



Can a seller give a special warranty deed instead of a general warranty deed?

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QUESTION: My sellers are heirs of an estate property. They have received an offer on their listing, but they have taken issue with the standard language in Form 2-T (Offer to Purchase and Contract) which says that they need to provide a general warranty deed to the buyer. They instead want to give a special warranty deed. Is a special warranty deed permissible? If it is, how do I handle the contract?

ANSWER: It is permissible for the sellers to give a special warranty deed. A general warranty deed includes several covenants from the seller: (1) a covenant that the seller possesses the estate in the deed (such as a fee simple estate) and that the seller has the right to convey such estate; (2) a covenant that there are no encumbrances and that the seller will defend the buyer if any are discovered; and (3) a covenant that there are no interests in the property superior to the seller's and that the seller will defend the buyer if such an interest later arises. The seller warrants these covenants to the buyer against any claims made by any person from the beginning of time.

In contrast, the seller in a special warranty deed only warrants title against any person who claims to have title to the property by, through, or under the seller. This means the seller warrants that they have not done anything during their ownership to create a defect in the title, but the seller's warranty does not extend prior to the time the seller became the owner.

You should advise your sellers in writing to seek legal guidance on the ramifications of giving such a title. You should also inform them that a special warranty deed may affect the desirability of the property for some buyers. And finally, the seller's offering a special warranty deed should be disclosed in any listing for the property.

As to the contract itself, an attorney should be consulted to make the necessary adjustments to paragraph 8(g) in Form 2-T. This can be accomplished by striking parts of that paragraph and then inserting language concerning a special warranty deed instead of a general warranty deed. An attorney could also create a custom addendum.

Buyer agents should note that if a seller is only offering a special warranty deed, it is very important that the buyer seek legal advice concerning the risks, including the amount of coverage offered by title insurance.

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