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A few things you should know about New Hampshire real estate

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In many ways, New Hampshire is a unique state. We have no sales or income tax, host the nation's first presidential primary, and put our liquor stores as close to the interstate highways as possible. Our real estate laws are unique too. Here are few things you should know about real estate in New Hampshire:

Warranty v. Quitclaim Deeds. New Hampshire conveyancing law and practice is fairly typical in most respects. The form of deed that should be used when transferring real estate, however, can be confusing, especially to those used to doing business in other states. Here, the most often used form of deed is the warranty deed, which gives grantees the most extensive assurances of title. A conveyance by warranty deed includes an implied promise that the grantor has lawful title to and the right to convey the property, the property is free from encumbrances (except as otherwise stated in the deed), and the grantor warrants and will defend the grantee's title against all claims. Most buyers should insist on receiving a warranty deed.

An alternative type of deed is the quitclaim deed, which grants limited assurances of title. The quitclaim deed generally corresponds with the warranty deed, except that that the grantor's promise to defend the grantee's title is limited to claims arising during the time of the grantor's ownership. In other words, a quitclaim deed does not provide the purchaser with any protection against the title claims of third parties not claiming by and through the grantor.

Another important thing to note is that warranty and quitclaim deeds are not the only forms of deeds used. We also have fiduciary deeds, foreclosure deeds, tax collector's deeds, release deeds and other variations. Counsel should be relied upon to explain when it may be appropriate to use these various forms.

Current Use Taxation. Current use taxation is a special New Hampshire tax program for property owners who maintain their land in an undeveloped condition. Farm land, forest land, wetlands and open space of 10 acres or more are eligible for current use, under which the land is taxed significantly below its current market value. When current use land is developed or changed to a non-qualifying use, a Land Use Change Tax (LUCT) is assessed against the property in an amount equal to 10% of the property's full and true value. The current use designation runs with the property, so land ordinarily does not lose its status when transferred.

Current use can be an important tax savings tool for landowners, but it can also be a trap for the unwary. Although a landowner must apply with the municipality to have the property put into current use, once land is so classified it cannot be voluntarily removed without an actual physical change to the property. In addition, the timing of the development of land in current use may have a significant impact on the amount of the LUCT and when it is collected. Any plan to purchase or develop current use land should include careful planning with counsel.

Real Estate Transfer Tax (RETT). New Hampshire imposes a direct tax on the transfer of real estate at the rate of 1.5% of the purchase price. Payment of the tax is usually split equally between the buyer and seller. Unlike in other states, there are a limited number of exemptions to the RETT, the most common of which include non-contractual (gift) transfers, transfers between spouses pursuant to divorce, transfers to the state or a municipality, and transfers that occur upon death by will or otherwise.

Importantly, all transfers to and from any business organization generally will be taxable based on the full value of the real estate, regardless of whether any consideration was actually exchanged. Although there is litigation on this point percolating throughout the court system, anyone dealing with this type of transaction should proceed with caution and realize that there is a substantial audit risk.

Another unique feature of the RETT is that it also taxes transfers of interests in real estate holding companies. In other words, any sale of an ownership interest in a corporation, LLC or partnership meeting the definition of a real estate holding company will trigger the 1.5% tax as if the company's real estate itself had been conveyed and regardless of whether there is any actual transfer of title.

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