



What Form of Deed Will I Give For The Property I am Selling?

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 convey your property can have some very substantial legal consequences and will affect your responsibilities after the closing.

The deed that you give may or may not contain covenants of title. The State of Maine recognizes three basic types of deeds containing different covenants of title.

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.

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.

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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.

As a seller, you may convey under any of the three forms described above regardless of the form of deed under which he or she received the property. Some purchase and sale agreements call for a "Good and Sufficient" deed. Many lawyers feel that this merely obligates the seller to provide a release deed although there is not universal agreement on this point.

How you convey 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. You may wish to consult a lawyer to determine which type of deed is best for your use when you sell your property.

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