In those instances, a Quitclaim may be used essentially as an estoppel document, rather than a tool to obtain title to or an interest in real estate.

If you are ever presented with a situation in which you are being advised to use a Quitclaim or believe a Quitclaim is adequate, you should seek legal advice from an attorney specialized in real estate transactions to make sure you are fully aware of the consequences of such actions, as well as obtaining other possible options, such as using a Deed Without Warranty. Otherwise, you may find yourself or your heirs or assigns litigating an unintended title dispute at some point in the future.

* There are other types of Deeds which deal with mineral estates in Texas real property such as a mineral deed or a royalty deed. It should be noted that unless otherwise reserved to the Grantor or through a prior transfer, the deed of a fee interest in real estate in Texas will include the mineral estate along with the surface estate. However, the discussion of transferring an interest in only the mineral estate is beyond the scope of this discussion.

CLIENT SPOTLIGHT: SERVICEMASTER by BRIDGES



Brad and Sammy Bridges have been in the fire & water disaster restoration industry ever since their father, Jimmy, started the business in 1981. Brad & Sammy have extensive experience in working catastrophe losses all over the United States.

ServiceMaster Clean is one of the largest restoration & cleaning vendors in the United States.

ServiceMaster by Bridges services the Dallas/Ft Worth area. In addition, we have also handled large catastrophe losses in Florida, Iowa, Louisiana, Mississippi, Tennessee and all over Texas. ServiceMaster Clean is capable of handling any loss,

anywhere in the United States.

Scope of Restoration Services:

- Fire/Smoke Damage Restoration
- Water/Damage Restoration
- Contents/Personal Property Restoration
- Mold Damage Mitigation
- HVAC Unit and Air Duct Cleaning
- Deodorization
- Vandalism Clean-up
- Hazardous Materials Clean-up
- Trauma Clean-up
- Emergency Board-up/Repair Services
- Hard Floor Cleaning (tile/wood/vinyl)
- Oriental Rug Cleaning

Carpet & Upholstery Cleaning

ServiceMaster by Bridges offers on-site fire & smoke damage contents cleaning via our portable Contents Cleaning Unit. On-board equipment includes state-of-the-art ultrasonic cleaning technology, multiple industrial size sinks and an air compression unit. The assembly line design of the interior of the CCU allows for prompt and efficient mitigation to begin right away.

THE CLEAN YOU CAN EXPECT. THE SERVICE YOU DESERVE.

Call Brad and Sammy Bridges at:

(940) 387-4746



Alagood & Cartwright: Supporting our Communities:

PILOT POINT EDUCATIONAL FOUNDATION

There are many ways that Alagood & Cartwright, P.C. gives back to our local communities. One such way is being an advocate for excellence in education and donating to local schools. For 12 years now, A&C has supported the Pilot Point Educational Foundation at the highest level of sponsorship available, by attending their annual Educational Foundation Gala. The event may have changed venues from year to year, but A&C has remained a consistent supporter and donor by hosting other friends, clients, and officials at the event. The evening normally begins with photos by Eagleton Photography and a silent auction. As dinner is served, a live auction begins with items donated by celebrities, citizens, and students. The Pilot Point Educational Foundation provides scholarships and teacher grants to the local community and appreciates the support of Alagood & Cartwright, P.C.

Scott and wife Dawn at the Pilot Point Educational Foundation Gala, April 2012

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<http://research.lawyers.com/blogs/authors/2011-R-Scott-Alagood/>

ABOUT ME



Name: Sofi Alagood

Breed: Yellow Lab

Position: On Mondays and Tuesdays I visit Alagood & Cartwright, P.C.

Hobbies: Following Michelle around the office and playing at Wriggly Field Dog Park at lunch

Favorite thing to do at the A & C: Visiting John Fondon's office to see what he has available in his trash can

Family: Scott, Dawn, Ryan and Jack Alagood

SCOTT ALAGOOD SELECTED AS A "TEXAS SUPER LAWYER"



R. SCOTT ALAGOOD OF ALAGOOD & CARTWRIGHT, P.C. WAS RECENTLY NAMED TO THE TEXAS SUPER LAWYERS LIST AS ONE OF THE TOP ATTORNEYS IN TEXAS FOR 2012 IN REAL ESTATE.

IN THE NEWS

Where can you read Scott's words of wisdom?

Beginning this month, Scott will have a monthly column in the Denton Business Chronicle. Check it out and let us know your thoughts.

You can visit Scott's weekly blog at: <http://research.lawyers.com/blogs/authors/2011-R-Scott-Alagood>

Less than 5 percent of lawyers in the state are selected to be part of the list, according to a news release.

Scott received Super Lawyer recognition in 2003 and 2004. His firm also received second place in the **Best of Denton** readers poll this year.

Scott is a 1985 graduate of Denton High School. He received his B.B.A. in Finance from Texas A&M University in 1989 followed by his law degree from Texas Tech University School of Law in 1992. Scott and Brian formed their firm in 2003.

Now in its 10 year, Super Lawyers recognizes excellence in Texas law. Since 2010, the magazine has partnered with Thomson Reuters business data provider. The Super Lawyers list recognizes lawyers from more than 70 areas who have attained a high degree of peer recognition and professional achievement.

LEGAL TIP:

When purchasing real property, it is extremely important that your contract allow for the simultaneous review of the commitment for issuance of a title insurance policy and the survey of the property.

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