

Deed Warranties and Why They Should Matter To You

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You're negotiating to buy a piece of real estate and your attorney tells you that the seller is proposing to give you a "Special Warranty Deed" in exchange for all of the money you will pay.

Special Warranty Deed - that sounds nice, doesn't it? But what does that term really mean?

In order to appreciate what a Special Warranty Deed will mean to you as a buyer, it will help to know a little about the different types of deeds commonly used in North Carolina. The three most common types of deeds are:

- General Warranty Deeds;
- Limited Warranty Deeds; and,
- Non-Warranty Deeds.

General Warranty Deeds

In a General Warranty Deed, the seller usually gives four warranties regarding the land to the buyer. The seller warrants to the buyer that:

- The seller has the right to convey the real estate.
- The seller will defend the title to the real estate against the claims of all persons.
- The seller is "seized of the fee" in the real estate. "Seized of the fee" basically means that the seller warrants that the seller owns all of the rights in the real estate except as specifically stated in the deed.
- There are no encumbrances against the real estate that are not listed in the deed. An encumbrance could be a simple (even beneficial) easement that allows the power company to

install a power line across the property or a multi-million dollar judgment lien against the property. An encumbrance could be just about anything you might imagine that impacts (usually negatively) the use or value of the property, including restrictive (sometimes called "protective") covenants that control how the real estate may be used.

Limited Warranty Deeds

However, in a Limited Warranty Deed, the seller usually gives only two warranties. The seller usually warrants to the buyer that:

- The seller personally has not done anything to the title that the seller received. This is a much more limited warranty than the broad warranty found in a General Warranty Deed. As explained above, in a General Warranty Deed the seller warrants that the seller not only owns the property, but also has *all* of the rights in the property except as specifically stated in the deed.
- The seller will defend the title to the property against claims based on the prior actions of the *seller*, but no one else. This also is a much more restrictive warranty than that found in the General Warranty Deed. As noted above, in a General Warranty Deed the seller warrants that the seller will defend the title against the claims from *all* parties except as specifically stated in the deed.

Limited Warranty Deeds go by various names, including "Special Warranty Deeds." Sometimes Limited Warranty Deeds are named after the grantor, such as a "Trustee's Deed" or an "Executor's Deed," but they all share the same characteristic in that they warrant only against the grantor's own acts.

Non-Warranty Deeds

As one might imagine, the seller gives no warranties in a Non-Warranty Deed. A Non-Warranty Deed is sometimes called a "Quitclaim Deed." Although lawyers quibble over whether there is a difference between a Non-Warranty Deed (which actually purports to convey something) and a Quitclaim Deed (which only releases any claims the grantor has in the land), they all share the same characteristic that they contain no warranty, even against the grantor's own acts. In a Non-Warranty or Quitclaim Deed, the seller merely is giving the buyer whatever rights, if any, that the seller has in the property and the seller makes no warranties of any nature about the seller's rights in the property.

But What About The Special Warranty Deed?

A Special Warranty Deed is just a Limited Warranty Deed with an appealing name.

But what does it matter if you get a Limited or Special Warranty Deed when you buy a piece of property as opposed to another type of deed? As long as no title problems come up, it probably will not make any difference whether the seller gives you a General Warranty Deed, a Limited Warranty Deed, or a Non-Warranty Deed. However, if a title problem should arise, the deed warranties may make a big difference to you.

Let's take a quick look at what would occur under the different deed warranties when a simple title problem arises. Let's assume that you purchased your office building in 2021 from Sam Seller. Being familiar with the area and Sam Seller, you know that Sam purchased the building from the developer in 2020. You also know that the developer went out of business at the end of 2020. When you purchased the property in 2021, everything went smoothly. Everything was still going well until this past weekend when you received a notice from the county tax office indicating that the 2018 property tax bill on your office building had not been paid and the county has a lien on your property for several thousands of dollars. Yikes! As you scramble to locate your purchase file, let's consider how the different deed warranties could affect your attitude once you actually find your file.

If you had received a General Warranty Deed from Sam Seller, then Sam would have warranted to you that there were no encumbrances against the property that were not listed in the deed. So unless the deed specifically indicated that the property was conveyed to you "subject to" the 2018 unpaid taxes, you should be able to sleep restfully knowing that Sam owes you the money for the unpaid taxes.

If you had received a Limited or Special Warranty Deed though, your sleep will not be as restful. In a Limited Warranty Deed, Sam would have warranted simply that he had not done anything to encumber or otherwise harm the title to the property while he owned the property. Unfortunately, Sam Seller did not own the property in 2018 when the 2018 taxes became a lien on the property or in January 2019 when they became past due. As you will recall, Sam bought the property in 2020. Consequently, the warranties found in a Limited Warranty Deed from Sam would not cover the unpaid 2018 taxes, and Sam would not be liable to you for the unpaid taxes.

Of course, if you had received a Non-Warranty or Quitclaim Deed from Sam Seller, then Sam also would not be liable to you for the unpaid taxes. As mentioned above, under a Non-Warranty or Quitclaim Deed, Sam would not have warranted anything to you about the property. You simply would have received whatever rights (if any) that Sam had in the property at that time, and Sam's rights were subject to the lien of the 2018 taxes.

What To Do If Offered A Special Warranty Deed

So, how do you protect yourself from issues that may arise when you will receive a Special Warranty Deed? Here are three things to do the next time you decide to buy property:

- Regardless of the type of deed to be given at closing, get your attorney involved in the transaction before you sign a contract. Even if the contract provides for a General Warranty Deed, other language in the contract could reduce the general warranties. For example, contract language that indicates the property will be conveyed by a General Warranty Deed "subject to all matters of record" sounds reasonable, but the "subject to" language essentially negates the general warranties because most matters encumbering title to the property will be "of record."
- Have your attorney conduct a title examination on the property to discover any encumbrances or title problems before you purchase the property. Even if there are no title problems, this is where your attorney will discover those "little" things that could become big problems if you did not know about them prior to purchasing the property. For example, this is where your attorney would discover that the large open area behind the office building is subject to an easement in favor of the owner of the adjoining property that would prevent you from expanding the building into that area.

- Have your attorney obtain title insurance for you. Title insurance will give you additional protection from unknown title risks that could raise their ugly heads in the future. Although title insurance does not guarantee that you will not have a title problem, it does provide insurance to help pay to correct the problem or to compensate you if the problem cannot be corrected.

Conclusion

Understanding deed warranties will help you to better protect yourself from title problems and possible litigation in the future. Special and Limited Warranty Deeds really aren't that special and might not grant you the protections you think. Even still, other deeds may not contain *any* protection for a buyer at all.

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