



Dear Stewart Partners,

The frigid temperatures we've been experiencing have kept most of us indoors, so we hope you've stayed warm and cozy and have been able to avoid all the colds, flus, and viruses going around this season.

This week we are continuing with our series on deeds utilized in New England. In this Mid-Week, we will be discussing deeds in Massachusetts and Rhode Island. We again are providing a link to Virtual Underwriter's Chapter on Deeds of Conveyance, which provides some great general information on deed elements and necessary requirements. Also, if you are a member of the Massachusetts Real Estate Bar Association (REBA), you have access to several forms that may be helpful to you when drafting deeds for Massachusetts transactions.

We are also including a Special Alert issued for property in Middletown, Rhode Island, in case you missed it last week.



In Case You Missed It – SA2024015

Last week, Stewart issued a Special Alert relative to property at **152 River Run, Middletown, Rhode Island**. If you didn't receive or have an opportunity to review, please follow this link to read the complete bulletin: [SA2024015 \(virtualunderwriter.com\)](https://virtualunderwriter.com/SA2024015). If you receive a title order or a request to close a transaction involving these parties or this property, please contact Eileen O'Shaughnessy, Stewart's Rhode Island underwriting counsel, prior to closing the transaction and issuing policies.



Massachusetts Deeds of Conveyance By: Rhonda L. Duddy, Massachusetts and New Hampshire Underwriting Counsel

There are three types of deeds typically used to convey real estate in Massachusetts. The type of deed is usually determined by the type of deed the seller had originally received, but the covenants that will be contained in the deed should also be considered when drafting. It is important to remember that the choice of deed type is significant to the future rights of both parties.

Quitclaim Deed

A quitclaim deed is the most frequently used deed in Massachusetts. Pursuant to M.G.L. c. 183, §11 and §17, in a deed with quitclaim covenants the grantor covenants with the grantee, the grantee's heirs, successors and assigns, that at the time of the delivery of such deed the premises were free from all encumbrances made by the grantor, and that the grantor will, and grantor's heirs, executors, administrators and successors shall, warrant and defend the same to the grantee and the grantee's heirs, successors and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other.

In essence, a quitclaim deed is effective to transfer title to a grantee, but only transfers whatever right, title and interest the grantor actually possessed in the land at the time the deed was given. The deed will warrant that the grantor and any heirs will warrant and defend the grantee only against the claims arising directly through or under the grantor.

Warranty Deed

A warranty deed offers the most protection to a grantee, but is not commonly used in Massachusetts, except in some counties in the western part of the state. Pursuant to M.G.L. c. 183, §10 and §16, in a deed with warranty covenants the grantor, for themselves, their heirs, executors, administrators and successors, covenants with the grantee, their heirs, successors and assigns, that at the time of the delivery of the deed, (1) they were lawfully seized in fee simple of the granted premises; (2) that the granted premises were free from encumbrances, (3) that they had good right to sell and convey the same to the grantee and their heirs and assigns, and (4) that the grantor, and the grantor's heirs, executors, administrators shall, warrant and defend the same to the grantee and the grantee's heirs and assigns against the lawful claims and demands of all persons.

The nature of the covenants contained in a deed is what distinguishes a warranty deed from a quitclaim deed. The primary difference between a quitclaim deed and a warranty deed is that while a warranty deed provides covenants for the time before the grantor's ownership, a quitclaim deed only provides covenants during the time of the grantor's ownership. It is therefore important that granting language in the deed include either "with quitclaim covenants" or "with warranty covenants."

Release Deeds and Fiduciary Deeds

A release deed only releases the real estate to the grantee and does not contain any words of covenants of any kind. The grantor is only conveying the interest he legally has in the property. MGL. c. 183, §12 states, "In a conveyance of real estate the word 'grant' shall be a sufficient word of conveyance without the use of the words 'give, bargain, sell and convey', and no covenant shall be implied from the use of the word 'grant.'"

A fiduciary deed is a type of release deed. A fiduciary deed is a release deed and is used by a fiduciary, who is not the owner of the property, but has legal rights to sell or convey the property. Fiduciary deeds are commonly used by a personal representative of an estate or court appointed conservator when conveying property. It is also sometimes used by a trustee of a testamentary trust. Simply put, a release or fiduciary deed has the same effect as a quitclaim deed, but without any covenants.



Rhode Island Deeds of Conveyance By: Eileen C. O'Shaughnessy, Rhode Island Underwriting Counsel

In Rhode Island, there are several distinct kinds of deeds that can be used. Below is a brief description of each, in the order of most common usage.

Warranty Deed

The Warranty Deed is the most common type of deed used to transfer residential property in Rhode Island. A warranty deed covenants that at the time of delivery of the deed, the grantor is lawfully seised in fee simple of the granted premises which are free of all encumbrances. The warranty deed covenants that the grantor has full power and authority to convey the premises to the grantee and that the grantor and their successor and assigns will warrant and defend the granted premises to the grantee against the claims of all persons. (See R.I.G.L. 34-11-15 and 34-11-16) This deed is commonly used by individuals, corporate entities, and limited liability companies as grantors.

Quitclaim Deed

The quitclaim deed is typically used in inter-family transfers or transfers to the grantor's LLC or Trust. The meaning of quitclaim covenants under the statute (See R.I.G.L. 34-11-17 and 34-11-18) is that the grantor, for themselves and for their heirs, executors and administrators, covenants with the grantee and the grantee's and assigns, that they will, and their executors and administrators shall, warrant and defend the granted premises to the grantee and their heirs and assigns forever against the lawful claims and demands of all persons claiming by, through, or under the grantor.

The covenants parallel the covenants given in a Massachusetts quitclaim deed.

Fiduciary Deed

Fiduciary Deeds include, but are not limited to Executor's, Administrator's, Guardian's, and Trustee's Deeds. These Deeds must set forth under what power the fiduciary is acting, whether by Court order or the terms of the Trust documents and provides covenants from the fiduciary only in that capacity.

Special Warranty Deed

A special warranty deed or limited warranty deed is typically used by lenders when they are selling properties they own through foreclosure. While the statute (See R.I.G.L. 34-11-43 and 34-11-44) sets forth the same covenants as the Quitclaim Deed, a Special Warranty Deed only warrants the title during the time the grantor has owned the property.

Receiver's Deed

Similar to a Fiduciary's Deed, the Receiver's Deed is executed pursuant to Court order in a Receivership proceeding and is conveying only in the Receiver's official capacity. The Receiver's Deed almost always conveys free and clear of any liens. The Receiver is able to do this because the interests of others have been adjudicated in the receivership. It is important for this reason to always review the court order that gives the receiver the

authority to convey to determine what the grantee of a Receiver's deed is receiving, and what encumbrances or other matters may continue to impact the property, if any.



Deeds of Conveyance – Virtual Underwriter

Do you want additional information on Deeds of Conveyance, the essential elements, operative words, and a basic deed review checklist? Check out Stewart's Virtual Underwriter. VU has an entire section on Deeds of Conveyance and provides some great background and foundational information. This is a great tool for training or even as a refresher for you and your staff. To read this section on VU, follow this link: [VU: Deeds of Conveyance](#)



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