
TITLE

Question: Under a statutory warranty deed, is the seller liable for defects in a home discovered after closing?

Answer: A statutory warranty deed is the customary form of conveyance in Washington. When a grantor (seller) delivers a statutory warranty deed, the grantor warrants "(1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed." RCW 64.04.030. A warranty deed has nothing to do with the quality or condition of the improvements -- the warranties affect title only.

Question: My buyers have made an offer on a bank-owned property. The bank will only give a Special Warranty Deed, rather than the Statutory Warranty Deed called for in the purchase and sale agreement form. What is the difference?

Answer: The difference between a statutory and special warranty deed is that a special warranty deed warrants the title only against defects or encumbrances that attached or accrued during the grantor's term of ownership, which in this case was probably just a few months. The purchase and sale agreement forms provide for a statutory warranty deed, which is customary in real estate transactions in this state. However, most institutional sellers will give only a special warranty deed. I strongly recommend obtaining extended coverage title insurance when a seller gives only a special warranty deed.

Question: Can a seller who received only a quit claim deed give a statutory warranty deed upon resale of the property?

Answer: The customary form of conveyance in Washington is a statutory warranty deed. An owner who received only a quit claim deed may nevertheless convey by statutory warranty deed. The consequence of conveying by statutory warranty deed under such circumstances is that the seller would not have any rights against his grantor, if the buyers assert a claim against him after closing. For example, suppose, after closing, a neighbor asserts a claim against the buyers to quiet title to a strip of land on the neighbor's side of a fence under adverse possession and the elements of adverse possession were satisfied, but unknown, prior to the closing. The buyers could tender their defense of the neighbor's claim to the seller, who would be obligated to defend and indemnify the buyers against the claim. If the neighbors prevailed, the seller would be liable to the buyers for the fair market value of the strip of land lost through adverse possession, but could not pass that loss along to the prior grantor, who made no warranty of title.

On the other hand, the sellers could give only a special warranty deed, which warrants the title only against defects and encumbrances that attached or accrued during the seller's term of ownership. Many institutional sellers refuse to give a statutory warranty deed under such circumstances. Using a special warranty deed would have to be disclosed in the agent remarks section of the listing and may have a chilling effect on the sale of the property. Discuss the issue in general terms only with the seller, then advise the seller to consult his/her attorney before making a decision on this issue.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.