

How Should I Take Ownership of The Property I am Buying in Maine?

This important question is one which you should consider before closing and, preferably before you sign your purchase and sale agreement. The manner that you take ownership can have some very substantial legal consequences and determines who must sign various documents in the future affecting ownership interests. Typically, the manner that you wish to hold title is specified at the time the purchase and sale agreement is negotiated. Once agreed upon, a seller may not be willing to change the form of conveyance if you should desire.

The two decisions you will need to make are:

1. What promises will you ask the seller to make to you regarding the status of his or her ownership, referred to as the covenant of title?
2. Who will the property be transferred to, referred to as tenancy?

COVENANTS OF TITLE

The State of Maine recognizes three basic types of deeds containing different covenants of title; a Warranty, a Quitclaim with Covenant and a Quitclaim Deed.

Warranty Deed:

A seller who provides a warranty deed makes four basic promises to the buyer:

1. that the seller owns the property and has the right to sell it,
 2. that the property is free of encumbrances such as mortgages and liens,
 3. that no one will attempt to claim ownership of the property or some interest in it,
- and,
4. that the seller will execute any document in the future necessary to make the title good.

The seller under a warranty deed is liable for title issues that occurred before and during his or her ownership. These promises are made to the party that the property is conveyed to and everyone else who may later own the property. A warranty deed provides the greatest protection for the buyer and the greatest liability for the seller.

Quitclaim Deed With Covenant:

In a quitclaim deed the seller makes the same promises as in a warranty deed but limits those promises to title issues that occurred only during that seller's time of ownership. These promises are also made to everyone else who later owns the property.

Quitclaim Deed/Quitclaim Deed Without Covenant/Release Deed:

A seller who provides a quitclaim deed conveys all the right and interest that he or she has in the property but makes no promise as to the nature or quality of his or her title. This deed provides the least protection for the buyer and the least liability for the seller.

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Other Types of Deeds:

Maine law also recognizes certain other types of deeds to be used in special circumstances. These include Trustee's Deed, Personal Representative's Deed, Conservator's Deed and Guardian's Deed. These deeds do not contain any covenants of title.

Some general considerations:

The type of deed used to convey a property does not affect the quality of the title to the property being conveyed. It merely indicates what the seller's obligation is in the future should a problem arise. Remember, a covenant of title is only as good as the person who makes it. If the seller is unable to meet his or her financial responsibility or has died the covenant of title will not protect the buyer.

A seller may convey under any of the three forms described above regardless of the form of deed under which he or she received the property. Beware of a purchase and sale agreement that calls for a "Good and Sufficient" deed. Many lawyers feel that this merely entitles the buyer to a release deed.

With the growing popularity of Owner's Title Insurance, the form of deed that a seller accepts has become less important. If a buyer has purchased this protection it is generally easier to make a claim under the title insurance policy than to pursue legal remedies against the seller. Be sure to consult a lawyer if you have questions about the type of deed you should request.

TENANCY

Individual sole ownership:

Individual sole ownership is the ownership by one person. That person can be either single or married.

Individual Co-ownership:

Individual co-ownership is the ownership by more than one person. This may be between married or non-married persons. There is no limit to the number of persons who can co-own property.

1. Joint Tenancy.

In this form of ownership, each owner has an undivided equal interest in the property. An undivided interest means that the owner shares the whole with the other owner(s) and does not have a right to a specific portion of the property. Each owner's interest is subject to the interest of survivorship of the other joint owner(s). This means that as each joint tenant dies, his or her interest in the property passes to the other joint tenant, if there is only one, or is shared among the surviving joint tenants if there is more than one. A joint tenant's interest does not pass to his or her heirs or devisees and can not be directed by his or her will unless they are the last surviving owner. To create joint tenancy all owners must acquire their title at the same time by the same instrument and the intention to create a joint tenancy must be expressly declared in the deed. A joint tenant can remove his or her interest from joint tenancy by conveying it to another during his or her lifetime. In this case the new owner receives a proportional interest in the property as a tenant in common (see below).

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2. Tenants in Common.

In this form of ownership, each owner has an undivided fractional interest in the property. An undivided interest means that the owner shares the whole with the other owner(s) and does not have a right to a specific portion of the property. The fractional interests that each owner has may be different. For example, three people may own a property, two with a $\frac{1}{4}$ interest and one with a $\frac{1}{2}$ interest. Upon death, each owner's share passes to his or her heirs or devisees.

Ownership in an entity:

Rather than owning property in an individual's name, a purchaser may wish to have the property held in the name of some type of entity.

1. A Corporation.

A corporation is a legal entity, created under laws of the state in which it is incorporated. Corporations have one or more shareholders. Different classes of shareholders may have different rights. Various states recognize different types of corporations.

2. A Partnership.

A partnership is an association of two or more persons for the purpose of accomplishing some purpose(s). A partnership need not be for the purpose of conducting business.

3. A Trust

A trust is an arrangement whereby legal title is transferred to a person called a trustee to be held and managed by that person for the benefit of another person or persons, called the beneficiaries.

4. A Limited Liability Company

Like a corporation, a limited liability company is a legal entity created under the laws of a particular state. A limited liability company, however, has members rather than shareholders and operates in many ways like a partnership.

Some general considerations:

There are many different reasons and considerations why a property should be held in any particular form, each with its particular benefits and drawbacks. These might include tax benefits, probate and family matters, issues of privacy and liability concerns. Property may also be held in any combination of entities and among entities and individuals, either jointly or as tenants in common. You may wish to consult a lawyer to determine which method of ownership is best for you.

How you hold title to your property may have very important legal consequences. The information provided above is not intended to serve as a substitute for sound legal advice.

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