

Dear Stewart Partners,

This week's Mid-Week Update focuses on the northern New England states of Maine and New Hampshire, each a beautiful and chilly winter wonderland these days. Continuing with our recent topic of deed types throughout the New England states, we provide a primer on Maine and New Hampshire deeds. We also want to make you aware of a relatively new type of online scam whereby someone posing as a friend or family member attempts to entice users into inadvertently handing over their social media account credentials.



I Can't Believe He's Gone

The title of this article likely caught your attention. What if one of your Facebook or Instagram friends posted it there? Would you click on the link to find out if someone you know passed away? Unfortunately, many people do.

By now, we are all keenly aware that the title industry is frequently targeted by various types of attempted fraud. This relatively new type is known as the "I Can't Believe He is Gone" phishing scam. Typically seen on social media sites such as Facebook, the scam begins with a post that appears to be from the user's known friend or family member stating something like "I can't believe he is gone - I'm gonna miss him so much." The post includes a link purportedly to an article or obituary. However, clicking the link directs the user to a fraudulent web page prompting them to log back into Facebook or other social media site. Once the user enters those logon credentials, the scammers have successfully stolen them for use in other scams.

To avoid falling victim to this scam, we recommend adhering to the following tips:

1. If possible, use multi-factor authentication (MFA) as additional security for your accounts. MFA will prompt you to provide additional verification before logging in, thereby making it harder for scammers to steal your credentials and compromise your account; and
2. Although the post appears to come from a friend or family member and therefore seems trustworthy on its face, their account could be compromised in the same or other manner. We recommend reaching out to the sender by phone, text, or email, to verify their post was legitimate.



Maine Deeds of Conveyance By: Zachary Greenfield, Esq., Maine State Manager and Underwriting Counsel

In 1967, Maine's legislature enacted the Maine Short Form Deeds Act, 33 MRSA § 761 et seq. ([Maine Short Form Deeds Act, 33 MRSA](#)) to establish the types of deeds to be used in the conveyancing of real estate. Section 775 of the Act is extremely helpful to practitioners in that it contains an appendix of examples of each type of deed. The following is a brief description of the most popular of those deeds:

Warranty Deed

As it is in most states, the Maine warranty deed is the gold standard for purchasers. It has “the force and effect of a deed in fee simple to the grantee, his [or her] heirs and assigns, his [or her] and their use and behoof forever, with covenants on the part of the grantor, for himself [or herself], with the grantee, his [or] heirs and assigns, that, at the time of the delivery of such deed, he [or she] was lawfully seized in fee of the premises, that they were free of all encumbrances, that he [or she] had good right to sell and convey the same to the grantee to hold as aforesaid, and that he and his [or she and her] heirs shall and will warrant and defend the same to the grantee, his [or her] heirs and assigns forever, against the lawful claims and demands of all persons.” 33 MRSA § 763.

In our April 12, 2023 Mid-Week Update, we told you about a Maine Supreme Court decision in *Kneizys v. FDIC*, 2023 ME 20, in which the Law Court ruled that a deed entitled “Warranty Deed” but failing to include the words “with warranty covenants” in the body of the deed will result in a deed without warranty covenants. As such, it is important to make sure those words are included in the body of the deed when you are assisting buyers. The following is a link to that article: [2023.4.12 REG Mid-Week Update](#)

Quitclaim Deed with Covenant

This type of deed is commonly used in commercial transactions in Maine. It has “the force and effect of a deed in fee simple to the grantee, his [or her] heirs and assigns forever, with covenant on the part of the grantor, for himself [or herself], with the grantee, his [or her] heirs and assigns forever, that at the time of the delivery of such deed the grantor covenants with the grantee, his [or her] heirs and assigns, that he [or she] will warrant and forever defend the premises to the said grantee, his [or her] heirs and assigns forever, against the lawful claims and demands of all persons claiming by, through or under him [or her].” 33 MRSA § 764. In other words, the grantor who conveys by this type of deed is releasing to the grantee whatever interest the grantor may have in the property and only promises that the grantor has not done anything to harm the title.

Quitclaim Deed Without Covenant

Also known as a Release Deed, this type of deed is the bare minimum. It releases to the grantee any interest the grantor may have in the property without any warranties or covenants of any kind. If the grantor lacked any rights in the property, the grantee's options for recourse against the grantor are very limited.

Mortgage Deed

A Maine mortgage deed “has the force and effect of a mortgage deed to the grantee, the grantee's heirs and assigns, to the grantee and their use and behoof forever, with covenants on the part of the grantor, for the grantor, with the grantee, the grantee's heirs and assigns, that at the time of the delivery of such mortgage deed the grantor was lawfully seized in fee of the premises, that they were free of all encumbrances, that the grantor had good right to sell and convey the same to the grantee to hold as aforesaid, and that the grantor and the grantor's heirs shall and will warrant and defend the same to the said grantee, the grantee's heirs and assigns forever, against the lawful claims and demands of all persons; and with mortgage covenants and upon the statutory condition as defined in sections 768 and 769 to secure the payment of the money or the performance of any obligation therein specified.” 33 MRSA § 764. Most practitioners consider Maine to be a “title theory” state in the context of mortgages. In other words, a mortgage conveys title to the mortgagee subject only to the mortgagor’s rights of possession and redemption, each of which may be terminated by foreclosure.

It is important to note that Maine is a judicial foreclosure state in the context of residential mortgage loans, and a power of sale foreclosure state in the context of properly drafted commercial mortgage loans. To qualify for foreclosure by power of sale, which is an abbreviated foreclosure process achieved by giving certain notices and proceeding directly to an auction, 33 MRSA § 501-A ([33 MRSA § 501-A](#)) requires mortgages securing commercial loans to expressly include the specific grant of “The Statutory Power of Sale,” which is neither automatic nor included in the “statutory condition”.

Other Maine Deeds

Other types of statutorily recognized deeds in Maine include Transfer on Death Deeds, Deeds of Sale by Personal Representatives, Deeds of Distribution by Personal Representatives, and Municipal Quitclaim Deeds.



New Hampshire Deeds of Conveyance By: Michelle Radie-Coffin, New Hampshire State Manager and Associate Senior Underwriting Counsel

There are three types of deeds that are generally used in New Hampshire. RSA 477 includes statutory forms; however, nothing precludes the use of other legal forms of deeds so long as the form that is used in substance follows the applicable statute for each of the deeds listed below.

Warranty Deed

A warranty deed conveys title to property with a warranty that the seller has the right to sell the property and that the title to the property is free from all encumbrances or other interests, except as may be stated in the deed. A warranty deed is one in which the grantor warrants and agrees to defend the title against the claims and demands of all persons, whether such claims or demands arose during the seller’s ownership or the ownership of prior titleholders. The statutory form is in RSA 477:27. [Warranty Deed Statutory Form](#). Warranty Deeds contain assurances of the title, also known as covenants:

- Covenant of Seisin – The covenant of seisin is a covenant that the seller has the estate or interest that they purport to convey.
- Covenant of Right to Convey – The covenant of the right to convey is a covenant that the seller has the power and authority to make the grant.
- Covenant Against Encumbrances – The covenant against encumbrances is a covenant assuring that there are no encumbrances against the title or interest conveyed.
- Covenant for Quiet Enjoyment – The covenant for quiet enjoyment is a covenant that the buyer will not be disturbed in their possession or enjoyment of the property by a third party's lawful claim of title.
- Covenant of Warranty – The covenant of warranty is a covenant wherein the seller agrees to defend on behalf of the buyer any lawful or reasonable claims of title by a third party, and to compensate the buyer for any loss sustained by the claim of superior title.
- Covenant for Further Assurances – The covenant for further assurances is a covenant to perform whatever acts are reasonably necessary to perfect the title as the buyer may reasonably require.

Quitclaim Deed

Similar to a warranty deed, a quitclaim deed conveys title to property with a warranty that the seller has the right to sell the property and that the title is free from all encumbrances or other interests, except as may be stated in the deed. However, under a quitclaim deed the seller only agrees to warrant and defend the title against the claims and demands of persons claiming, by, through or under the seller, but not against those claims or demands arising from prior titleholders. The statutory form for a quitclaim deed is found in RSA 477:28 [Quitclaim Deed Statutory Form](#).

Fiduciary Deed

Fiduciary deeds are used when property is being conveyed out of an estate or a trust. The executor or trustee acting in a fiduciary capacity warrants that they have the authority to sell, and that they will warrant and defend the title against the claims of all persons claiming by, from or under the executor or trustee in their fiduciary capacity. Because the liability of the estate or trust is limited to claims brought by persons claiming by, from or under the executor or trustee, a fiduciary deed is like a quitclaim deed. The statutory form for a fiduciary deed is found in RSA 477:30 [Fiduciary Deed Statutory Form](#).



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