



CHICAGO TITLE
INSURANCE COMPANY



TITLE TALK By: Katie Button

Deed Covenants and Form of Deed in New Hampshire



Call or email
anytime with
questions!

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The purpose of a deed is to transfer title from the Grantor to the Grantee. That's pretty simple but explaining the deed covenants is a bit more complicated. Deed covenants are similar to the warranty that comes along with your brand new car. The warranty terms will vary depending on the manufacturer and even on the type of car you buy. One warranty may obligate the dealer to replace your leaking head gasket at 25,000 miles but another may not cover that problem at all. Deed covenants are the same type of concept.

Deed covenants describe the obligations of the Grantor to defend the title they convey to the Grantee. In the old days, pre 1951, covenants were written out in long form directly in the deed. The covenants could actually vary based on the agreement between the parties but over time developed into two commonly used clauses we now refer to as Warranty and Quitclaim Covenants.

In 1951 the New Hampshire Legislature codified the covenant language and deed forms in RSA 447:27 through 447:31. After this legislation, a deed no longer required the full recitation of covenants if the magic words "conveyed with {insert type} Covenants" were included in the deed. The magic words incorporate the identified covenants as defined in the statute by reference.

The most common form of covenants in NH are Quitclaim and Warranty while Fiduciary deeds are also used in limited circumstances.

Quitclaim Covenants: RSA 477:28

The basics: The grantor conveys whatever interest they have in the property but don't guarantee they have any interest but will defend against claims resulting from the grantors term of ownership, except for the encumbrances listed in the deed.

The Statute*: At the time of the delivery of the deed, the premises were free from all encumbrances made by the grantor, except as stated, and the grantor will warrant and defend the same to the grantee forever against the lawful claims and demands of all persons claiming, by, through or under the grantor, but against none other.

Warranty Covenants: RSA 477:27

The basics: The grantor conveys the property and guarantees they actually own the property, and will defend against any claims against the title resulting from any time period prior to the deed, except for matters listed as encumbrances in the deed.

The Statute*: At the time of delivery of the deed, the grantor was lawfully seized in fee simple of the granted premises, the premises were free from all encumbrances, except as stated, the grantor had good right to sell and convey the same to the grantee, and the grantor will warrant and defend the same to the grantee, against the lawful claims and demands of all persons.



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Fiduciary Deed: RSA 477:30



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The Basics: The grantor conveys the property, was authorized to convey and will defend against claims resulting from the Grantor but only in their representative capacity. Fiduciary deeds are used when the grantor is under a fiduciary capacity such as an administrator of an estate or a trustee of a trust. Because the grantor was not an actual owner of the property and only acting in a representative capacity, the statutory covenants are a bit different and limited to only that capacity.

The Statute*: At the time of the delivery of such deed, the grantor was duly authorized to make the sale of the premises; the grantor has complied with the requirements of the statute in such case provided; and the grantor will warrant and defend the same to the grantee against the lawful claims of all persons claiming by, from or under him or her in the capacity aforesaid.

Other Forms?

Can a Special Warranty Deed or other non-NH form of deed be used to convey NH property? For title insurance purposes, the answer is yes as long as there is conveyancing language. But the buyer should be concerned with the covenants used just like a new car buyer should scrutinize their car warranty. A common example is a deed drafted "with Special Warranty Covenants" as the magic words and no full recitation of what those covenants are. Because NH has not codified Special Warranty Covenants, those magic words are not magic at all and result in a deed with no covenants. To cure this, they need to go back to the pre-1951 practice of writing out a full recitation of the terms of the Special Warranty Covenants in the deed. **Remember**, only the covenants codified in RSA 447:27 through 447:31 can be incorporated into a deed by reference. Any other form of covenants need to be fully recited in the deed.

Drafting Considerations

When drafting a deed conveying NH property with NH statutory deed covenants, all known encumbrances should be recited in the deed as "subject to".

Title Insurance Considerations

Deed covenants are not a factor in underwriting a title insurance policy in NH. But if you are insuring a transaction based on a deed with no covenants or a portion of the property is conveyed with no covenants, that is often an indication of an issue with the title. Please contact your Underwriter for assistance.

Disclaimer

* The full statutes can be viewed at <http://www.gencourt.state.nh.us/ras/html/NHTOC/NHTOC-XLVIII-477.htm>. Portions of the statutory language have been removed in this newsletter including "heirs, successors and assigns" and "heirs, executors, and administrators" after party names. This newsletter should not be relied upon as a full recitation of the statutes referenced.

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