

# 18th Annual Harold I. Levine Real Estate Institute

## How Our Past Shapes Our Future

November 3, 2022



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# 18th Annual Harold I. Levine Real Estate Institute

## Residential Real Property Disclosure Act What's New and What's Not



**Greg Miely**

Senior Managing Attorney  
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### Additional Information from Live Presentation

During the presentation regarding the amendments to the Illinois Real Property Disclosure Act, there were several questions regarding whether a personal representative of a decedent's or disabled person's estate who is selling the estate property must provide the disclosure report. I responded that the personal representative must provide the disclosure report, but actually, Section 15 of the Act provides exemptions for "Transfers pursuant to court order, including, but not limited to, transfers ordered by a probate court in administration of an estate" (Section 15(1)), and "Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust. As used in this paragraph, 'trust' includes an Illinois land trust" (Section 15(3)).

Unfortunately, if the personal representative or trustee is selling the property, a beneficiary of the estate or trust who has a legal or equitable interest in the property must make the disclosure: "Seller" means every person or entity who: (1) is a beneficiary of an Illinois land trust; or (2) has an interest, legal or equitable, in residential property as: (i) an owner; (ii) a beneficiary of a trust; (iii) a beneficiary pursuant to testate disposition, intestate succession, or a transfer on death instrument" (Section 5). Legislation is now being introduced to amend the statute to require disclosure only by beneficiaries who occupy the property or have management responsibility.

Of course, if property is distributed by the personal representative or trustee to the beneficiaries who then sell the property, those beneficiaries must provide the disclosure report.

## Illinois Residential Real Property Disclosure Amendments

- **Who must provide the Disclosure Report (who is a “seller”)?**

1. Illinois land trust beneficiary;
2. Legal or equitable interest holder as:
  - a. Owner
  - b. Trust beneficiary
  - c. Beneficiary of a:
    - 1) Testate disposition
    - 2) Intestate succession
    - 3) Transfer on Death instrument
    - 4) Contract purchaser
    - 5) Lessee of a ground lease



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## Illinois Residential Real Property Disclosure Amendments

- **Who must provide the Disclosure Report (who is a “seller”)?**

3. Stricken from the definition of “Seller” was an exemption for a seller who had never occupied or managed the property. Thus, heirs of the deceased titleholder were not required to provide the disclosure.
4. With the amendment, the seller, regardless of any lack of occupancy of the property, must provide the disclosure. Lack of occupancy affects only whether the seller is “aware” of any of the enumerated defects.
5. A “no” answer to statement 1 (occupancy) on the disclosure report requires the seller to explain its relationship to the property.



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Transactions subject to the Act

1. Subject to Section 15 exemptions, the Act applies to any transfer by sale, exchange, installment land sale contract, assignment of beneficial interest, lease with an option to purchase, ground lease, or assignment of ground lease of residential real property.
2. "Contract" means a written agreement by the seller and prospective buyer that would, subject to the satisfaction of any negotiated contingencies, require the prospective buyer to accept a transfer of the residential real property.



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Transactions subject to the Act

3. An option contract is not a contract for the sale of property but "is an agreement in which one party (the optionor), based upon consideration given to him by the optionee, binds himself to perform a certain act, at the sole power and discretion of the optionee to accept upon terms specified...The owner does not then sell or agree to sell his property or any interest in it, but he sells the right or privilege to buy at the option of the other party."

Terraces of Sunset Park, LLC v. Chamberlin, 399 Ill. App. 3d 1090, 1094, 929 N.E.2d 1161, 1165 (2010)"



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## Illinois Residential Real Property Disclosure Amendments



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### ▪ Transactions subject to the Act

4. Even though the purchaser intends to raze the residence after the closing, the seller is still obligated to provide the disclosure report.

Skarin Custom Homes, Inc. v. Ross, 388 Ill.App.3d 739 (2<sup>nd</sup> Dist., 2009)

5. But the disclosure report is not required if at the time the contract is executed, the residence is uninhabitable.

Grady v. Sikorski, 349 Ill.App.3d 774 (1<sup>st</sup> Dist., 2004)



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## Illinois Residential Real Property Disclosure Amendments



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### ▪ Exemptions:

1. Transfer by court order:
  - a. Dissolution of marriage;
  - b. Probate proceeding;
  - c. Bankruptcy;
  - d. Specific performance;
  - e. Eminent domain
2. Judicial sale deed/deed in lieu of foreclosure
3. Fiduciary deeds:
  - a. Executor/administrator
  - b. Guardian/conservator
  - c. Trustee (**including land trustee**), but not the beneficiary(ies)



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## Illinois Residential Real Property Disclosure Amendments

### ■ Exemptions:

4. Co-owner to co-owner;
5. Transfer *from a decedent by testate or intestate succession, or transfer on death instrument*;
6. Spousal or familial transfers;
7. Relocation company transfer (but titleholder must provide disclosure);
8. Governmental entity;
9. Unoccupied newly constructed residential property (*but not rehabilitation construction*)
  - If an exemption applies, there is no liability under the Act even if the seller provides a disclosure



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## Illinois Residential Real Property Disclosure Amendments

### ■ Duty to Disclose

- Duty to supplement original disclosure now required whenever the Seller “*becomes aware*” (rather than “has actual knowledge”) of an error, inaccuracy, or omission in previous disclosure.
- Query: At what point does a seller “become aware” of an error, inaccuracy, or omission?
  - Neighbor mentions that prior owner complained of basement flooding despite seller having no such problems
- The amended disclosure form continues to provide that “aware” means actual notice or knowledge, and Section 25 (Seller’s liability) still provides that seller must disclose defects of which seller has “actual knowledge.”



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Disclosure Report form

1. Seller occupancy: If the seller has not occupied the property during the previous 12 months, the seller must now explain the seller's "capacity" or "relationship" to the property;
2. Flood insurance: This new item requires seller to indicate whether the seller has flood insurance. Previously, disclosure 3 required seller to indicate if the property was in a floodplain or if seller had flood insurance. Flood insurance coverage is now a separate item.
3. Flooding: No change to item 3
4. Floodplain: This item now involves only floodplain matters and not flood insurance



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Disclosure Report form

- 5 – 24: Other than renumbering, no changes were made to these items
- A new paragraph has been added above the sellers' signature lines:

SELLER ACKNOWLEDGES THAT THE SELLER IS REQUIRED TO PROVIDE THIS DISCLOSURE REPORT TO THE PROSPECTIVE BUYER BEFORE THE SIGNING OF THE CONTRACT AND HAS A CONTINUING OBLIGATION, PURSUANT TO SECTION 30 OF THE RESIDENTIAL REAL PROPERTY DISCLOSURE ACT, TO SUPPLEMENT THIS DISCLOSURE PRIOR TO CLOSING.



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Disclosure Report form

1. Section 40 of the Act allows a buyer to terminate a contract if the disclosure is provided to the buyer after the contract has been executed and indicates a material defect exists.
2. Section 40 was amended to allow the buyer **five days** (instead of three) after receipt of the disclosure to terminate the contract and entitles the buyer to a full refund of the earnest money/down payment **with no liability to, or recourse by, the seller.**



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Supplemental Disclosure Report

3. If a supplemental disclosure reveals a material defect, the buyer may terminate the contract only if:
  - a. The disclosure of the material defect was the result of seller's actual knowledge, at the time a prior disclosure was issued, of an error, inaccuracy, or omission;
  - b. **The defect is not repairable prior to closing; or**
  - c. **The defect is repairable prior to closing, but, within five business days after delivery of the disclosure, seller declines to repair the defect.**



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## Illinois Residential Real Property Disclosure Amendments



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### ■ Notices

1. Delivery of the disclosure report by the seller and notice of termination by the buyer may be made by means of the following:
  - a. Personal delivery;
  - b. Facsimile;
  - c. **Email;**
  - d. **Other electronic delivery** (texting/SMS?);
  - e. U.S. mail; or
  - f. Alternate delivery service (FedEx, UPS, etc.).
2. The disclosure report and any notices are to be sent to the address (physical or electronic) **provided by the seller and buyer, or as indicated in the contract or other agreement.**



## Illinois Residential Real Property Disclosure Amendments



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### ■ Remedies

1. If the seller fails to provide the disclosure to the buyer prior to the conveyance of the property, the buyer may terminate the contract, but the right to terminate expires upon conveyance.
2. If the seller knowingly violates or fails to perform any duty required under the Act, or knowingly discloses false information, the seller is liable to the buyer for the actual damages, court costs, and, at the court's discretion, reasonable attorney's fees.
3. The Act does not limit any other remedies available under other statutes or at common law.



## Illinois Residential Real Property Disclosure Amendments

### ▪ Miscellaneous

1. The previous version of the Act variously called the disclosure a form, a document, or a statement
2. The disclosure is now, officially, a report.



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Select Cases

1. “As is” clause in real estate contract not a defense to fraudulent misrepresentation and fraudulent concealment on disclosure report (basement flooding).

Bauer v. Giannis, 359 Ill.App.3d 897 (2<sup>nd</sup> Dist., 2005)

2. Doctrine of merger will not preclude action under Disclosure Act since Act imposes ongoing liability for fraud or misrepresentation.

Coughlin v. Gustasfon, 332 Ill.App.3d 406 (1<sup>st</sup> Dist., 2002)



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## Illinois Residential Real Property Disclosure Amendments



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### ■ Select Cases

3. “As is” clause in real estate contract not a defense to fraudulent misrepresentation and fraudulent concealment on disclosure report (basement flooding).  

Bauer v. Giannis, 359 Ill.App.3d 897 (2<sup>nd</sup> Dist., 2005)
4. Muir v. Merano, 378 Ill.App.3d 1103 (5<sup>th</sup> Dist., 2008)
  - a. Seller and buyer enter into written agreement for sale/purchase of property; buyer paid \$10,000 earnest money with \$5,000 to be retained by seller if the transaction failed to close.
  - b. After six requests, seller refused to provide disclosure report to buyer. Buyer terminated the contract pursuant to Section 55 and demanded return of earnest money. Seller offered \$5,000.



## Illinois Residential Real Property Disclosure Amendments



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### ■ Select Cases

4. Muir v. Merano, 378 Ill.App.3d 1103 (5<sup>th</sup> Dist., 2008)
  - c. Trial court held that sale was subject to Disclosure Act and that seller had failed to provide disclosure report. Court entered judgment in favor of buyer for \$10,000.
  - d. On appeal, seller argued that Disclosure Act provided for “escalating remedies” that build on one another:
    - 1) Section 20 (“The seller shall deliver to the prospective buyer the written disclosure report required by this Act *before the signing of a contract*”) requires delivery prior to the execution of the contract but provides no remedy for failure to do so.



## Illinois Residential Real Property Disclosure Amendments

### ▪ Select Cases

4. Muir v. Merano, 378 Ill.App.3d 1103 (5<sup>th</sup> Dist., 2008)
  - d. On appeal, seller argued that Disclosure Act provided for “escalating remedies” that build on one another...
    - 2) Section 40 (“If a seller discloses a material defect in the disclosure, and, in violation of Section 20, it is delivered to the...buyer *after all parties have signed a contract*, the...buyer, within 5 business days after receipt of that report, may terminate the contract...with the return of all earnest money deposits or down payments”) gives the buyer an “out” if seller fails to reveal a material defect prior to contract formation.



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## Illinois Residential Real Property Disclosure Amendments

### ▪ Select Cases

4. Muir v. Merano, 378 Ill.App.3d 1103 (5<sup>th</sup> Dist., 2008)
  - d. On appeal, seller argued that Disclosure Act provided for “escalating remedies” that build on one another...
    - 3) Section 55 (“If the seller fails or refuses to provide the disclosure report *prior to the conveyance* of the residential real property, the...buyer shall have the right to terminate the contract. A seller...shall be liable in the amount of actual damages and court costs, and the court may award reasonable attorney's fees”) is a final remedy if seller will absolutely will not make the disclosures, but this remedy is available to buyer only in “close proximity” or just prior to conveyance at closing. Since there was no closing/conveyance there was no remedy available.



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Out with the Old and in with the  
New Form for Transferring Title:  
Special Warranty Deed



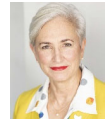
**Traci Nally**  
Senior Manager

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## Special Warranty Deeds



**Traci Nally**  
Senior Manager

- **General Warranty Deeds - 765 ILCS 5/9**
- **Special Warranty Deeds - 765 ILCS 5/8, effective January 1, 2023**



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## General Warranty Deeds: 765 ILCS 5/9. Warranty Deed; Form; Effect



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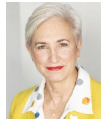
- **Originated in 1871**
- **Form of Warranty Deed**
- **Defines the Three Warranties**
- **Example of Warranty Deed in Materials**



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## General Warranty Deeds: 765 ILCS 5/9. Warranty Deed; Form; Effect



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- *“Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns, with covenant on the part of the grantor ...”*

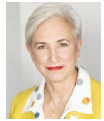
## General Warranty Deeds: 765 ILCS 5/9. Warranty Deed; Form; Effect



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Senior Manager

- Name of Grantor and Place of Residence
- Consideration for the Conveyance
- *Magic language: “... conveys and warrants to ...”*
- Name of Grantee
- Description of Real Estate *“... situated in the County of \_\_\_\_\_, in the State of Illinois.”*

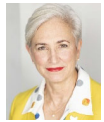
## General Warranty Deeds: 765 ILCS 5/9. Warranty Deed; Form; Effect



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Senior Manager

- **As to all three warranties, the statute says:**
  - *“Such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed.”*

## Warranty of Seisin



Traci Nally  
Senior Manager

- **Warranty of Seisin**
  - *“[At] the time of the making and delivery of such deed he was the lawful owner 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 ...”*
- **The Promise:**
  - No title existing in a third party that might defeat the estate that is granted.



## Warranty of Seisin



**Traci Nally**  
Senior Manager

- Warranty of *title* and not a warranty of *possession*.
- Breach occurs at conveyance of deed or payment of the purchase price.
  - Typically, at Closing
- Grantee need not prove eviction to prove the breach.

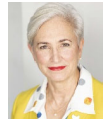
## Warranty of Seisin



**Traci Nally**  
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- Only the grantee in privity with the grantor that makes the warranty has a right of action for breach.
- Subsequent grantees cannot bring a breach of warranty of seisin against original perpetrator.

## Warranty of Seisin



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- **Examples of a breach of seisin:**
  - Conveyance of a marital residence by one spouse and not the other, even if the non-conveying spouse is not in title, i.e., a conveyance without homestead rights.
  - Conveyance when an unrecorded tax deed has been issued.
  - Conveyance without excepting mineral rights when a portion of mineral rights have been reserved or conveyed to a third party.



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## Warranty Against Encumbrances



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Senior Manager

- **Warranty Against Encumbrances**
  - “[The premises] were then [at conveyance] free from all encumbrances ...”
- **The Promise:**
  - A warranty against encumbrances assures a grantee that there is no outstanding right or interests to the estate conveyed or any part thereof which will diminish the value of the estate.



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## Warranty Against Encumbrances



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- The warranty against encumbrances IS violated by:
  - taxes and special assessments due and owing at time of conveyance;
  - homestead rights not extinguished;
  - mortgages;
  - substantial encroachments;

## Warranty Against Encumbrances



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- The warranty against encumbrances IS violated by:
  - building code violations where enforcing agency has taken action or asserted a lien;
  - unexpired leases;
  - easements that interfere with the full use of the property or diminish value;
  - restrictive covenants.

## Warranty of Quiet Enjoyment



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- **Warranty of Quiet Enjoyment**

- “[Grantor] warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises and [grantor] will defend the title thereto against all persons who may lawfully claim the same.”

- **The Promise:**

- Grantor warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises and grantor will defend the title thereto against all persons who may lawfully claim the same.



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## Warranty of Quiet Enjoyment



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- **This warranty is about *possession* and not *title*.**
- **Grantor warrants that the grantee, his heirs and assigns, will have the quiet and peaceable possession of the premises conveyed, as against anyone else (including the grantor) claiming lawful ownership.**
- **Includes a duty to defend title.**



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## Warranty of Quiet Enjoyment



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- **The warranty for quiet enjoyment IS violated by:**
  - easement that interferes with use of the property, like a denial of access;
  - when a foreclosing party (mechanic's lienor or mortgagee) evicts the grantee;
  - a pre-existing tenant who denies possession to the owner;
  - when grantor tries to dispossess grantees.

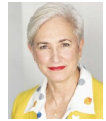
## Special Warranty Deeds: 765 ILCS 5/8. Warranty Deed; encumbrances done or suffered from the grantor



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- **Effective 1-1-2023**
- **Form of Special Warranty Deed**
- **Defines the Warranties and their limitations**
- **Example of Special Warranty Deed in Materials**

## Special Warranty Deeds: 765 ILCS 5/8. Warranty Deed; encumbrances done or suffered from the grantor



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- Par. (a) of the statute has not changed from the current §8, and states the magic language to be used in a special warranty deed, are three words:
  - “grant”
  - “bargain”
  - “sell”

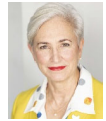
## Special Warranty Deeds: 765 ILCS 5/8. Warranty Deed; encumbrances done or suffered from the grantor



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- Par. (a) also defines the three warranties as:
  - *“that the grantor was the owner of an indefeasible estate in fee simple,”* (Seisin)
  - *“free from encumbrances done or suffered from the grantor,”* (Encumbrances)
  - *“for quiet enjoyment against the grantor”* (Quiet Enjoyment)

## Special Warranty Deeds: 765 ILCS 5/8. Warranty Deed; encumbrances done or suffered from the grantor



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- Par. (b) provides the language to be used in a special warranty deed. Notably it uses “grants,” “bargains,” and “sells.”
- DOES NOT USE “warrants” as is §9.
- Deeds pursuant to §8 of the Conveyances Act, substantially using the statutory language, would be special warranty deeds.
- Example of a special warranty deed form using the language of the statute is in the materials.

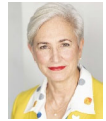
## Special Warranty Deed Affects on Warranties of Title Warranty of Seisin



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- The cause of action for a breach of the warranty of seisin is available only to those in privity with the grantor.
- Subsequent grantees cannot bring an action for breach of seisin against a prior grantor.
- Therefore, a special warranty deed should not change the promise of the warranty of seisin.

## Special Warranty Deed Affects on Warranties of Title Warranty Against Encumbrances



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A special warranty deed will change the promise of the warranty against encumbrances.

## Special Warranty Deed Affects on Warranties of Title Warranty Against Encumbrances



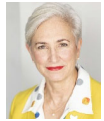
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The warranty will apply only to encumbrances that are caused by the grantor, e.g.:

- taxes and special assessments due and owing at time of conveyance;
- homestead rights;
- mortgages;
- substantial encroachments;
- building code violations where enforcing agency has taken action or asserted a lien;
- unexpired leases;
- easements that interfere with the full use of the property or diminish value;
- restrictive covenants.



## Special Warranty Deed Affects on Warranties of Title Warranty of Quiet Enjoyment



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- A special warranty deed will change the promise of the warranty of quiet enjoyment.
- Under a special warranty deed, the grantor need only defend the grantee against claims interfering with grantee's peaceable possession of the land from the grantor or its heirs and assigns.

## Special Warranty Deed Affects on Warranties of Title Warranty of Quiet Enjoyment

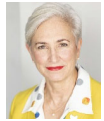


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- **Examples:**
  - an easement that interferes with use of the property created by the grantor;
  - when a foreclosing party, a mechanic's lienor or mortgagee in privity with the grantor, evicts the grantee;
  - a pre-existing tenant, in privity with the grantor, who denies possession to the owner;
  - when grantor tries to dispossess grantees.

## Questions:

- **Should the special warranty deed form be the norm in Illinois closings?**
  - No. But, no longer assume that the buyer is entitled to a general warranty deed at closing. Make the real estate contract clear as to what is expected.
  - The use of special warranty deeds makes the need for title insurance critical, as compared to an Attorney Opinion Letter.



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**765 ILCS 5/8**

**Effective: January 1, 2023**

**§ 8. Warranty deed; encumbrances done or suffered from the grantor.**

(a) In all deeds whereby any estate of inheritance in fee simple shall hereafter be limited to the grantee and his heirs, or other legal representatives, the words “grant,” “bargain” and “sell,” shall be adjudged an express covenant to the grantee, his heirs, and other legal representatives, to-wit: that the grantor was the owner of an indefeasible estate in fee simple, free from encumbrances done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns, may in any action, assign breaches, as if such covenants were expressly inserted: Provided, always, that this law shall not extend to leases at rack-rent, or leases not exceeding 21 years, where the actual possession goes with the lease.

(b) Deeds made pursuant to this Section, sometimes referred to as special warranty deeds, may be substantially in the following form:

The grantor (here insert the name or names and address of the grantor), for and in consideration of (here insert consideration), hereby grants, bargains, sells, and conveys to the grantee all of the following described land and the improvements thereon situated in the County of ....., State of Illinois, legally described and known as follows: (insert legal description, common address, and permanent index number) together with all and singular the hereditaments and appurtenances thereto; to have and to hold the same, with the appurtenances thereto, forever, subject to the following matters: ....(insert known encumbrances).

Dated (insert date)

(signature of grantor or grantors)

The names of the parties shall be typed or printed below the signatures. Such form shall have a blank space 3 inches by 5 inches for use by the recorder. However, the failure to comply with the requirement that the names of the parties be typed or printed below the signatures and that the form have a blank space 3 inches by 5 inches for use by the recorder shall not affect the validity or effect of such a form.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his or her heirs and assigns, with covenants on the part of the grantor (1) that at the time of making and delivery of such a deed, the grantor was the lawful owner of an indefeasible estate in fee simple in and to the premises therein described and that grantor had good right and full power to convey the same, (2) that the premises were free from encumbrances done or suffered by or through the grantor, except the rents and services that may be therein reserved, and (3) that the grantor will warrant and defend the premises against the lawful claims and demands of all persons claiming through the grantor but none other.

**765 ILCS 5/9**

**5/9. Warranty deed; form; effect**

§ 9. Deeds for the conveyance of land may be substantially in the following form:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration), conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the County of ..., in the State of Illinois.

Dated (insert date).

(signature of grantor or grantors)

The names of the parties shall be typed or printed below the signatures. Such form shall have a blank space of 3 ½ inches by 3 ½ inches for use by the recorder. However, the failure to comply with the requirement that the names of the parties be typed or printed below the signatures and that the form have a blank space of 3 ½ inches by 3 ½ inches for use by the recorder shall not affect the validity and effect of such form.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns, with covenants on the part of the grantor, (1) that at the time of the making and delivery of such deed he was the lawful owner 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 incumbrances; 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. Such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed.

**SPECIAL WARRANTY DEED**

THE GRANTOR, \_\_\_\_\_, individually, of the City of Urbana, in the County of Champaign, and State of Illinois, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, hereby GRANTS, BARGAINS, SELLS, AND CONVEYS to the GRANTEE, \_\_\_\_\_, individually, of the City of Urbana, in the County of Champaign, and State of Illinois, the following described real estate, to-wit:

LOT 100 IN SUNNYCREST, INC., TENTH  
SUBDIVISION, AS PER PLAT RECORDED IN  
PLAT BOOK "M" AT PAGE 93, SITUATED  
IN CHAMPAIGN COUNTY, ILLINOIS.

Commonly Known As: 1000 E. Sunnycrest  
Urbana, Illinois

Permanent Parcel No: 00-00-00-000-001

together with all and singular the hereditaments and appurtenances thereto; to have and to hold the same, with the appurtenances thereto, forever, subject to the following matters:

- (1) Real estate taxes for the year 20\_\_ and subsequent years;
- (2) Covenants, conditions, restrictions and easements apparent or of record;
- (3) All applicable zoning laws and ordinances.

Dated this \_\_\_\_ day of , 20\_\_.

\_\_\_\_\_  
(signature of grantor)

**STATE OF ILLINOIS**                    )  
  )  
**COUNTY OF CHAMPAIGN**         )

**SS.**

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that \_\_\_\_\_, individually, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**WARRANTY DEED**

THE GRANTOR, \_\_\_\_\_, individually, of the City of Urbana, in the County of Champaign, and State of Illinois, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, hereby CONVEYS AND WARRANTS to the GRANTEE, \_\_\_\_\_, individually, of the City of Urbana, in the County of Champaign, and State of Illinois, the following described real estate, to-wit:

LOT 100 IN SUNNYCREST, INC., TENTH  
SUBDIVISION, AS PER PLAT RECORDED IN  
PLAT BOOK "M" AT PAGE 93, SITUATED  
IN CHAMPAIGN COUNTY, ILLINOIS.

Commonly Known As: 1000 E. Sunnycrest  
Urbana, Illinois

Permanent Parcel No: 00-00-00-000-001

together with all and singular the hereditaments and appurtenances thereto; to have and to hold the same, with the appurtenances thereto, forever, subject to the following matters:

- (1) Real estate taxes for the year 20\_\_ and subsequent years;
- (2) Covenants, conditions, restrictions and easements apparent or of record;
- (3) All applicable zoning laws and ordinances.

Dated this \_\_\_\_ day of , 20\_\_.

\_\_\_\_\_  
(signature of grantor)

**STATE OF ILLINOIS**                    )  
  )  
**COUNTY OF CHAMPAIGN**         )

**SS.**

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that \_\_\_\_\_, individually, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

# 18th Annual Harold I. Levine Real Estate Institute

Lender's Perspective on  
Coordinating with Title  
Agents during the  
Mortgage Loan Process



**Tiffany Jacobelli**  
EVP, Closing Operations  
Guaranteed Rate



**Whitney Vogt**  
Dir., Strategic Initiatives  
Guaranteed Rate

**Audio problems?** Listen by phone: **888.788.0099**, Access Code: **867 5939 7305**



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# Agenda

## GR History - Background & experience

### Part 1: Understanding eClose / FlashClose

- a. Types of eClose and Key differences between Hybrid, eNote and eClose RON
- b. eNotes
- c. RON – Components, eligibility considerations & technology overview

### Part 2: Setting up for Success *Best practices & insights for lender & title*

- a. Pre-close preparation
- b. Day-of Close / Signing

### Part 3: Conclusion: Digital Closing benefits

- a. Why we love eClose (Lender and Title)



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# Background & Experience

## How did we get here?

- Why eClosings?
- How long has GR been doing eClosings?
- What's total volume?



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## Part 1: Understanding eClose

- Types of eClosing
- Key differences – Hybrid & RON
- Digital closing considerations



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## What is eClose?

Many flavors of eClose, its important to understand the different types and what lenders allow.

Guaranteed Rate FlashClose<sup>sm</sup>

Hybrid  
Combination of eSign / wet sign

RON  
Remote Online Notarization  
100% digital / virtual closing

Not permitted on GR loans

IPEN  
In-Person Electronic Notarization

RIN  
Remote Ink Notarization



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# Hybrid vs RON

## Key differences:

- FlashClose Hybrid: Speed up the process! Borrower can review and sign most of docs ahead; shortens closing appt.
- FlashClose eClose RON: Skip the closing table! Allow Borrower convenience to complete signing online, where they want.



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## What's the benefit of RON eClosing?

- Convenience and satisfaction! Borrower can skip the closing table and complete closing via webchat on their closing day.
- Market demand is growing for online signing.
- Accuracy - All docs are electronically signed, fewer errors or missed signatures
- Streamlined - No wet signed docs, less confusion working with Title and Settlement Agents.
- Save the trees! All closing documents are digital, signers download/save PDF copies for records



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## When should you consider eClose RON vs Hybrid?

- New Normal! Support busy customers providing convenience and no-contact, paperless mortgage
- Savvy borrower that just wants flexibility in their closing
- No need for POA or mailaway due to borrower/co-borrower availability issues

**REMEMBER!** eClose is just the signing "ceremony" part of the process. Settlement partners still complete required closing actions including doc prep, funds disbursement, recording, etc.



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# Digital closings - Important considerations

- Lender must drive eligibility & decision to use RON
- Authentication standards including KBA – reduce fraud risk
- Settlement should understand title underwriter guidelines (national & state)
- Electronic Promissory notes (eNote) are a transformational change in mortgage industry



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## Part 2: Setting up for Success

### Best Practices for Collaboration between Lenders & Title

1. Pre-closing prep
2. Day of signing



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## Pre-Close Preparation Success starts prior to closing!

### Lender

- Sets expectation with borrowers early on
- Communicates with title early and often
- Owns the process & invests in resources to support operations
- Knowledgeable in all aspects: technology, eligibility, process & support
- Start files early for title action & signer review

### Title

- Ensure documents are accurate and correct for signing and recording
- Understand Lender flow and steps needed
- Identify Power Users – to assist and help internally
- Embrace the process and reinforce with signers
  - Know what to expect
  - Instructions for funds
  - Contact / support channels



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*Technology is great but it does not replace human communication & coordination*



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# Day-of closing / Signing

## Lender

- Establish daily production oversight and monitoring
- Support team - Anticipate and be ready for possible challenges/ hiccups
- LO is not Tech Support! Must ensure loan teams and signers have helpful, timely support channels

## Title

- Use systems for real-time monitoring & status
- Anticipate and be ready for possible challenges/ hiccups (Plan B)
- Learn support channels available
  - GR closer is the first line of defense
  - External resources – both title & signer
- Email contact at title order will be primary communication tool throughout closing process
- Understand lender workflow process for docs
  - Wet sign/Hybrid
  - eClose RON



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# Part 3: Conclusion

Why we love digital closings!



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## Why we love eClose!

- eClose is the new normal!
  - Market demand & customer satisfaction
  - Reduces need for mailouts, POAs, signer availability issues
- Single point of truth – document version & real-time status
  - Get out of email
  - Agility to correct docs and update real time
- Accuracy / Speed / Convenience
  - Minimize post-closing issues and corrections
- Eliminates non-value add part of closing:
  - Printing, scanning, mailing, waiting!



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Thanks for your time!



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Questions & Support: [flashclose@rate.com](mailto:flashclose@rate.com)