



Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

June 16, 2021

Presented by:

- **Traci E. Nally**
Senior Manager - Claims and Litigation
Attorneys' Title Guaranty Fund, Inc.



Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

June 16, 2021

NOTICE: The following presentation contains copyrighted materials used under the Multimedia Guidelines and Fair Use exemptions of U.S. Copyright law. Further use is prohibited.

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Big Picture



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Citations to Illinois Cases

- Notice first name of cases in **red**.
- Review case summaries
- Illinois only



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

The Language of Warranties of Title

- Covenants v. Warranties
- Incumbrances v. Encumbrances
- Seisin v. Seizin
- Grantor v. Warrantor v. Covenantor
- Grantee v. Warrantee v. Covenantee



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect

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



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect

- *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 ...*



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect

- Name of Grantor and Place of Residence
- Consideration for the Conveyance
- "... conveys and warrants to ..."
- Name of Grantee
- Description of Real Estate "... situated in the County of _____, in the State of Illinois."



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect

- 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.*



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect



Traci Nally
ATG
Champaign

■ 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 ...*

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect



Traci Nally
ATG
Champaign

■ Warranty Against Encumbrances

- *[The premises] were then [at conveyance] free from all incumbrances ...*

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

765 ILCS 5/9. Warranty Deed; Form; Effect



Traci Nally
ATG
Champaign

■ 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.*

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Statute of Limitations



Traci Nally
ATG
Champaign

■ 735 ILCS 5/13-206

- *§ 13-206. Ten-year limitation. ... actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing and actions brought under the Illinois Wage Payment and Collection Act shall be commenced within 10 years next after the cause of action accrued ...*
 - (Brown)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

***In Præsentī* Warranties**

- ***“In præsentī”* or “at the present time.”**
- **Warranty is given at the time of conveyance only.**
- **Breach occurs at conveyance.**
- **Grantee need not be evicted for a breach to occur.**
- **Privity/Remote grantors are not liable.**



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranties that Run with the Land

- **Continuing Warranties**
- **Breach occurs at eviction or when substantial damage is incurred by the grantee.**
- **Limitation period begins at eviction or substantial damage.**
- **Successors of the grantee have a cause of action for breach against remote grantors.**



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Seisin



Traci Nally
ATG
Champaign

- Also called “covenant of good right to convey.”
- **The Promise:**
 - No title existing in a third party that might defeat the estate that is granted.
- **Warranty of *title* and not a warranty of *possession*.**

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Seisin



Traci Nally
ATG
Champaign

- ***In Præsentia* Warranty**
- **Breach occurs at conveyance of deed or payment of the purchase price.**
 - Typically, at Closing
- **Grantee need not prove eviction to prove the breach.**
 - (Clapp, Tone)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Seisin



Traci Nally
ATG
Champaign

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

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Seisin



Traci Nally
ATG
Champaign

- The warranty of seisin is **NOT** violated by:
 - misdescription of land;
 - incorrect acreage, size or dimension of land conveyed;
 - an encroachment of a building onto adjoining land;
 - building code violation.
 - (**Monti**)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Seisin

▪ 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.
 - (Firebaugh)
- Conveyance when an unrecorded tax deed has been issued.
 - (Clapp)
- Conveyance without excepting mineral rights when a portion of mineral rights have been reserved or conveyed to a third party.
 - (Brown, Ibbetson)



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances

▪ The Promise:

- An encumbrance is any right to or interest in land, which may subsist in a third party that diminishes the value of the estate but which right or interest is consistent with passing of fee by conveyance.
- 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.
 - (Brown)



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances

- Sometimes *in præsenti*.
 - (Firebaugh, *CTI v. Aurora Loan*, Meyers)
- Sometimes runs with the land.
 - (Eichelberger, Richard)



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances

- Not Entirely Clear on Why:
 - *In praesenti*
 - The encumbrances must exist at conveyance.
 - Runs with the Land
 - Limitation period begins to run at time of damage.

OR



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **Not Entirely Clear on Why:**
 - Monetary encumbrances (taxes, assessments and mortgages) run with the land and warranty inures to the grantee that pays to resolve the defect.
 - Other encumbrances (easements or rights-of-way) are *in præsenti*, and breach occurs at conveyance.
 - (Eichelberger, Richard)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **Practice Pointer:**
 - If you have a breach of the warranty against encumbrances realize that you might have particular issues involving:
 - when the limitation period began;
 - whether you can sue remote grantors.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **The warranty against encumbrances is NOT violated by:**
 - public right of way;
 - easements that add value to the land or are essential to its use;
 - building code violations where enforcing agency has NOT taken action or asserted a lien;
 - (Monti)
 - taxes for years prior to conveyance, but not assessed and levied until after the conveyance;
 - (Willis)
 - encumbrances that are expressly excepted in a warranty deed.
 - (Willis, compare with Trumbull)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **The warranty against incumbrances IS violated by:**
 - taxes and special assessments due and owing at time of conveyance;
 - (Hagen, Eichelberger, Richard, *CTI v. Aurora Loan, Clapp*)
 - dower/homestead rights;
 - (Firebaugh)
 - Mortgages;
 - (Jones)
 - substantial encroachments;

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **The warranty against incumbrances 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.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty Against Encumbrances



Traci Nally
ATG
Champaign

- **Practice Pointer:**
 - If you are seller's attorney and are aware of certain encumbrances that will not be removed before conveyance, note them on the deed (**Willis, Trumbull**):
 - *Subject to:*
 - (1) *Real estate taxes for the year 2020 and subsequent years*
 - (2) *Covenants, conditions, restrictions and easements apparent or of record;*
 - (3) *All applicable zoning laws and ordinances.*

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment



Traci Nally
ATG
Champaign

- **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.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment



Traci Nally
ATG
Champaign

- Often referred to as “covenant of warranty”
 - (Harding)
- This warranty is about *possession* and not *title*.
 - (Brown, Scott)
- 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.
 - (Biber, Harding)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment

- Runs with the land.
 - (Biber)
- Breach does not occur at conveyance but only occurs when there is an entry on the land and an expulsion of the grantee from the land, or an actual disturbance of possession due to a paramount title or right.
 - (Scott)
- Constructive eviction is sufficient, i.e., grantee yields to the hostile assertion of an adverse paramount title.
 - (Harding)



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment

- The warranty for quiet enjoyment is NOT violated by:
 - eminent domain;
 - false claims of title;
 - the existence of a paramount title without an eviction or constructive eviction;



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment



Traci Nally
ATG
Champaign

- **The warranty for quiet enjoyment is NOT violated by:**
 - existence of a prior mortgage without a foreclosure and taking of possession;
 - payment of tax liens;
 - public easements or right of way.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Quiet Enjoyment



Traci Nally
ATG
Champaign

- **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;
 - (Sizemore)
 - when grantor tries to dispossess grantees.
 - (Biwer)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- An action at law for indemnity and is not an equitable action.
- Equitable relief is not available.
- View and treat like a breach of contract action.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- Statutes of limitation begin at the breach.
 - Seisin at conveyance
 - Quiet title at eviction/when damaged
 - Encumbrances
 - It depends
- **735 ILCS 5/13-206**
 - Ten-year limitation period

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Defenses to breach of warranty include:**
 - Statute of Limitations
 - (Brown)
 - Grantee/covenantor surrendered to an inferior claim of title.
 - Under warranty of seisin, subsequent grantees do not have privity to bring the case against a remote grantor.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Defenses to breach of warranty do NOT include:**
 - Grantee's knowledge, actual or constructive, of the breach of warranty. Knowledge of the encumbrance by the grantee is irrelevant.
 - (Midfirst, Ibbetson, Wood, compare to *CTI v. Bass*)
 - Laches is not a defense because the grantor is the covenantor. A covenantor without clean hands cannot raise an equitable defense like laches.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

Who are the defendants?

- *In præsenti* (seisin & encumbrances):
 - The grantee's immediate grantor
- Runs with the land (quiet title and encumbrances):
 - All grantors including the original grantor become liable at the time of loss of possession or the incurring of damages.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

Pleading

- Each warranty should be plead as a different count.
- Existence of a paramount title in a third party, or an encumbrance caused by a third party.
 - (National Bank of Decatur)
- Facts from which damages may be ascertained.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Pleading forms are in written materials.**
 - 7C American Jurisprudence Pleading and Practice Forms Annotated. Covenants, Conditions, and Restrictions. Covenants of Title.
 - Not perfect but will get you started.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Evidence**
 - Burden of proof is plaintiff's.
 - Each element must be proven by a preponderance of the evidence.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

▪ Evidence

- Parol evidence is not allowed.
 - (Hagen, Wood)
- Exception is when the actual consideration paid is not reflected on the deed.
- Verbal agreements to modify the warranties contained in a warranty deed are not admissible.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

▪ Documentary evidence is allowed:

- Deed to prove consideration
- Tax deed to prove loss of title
 - (Clapp)
- County collector's return to prove tax assessments
 - (Clapp)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

■ Evidence – Proof of Paramount Title

- Proof that third party has a better title than the grantor/defendant.
- A judgment for eviction, where covenantor had notice and was asked to defend, is conclusive of paramount title.
 - (Harding)
- If covenantor was not notified, eviction judgment admissible but not conclusive (due process).

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

■ Evidence – Damages

- Damages must be proven by grantee to receive something more than nominal damages.
 - (Clapp)
- Must be proven as reasonable.
 - (Clapp)
- Total damages may not exceed purchase price or stipulated price between the parties at conveyance.
- If purchase was made with exchange of personalty, then the purchase price would be the value of the personalty at the time of conveyance.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Evidence – Damages**
 - Total Failure of Title:
 - Consideration actually paid is used and NOT an appraisal of value at conveyance.
 - Damages measured at conveyance and not at eviction.
 - (Scott)
 - Appraisal used only when there is not an otherwise stipulated purchase price.
 - If appraisal used – appraisal at time of conveyance.
 - Cost of renovations or appreciated value NOT recoverable.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- **Evidence – Damages**
 - Partial Failure of Title:
 - Diminution in value, i.e., the difference in value between the land conveyed with the defect and without the defect.
 - (Weber, Tone, Sizemore)
 - Appraised at time of conveyance.
 - Diminished value based on proportional footage only acceptable if there is a uniformity of quality of the property; and if there is uniformity, evidence of that uniformity must be presented.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- Evidence – Damages
 - Encumbrances
 - Actual amount paid for release of the encumbrance.
 - (Meyers)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

- Damages, Generally
 - Interest on purchase price is recoverable, but courts will recognize the mitigation of interest with value of grantee's use of the land prior to eviction.
 - (Harding)
 - Amount expended by grantee in curing title or unsuccessfully defending an eviction, including attorney's fees.
 - (Rauscher, Nat'l Bank of Decatur, Midfirst, Meyers, Harding)
 - Attorney's fees incurred in the breach of warranty case are not recoverable.
 - (Rauscher)

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

■ Damages, Generally

- Lost rents not recoverable. In a quiet enjoyment case, loss is measured by a diminution in value. Grantee to recover rents due after conveyance from tenant.
 - (Sizemore)
- Mortgage foreclosure: redemption payment, but if evicted, value of land at time of conveyance

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Warranty of Title Litigation



Traci Nally
ATG
Champaign

■ Damages, Generally

- Cannot recover Real estate taxes paid while in possession.
- In suits against remote grantors, it is unclear if the grantee would get the purchase price he paid to his immediate grantor, or the purchase price of that the guilty grantor received from his grantee.

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

Works Cited

Patton, Copyright © 1970 by Twentieth Century Fox, <https://www.youtube.com/watch?v=CCA6uxQE-bw>

John Cribbet, timeless stories and lifelong lessons, Copyright © 2004 by the University of Illinois College of Law

Picture of Troy Middleton with Eisenhower:

https://upload.wikimedia.org/wikipedia/commons/e/ec/Major_General_Middleton_and_General_Eisenhower%2C_1944.jpg

Picture of Allied Supreme Command:

https://upload.wikimedia.org/wikipedia/commons/0/03/Meeting_of_the_Supreme_Command.jpg

Picture of Beetle Smith:

[us-army_germany_1944-46_p05.jpg \(467x600\) \(marshallfoundation.org\)](https://www.marshallfoundation.org/us-army-germany-1944-46-p05.jpg)

Picture of victorious American commanders:

[1559721e8d2559cc7f77ea8a714d030f.jpg \(1024x801\) \(pinimg.com\)](https://www.pininimg.com/1559721e8d2559cc7f77ea8a714d030f.jpg)

Pictures of General Patton and Willie:

<https://i.pinimg.com/originals/99/5e/38/995e3865df270105ba93cf7de362fd74.jpg>

<https://assets.rbl.ms/17224619/origin.jpg>

https://4.bp.blogspot.com/-iyP7ZNFbs8/IV_Xhib-QOI/AAAAAAAAALWq/dsNFP10t57so5PrSc48y-lzarYYFZEUZAClC/s1600/general_patton_dog_willie_3.jpg

"The President's Own" US Marine Band, Stars and Stripes Forever

https://www.marineband.marines.mil/Portals/175/Docs/Audio/Complete_Marches_of_JPS/Volume_3/53_The_Stars_and_Stripes_Forever.mp3?ver=2016-12-09-104112-957



Traci Nally
ATG
Champaign

Audio
problems?
Listen by phone:
888.788.0099
Access Code:
947 9524 7216



ATG LEGAL
EDUCATION

Warranties of Title: Seisin, Encumbrances, and Quiet Enjoyment

WARRANTY DEED

THE GRANTORS, JOSEPH SMOSEPH and SALLY SMOSEPH, individually and as married persons, 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, **CONVEY and WARRANT** to the GRANTEE, BENJAMIN SMENJAMIN, 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

Subject to: (1) Real estate taxes for the year 2020 and subsequent years;
(2) Covenants, conditions, restrictions and easements apparent or of record;
(3) All applicable zoning laws and ordinances.

Hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

Dated this ____ day of , 2021.

JOSEPH SMOSEPH

SALLY SMOSEPH

STATE OF ILLINOIS)

) SS.

COUNTY OF CHAMPAIGN)

I, the undersigned, a Notary Public in and for said County and State aforesaid, do hereby certify that JOSEPH SMOSEPH and SALLY SMOSEPH, individually and as married persons, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the waiver of the right of homestead.

Given under my hand and Notarial Seal this _____ day of _____, 2021.

Notary Public

AFTER RECORDING RETURN TO and SEND TAX BILL TO:

BENJAMIN SMENJAMIN
1000 E. Sunnycrest
Urbana, IL 61801

PREPARED BY:

Traci E. Nally
2101 Windsor Place
Champaign, Illinois 61820
Telephone: 217/766-5485
E-mail: tnally@atgf.com

ILLINOIS CASE SUMMARIES BY TOPIC

Warranty of Seisin

Tone v. Wilson 81 Ill. 529 (1876). By warranty deed, grantor (Wilson) sells to grantee (Tone) property and grantee gives mortgage back to grantor. Grantee defaults on mortgage but finds out that grantor did not own all of the property conveyed. Grantee sues to halt foreclosure and for a refund of what he has paid. Grantee has right of action for breach of covenant of seisin to that portion of the property to which grantor had no title. Grantee may recover as damages the value of that portion not conveyed. Covenant of seisin is a present covenant that does not run with the land. Grantee does not have to be evicted to bring suit on the covenant of seisin. Because of grantee's attorney's malpractice the breach of the covenant of seisin was not raised in defending the foreclosure, and therefore grantee did not prevail in the appeal on this issue. Contained in the case are Supreme Court pronouncements of many basic characteristics of covenants of seisin.

Monti v. Tangora, 99 Ill. App. 3d 575 (4th Dist. 1981). By warranty deed, grantors conveyed to grantees a commercial building with pre-existing building code violations. Although grantors were aware of the violations and did not disclose them to the grantee, the building code violations had not resulted in a lien because the municipality had yet to enforce them. Court systematically addresses, defines, and applies each of the three covenants of warranty to the facts of the case, and therefore the case is a very good primer on the warranties of title. A building code violation that has not been enforced or recorded as a lien against the property does not breach the covenants of seisin, against encumbrances or quiet title.

Brown v. Loder, 75 Ill. 2d 547 (1979). By warranty deed, grantor conveyed land to grantee with no mention of mineral rights. A prior grantor had reserved 2/3s of the mineral rights to himself, but this was not included on grantee's deed. After conveying an option for the coal rights, grantees came to find out they owned only a 1/3 interest. Grantees brought action for breach of warranties of seisin and quiet enjoyment. Opinions defines and discusses the two warranties. Seisin count was dismissed under the statute of limitations. Quiet enjoyment was dismissed because grantees were never in possession of the mineral rights as they had not previously attempted to mine the land. Quiet enjoyment is a warranty of possession and not title, and without possession by grantee there is no breach by grantor.

Firebaugh v. Wittenberg, 309 Ill. 536, 543, 141 N.E. 379 (1923). Grantee claims breach of warranty because deed was not signed by wife of grantor who had an inchoate right of dower. Held that there was a breach of warranty. But the reasoning was not clear on which warranty was breached or if all of them were breached. In dicta, the court stated that warranties of seisin and against encumbrances were personal and do not run with the land. Much of the analysis was an assessment of the nature of the right of dower. In the end the court held that the right of dower was a "valuable interest" and a deed not signed by the wife was a violation of its warranties.

Newman, for Use of Jolly v. Sevier, 134 Ill. App. 544 (3rd Dist. 1907). The grantor, who owned only a life estate and did not own an indefeasible fee simple title, by warranty deed conveyed land to first grantee. First grantee by warranty deed conveyed the land to second grantee. Second grantee brought an action against grantor for breach of the warranty of seisin. The issue on

appeal was whether second grantee could bring the action against the grantor because the warranty of seisin does not run with the land and is personal to the first grantee. The court agreed that the law says the second grantee cannot but allowed him to bring the case in the name of the first grantee, thus, “Newman [first grantee] for the use of Jolly [second grantee].” Case says in different places that warranties against encumbrances are “in praesenti” and run with the land.

Ibbetson v. Knodle, 201 Ill. App. 373 (3rd Dist. 1916). Grantor conveyed mineral rights one month and a few months later conveyed the land by warranty deed to grantee. Grantee sued for breach of warranty. The court held that the inability of the grantor to include the mineral rights in the conveyance was a breach. Whether or not the grantee had knowledge of the facts that constituted the breach does not prevent recovery. Unclear if the breach was of just one warranty, that of seisin, or all of the warranties.

Warranty Against Encumbrances

Jones v. Taylor, 261 Ill. App. 403 (3rd Dist. 1931). Case involved a prior mortgage that was not released before several subsequent conveyances by warranty deed. Court held that the warranty against encumbrances “runs with the land for the benefit of remote grantees” and therefore the last grantee held a warranty against encumbrances which was evidence that supported her contention that mortgage debt on her portion of the property had been paid in full by a remote grantor.

Hagen v. Lehmann, 234 Ill. App. 395 (1st Dist. 1924). By warranty deed, grantor conveys land with special assessments that have matured. Court declares the assessments as encumbrances in violation of warranty against encumbrances. Court holds that parole evidence was inadmissible in the action.

Willis v. Clark, 221 Ill. App. 614 (1st Dist. 1921). Land owned by a tax-exempt university was conveyed to Clark. A few years later Clark conveyed to Willis by warranty deed that excepted taxes levied the year prior to the conveyance. Back taxes for the years when Clark owned the land were assessed and levied following the conveyance. The court held that back taxes for years prior to conveyance, which had not been assessed and levied prior to conveyance, are not a violation of the warranty against encumbrances when excepted, as they were in this case, in the warranty deed.

Trumbull v. Gale, 222 Ill. App. 113 (1st Dist. 1922). A warranty deed excepted an encumbrance of a specific amount, which grantee agreed to assume and pay as part of the consideration. However, there was additional interest also due on the amount owing. Court held that the warranty against encumbrances was breached and when encumbrances are cited in the deed, they are excepted, and the assumption is that the property is free of all other encumbrances.

Midfirst Bank v. Abney, 365 Ill. App. 3d 636 (2nd Dist. 2006). A prior mortgagee was not named in a second mortgage’s foreclosure. Following foreclosure of the second mortgage, the first grantee received the property by sheriff’s deed which contained no warranties. The first grantee conveyed to the second grantee providing a warranty deed. All parties were aware of the prior

mortgage but believed it had been extinguished by the foreclosure. First grantee was liable for breach of warranty against encumbrances. Second grantee had a right to rely on first grantee's warranty deed, and thus, first grantee was liable for breach of warranty, even though second grantee had knowledge of and was involved in the defect in title. Second grantee was also entitled to recover costs of defending against foreclosure of prior mortgage in breach of warranty case against first grantee.

Brown v. Loder, 75 Ill. 2d 547 (1979). See summary under **Seisin**

Meyers v. Veres, 245 Ill. App. 127 (4th Dist. 1923). A prior grantor conveyed land by warranty deed to the first grantee. Prior grantor had caused there to be a federal tax lien on the land. The first grantee conveyed the land by warranty deed to the second grantee. Second grantee discovered the tax lien and took action to pay the lien and remove the encumbrance from the land. Second grantee brought a breach of warranty against encumbrances action against the first grantee. The court held that a covenant against encumbrances is "in praesenti" that promises the land is free of encumbrances and if breached occurs at the time of conveyance, and the grantee need not show an eviction to recover. Second grantee was allowed to recover costs and attorneys' fees incurred in curing the breach.

Monti v. Tangora, 99 Ill. App. 3d 575 (4th Dist. 1981). See summary under **Seisin**

Eichelberger v. Homerding, 317 Ill. App. 125 (2nd Dist. 1942). By warranty deed, grantors conveyed land to grantees on which there were encumbrances in the form of special assessments. Grantees paid the special assessments eleven years later and brought suit alleging a breach of the warranty against encumbrances. Grantors alleged the suit was barred by the 10-year statute of limitations, arguing that the warranty against encumbrances is "in praesenti" and therefore the breach occurred at conveyance and the limitations period began at that time. The court held that when the encumbrance against the land is a money charge such as a tax, assessment or mortgage debt, that the statute of limitations for a breach of the warranty of encumbrances does not begin running until damages have been sustained, i.e. a payment to remove the encumbrance or an eviction. When the encumbrance is an easement or a right of way over the land covenanted to be free of encumbrances the damages are sustained at conveyance and the limitation period begins at conveyance. Cites Richard v. Bent, 59 Ill. 38 (1871) as authority. Firebaugh v. Wittenberg is distinguished – summary under **Seisin**.

Richard v. Bent, 59 Ill. 38 (1871). Grantor by warranty deed conveys to first grantee land with real estate tax liens. First grantee conveys to second grantee. First grantee takes bankruptcy. Second grantee sues Grantor under the warranty given to first grantee. Court discusses the nature of the warranty against encumbrances as being personal and violated at conveyance, but that the damage at conveyance is only nominal. Because the first grantee did not remove the encumbrance and was not damaged by the encumbrance, the warranty of the grantor was passed to and vested in the subsequent grantee who sustained the whole of the damages.

Chicago Title Insurance Company v. Aurora Loan Services, LLC, 2013 Il App (1st) 123510. By special warranty deed, grantor conveyed property to grantee with a pre-existing, delinquent special assessments taxes that had been purchased. The delinquent taxes had been incurred by a

prior owner of the property and not the grantor. After conveyance, the property was subject to a petition for tax deed about which grantor thereafter made aware. Grantor did not notify grantee of the petition for tax deed. The court held that under a special warranty deed, there was no breach of the warranty against encumbrances by the grantor because it had not caused the encumbrance of the tax sale, and no breach of warranty for failing to notify the grantee of the petition for tax deed. Since the warranty of encumbrances does not run with the land and is personal and made at the time of conveyance, citing Firebaugh, a breach could not occur after delivery of the deed. Notification of the petition for tax deed was received by the grantor after conveyance and therefore, there was no duty to notify the grantee.

Firebaugh v. Wittenberg, 309 Ill. 536, 543, 141 N.E. 379 (1923). See summary under **Seisin**

Warranty of Quiet Enjoyment

Biwer v. Martin, 294 Ill. 488 (1920) By warranty deed, grantor (Martin) gives life estate to son and remainder to heirs. Later grantor tries to destroy the interest of the remaindermen. But the warranty of quiet enjoyment (or “covenant of warranty”) is granted to all grantees, and runs with the land. The grantor’s warranty includes a duty to defend title. Defines the warranty as a promise to grantee that he shall not lose possession by force of paramount title. A grantor who warrants title is estopped from attacking the title against the grantee.

Harding v. Larkin, 41 Ill. 413 (1866). Grantees bring breach of warranty of quiet enjoyment, referred to as a “covenant of warranty” against remote grantor, as other quitclaim deeds of conveyance had since been recorded. Grantees had been evicted and repurchased the property, although never actually dispossessed of the property. The court held that the constructive eviction of the grantees was sufficient to invoke the breach of the covenant of warranty. In addition to the damage caused by the loss of property, court allowed the recovery of the costs of defense and reasonable attorneys’ fees expended by grantees in defense of the eviction. The reasoning was that the covenant of warranty includes a promise to “defend title.” Attorneys’ fees for proceedings other than those to defend title were not allowed. The judgment of eviction and grantor’s notice of same was sufficient evidence of the breach of warranty. Interest on grantee’s damages incurred to recovery property was allowed, under particular circumstances of this case, even though the court acknowledged the regular rule that interest on damages is normally offset by grantee’s use of the property before eviction.

National Bank of Decatur v. Jack, 334 Ill. App. 186 (3rd Dist. 1948). Grantees brought breach of warranties of seisin and against encumbrances, requesting recovery of attorneys’ fees and costs in unsuccessfully defending an eviction. Although the trial court judgment dismissing the case was affirmed based on grantee’s failure to plead facts supporting the conclusion that there was paramount title in third parties, court acknowledges, citing Harding v. Larkin, that where a grantee has suffered an ouster, the liability of his grantor on covenants of warranty includes attorney fees and costs incurred by the grantee in maintaining an unsuccessful defense. Attorney’s fees cannot be recovered when a successful defense is maintained.

Monti v. Tangora, 99 Ill. App. 3d 575 (4th Dist. 1981). See summary under **Seisin**

Scott v. Kirkendall, 88 Ill. 465 (1878). A grantee brought a breach of the warranty of quiet enjoyment against remote grantors. The remote grantors did not have title to the land. Neither the grantor, the grantee or any interim owners of the land had ever possessed it. The mere existence of a paramount title never asserted is not a constructive breach of the warranty of quiet enjoyment. There must be an eviction. If there has never been possession, there cannot be an eviction. This should have been a breach of the warranty of seisin case because there was a defect in title and not a loss of possession. The two warranties are not the same.

Pleadings

National Bank of Decatur v. Jack, 334 Ill. App. 186 (3rd Dist. 1948). See summary under **Quiet Enjoyment**. Must plead and prove paramount title in a third party.

Evidence

Hagen v. Lehmann, 234 Ill. App. 395 (1st Dist. 1924). See summary under **Encumbrances**. No parole evidence

Harding v. Larkin, 41 Ill. 413 (1866). See summary under **Quiet Enjoyment**. Judgment of eviction as evidence.

Wood v Dillon 329 Ill. App. 16, (4th Dist. 1946). Grantors conveyed by warranty deed mineral rights to land. Grantor's ancestors had conveyed the right previously to a third party. No parole evidence is admissible showing a verbal waiver of the scope of a covenant of warranty, except if actual amount paid for premises is not reflected in the deed. Grantee's knowledge of a possible title defect does not nullify the effect of a warranty.

Clapp v. Herdman 25 Ill App 509 (1st Dist. 1887). By warranty deed grantor conveyed land to grantee on which there were pre-existing tax liens and a tax deed. Grantee sued for breach of warranties of title and to recover the expense of curing the defects. Grantee need not prove eviction to recover for breach of covenant of seisin. Documentary evidence of the tax deed was evidence presented and approved by court. Collector's return was prima facie evidence of the tax, assessment, levy, and amount of tax liens. The range of damages are from nominal damages, in the least, to the purchase money paid to covenantor, for the most. The sum paid to correct the defect must be fair and reasonable. It is the burden of the covenantee to prove damages. Grantee prove amount paid to obtain good title and that it was reasonable.

Defenses

Brown v. Loder, 75 Ill. 2d 547 (1979). See summary under **Seisin**. Statute of limitations as a defense

Ibbetson v. Knodle, 201 Ill App. 373 (3rd Dist. 1916). See summary under **Seisin**. Knowledge of breach by grantee is not a defense.

Midfirst v Abney, 365 Ill. App. 3d 363 (2nd Dist. 2006). See summary under **Encumbrances**. Grantee's knowledge of the encumbrance is not a defense.

Chicago Title Insurance Company v. Bass, 2015 Ill App (1st) 140948 citing Regopoulos v. Waukegan Partnership, 240 Ill. App. 3d 668, 674 (1st Dist. 1992). In a strange set of facts, that you can read for yourself, the court holds that a grantee of a grantor who was a tax purchaser who received land through a tax deed cannot sue tax purchaser-grantor for breach of warranty, because grantee was not a bona fide purchaser who purchased the land in reliance on the warranty of the deed. The Regopoulos case, on which this court relied, is not a breach of warranty of title case, but a breach of an express warranty of contract case. Case appears to be an anomaly.

Damages

Weber v. Anderson, 73 Ill. 439 (1874). Not a warranty of title case but could help in defining measure of damages. A grantee by quitclaim deed lost title to part of his parcel by adverse possession. Had the title failed to the whole tract purchased, appellee would have been entitled to recover the consideration paid for the land and six per cent interest. Where, however, the title fails to a part of a tract of land which has been sold for a gross sum, the measure of damages for a breach of covenant would be the relative value of the land to which the title has failed, as compared with that to which the title is valid, in proportion to the price paid for the whole. In either event, however, when there has been no eviction, but a paramount title has been purchased in, and less was paid for the same than the consideration originally paid, the recovery would be limited to the amount paid and interest.

Meyers v. Veres, 245 Ill. App. 127 (4th Dist. 1923). See summary under **Encumbrances**. Grantees duty to prove amount of damages and its reasonableness. Damage for breach of encumbrances is actual amount paid.

Sizemore v. McDaniel, 239 Ill. App. 280 (3rd Dist. 1925). By warranty deed, grantor conveys to grantee land free of pre-existing lease. However, tenant remained in possession of premises after conveyance and grantee is deprived of rents and profits. Damages for a breach of the warranty of quiet enjoyment are the diminution in value of the premises caused by the breach. Because grantee owned the land, the pre-existing lease arrangement was transferred at conveyance to grantee and recovering rents and profits against the tenant is the grantee's to pursue.

Scott v. Kirkendall, 88 Ill. 465 (1878). See summary under **Quiet Enjoyment**. Damages measured at the time of the purchase and not at the time of eviction.

Rauscher v. Albert, 145 Ill. App. 3d 40 (5th Dist. 1986). By warranty deed, grantor conveys land to grantee that is being adversely possessed by a third party. Grantee sues adverse possessor for quiet title and sues grantor for breach of warranty. Grantee loses quiet title case to adverse

possessors. Court awards attorney's fees to grantees but does not distinguish between those fees incurred in defending title against the adverse possessor, which grantee can recover, and those fees incurred in the breach of warranty count, which he cannot recover. Reversed for further proceedings. Cites Harding v. Larkin and National Bank of Decatur v. Jack cases.

National Bank of Decatur v. Jack, 334 Ill. App. 186 (3rd Dist. 1948). See summary under **Quiet Enjoyment**. Liability of his grantor on covenants of warranty includes liability for attorney fees and costs incurred by the grantee in maintaining an unsuccessful defense.

King v. Gilson, 32 Ill. 348 (1863). Grantor breaches warranty of seisin because he did not have good title at conveyance. Subsequently grantor obtained title to land. Warranty of seisin was breached at conveyance, but grantee only entitled to nominal damages because the after-acquired title of the grantee inures to the benefit of grantee. The acquiring title after action is brought does not cure the breach but it does mitigate grantee's damages.

Clapp v. Herdman 25 Ill App 509 (1st Dist. 1887). See summary under **Evidence**.

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

BENJAMIN SMENJAMIN, Plaintiff)
)
v.) 2021 L 100
)
JOSEPH SMOSEPH and SALLY SMOSEPH,)
Defendants)

COMPLAINT FOR BREACH OF WARRANTY AGAINST ENCUMBRANCES

Plaintiff, BENJAMIN SMENJAMIN, by his attorneys Nally, Bauer, Feinen & Mann, P.C. alleges:

1. Plaintiff resides at 1000 E. Sunnycrest, Urbana, Champaign County, Illinois.
2. Defendants, JOSEPH SMOSEPH and SALLY SMOSEPH, reside at 413 Brookwood, Champaign, Champaign County, Illinois.
3. On June 30, 2020, defendants in consideration of \$100,000 paid to them by plaintiff, conveyed and warranted, by warranty deed in fee simple to plaintiff, that certain tract of land, commonly known as 1000 E. Sunnycrest, Urbana, situated in Champaign County Illinois, and legally described as follows:

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

4. The deed was a warranty deed made in accordance with 765 ILCS 5/9 and contained a warranty on the part of defendants against any and all encumbrances. A copy of the deed is attached as Exhibit A and is incorporated by reference.
5. At the time of the making and delivery of the deed the premises were not free from all encumbrances, but on the contrary, defendants had previously, on September 1, 2015, mortgaged the premises to BankChampaign NA, to secure the payment of \$65,000, with interest.
6. At the time of the execution and delivery of the deed, the mortgage remained unpaid and unsatisfied of record and the amount of \$7,750 plus interest remained due to be paid thereon.
7. By reason of the above, plaintiff was compelled to, and did, on December 1, 2020, pay the sum of \$7,750, with interest in the amount of \$250, to BankChampaign NA, thus extinguishing the mortgage lien on the premises in question.

8. On March 15, 2016, in the in the Circuit Court of Champaign County, Illinois, a judgment was rendered against defendants for the sum of \$8,700, in an action in which Mary McDonald was plaintiff, and defendants in this proceeding were defendants.

9. That judgment was recorded in Champaign County against the defendants on March 20, 2016, and that judgment, at the time of the execution and delivery of the deed specified above, was a lien and encumbrance on the described property and remained unpaid and unsatisfied of record.

10. By reason of the above, plaintiff was compelled to, and did, on September 1, 2020, pay the sum of \$8,700, with interest in the amount of \$1,000 to Mary McDonald, thus extinguishing the lien of judgment on the premises in question.

11. At the time of the execution and delivery of the deed the premises were also subject to tax assessed, charged, and levied for the year 2018 on the premises by Champaign County, Illinois in the sum of \$2,500. This tax was then remaining due and unpaid and was, at the time of the delivery of the deed a lien and encumbrance on the premises.

12. By reason of the above, plaintiff was compelled to, and did, on December 1, 2020, pay the sum of \$2,500, with interest in the amount of \$250 to the Champaign County Collector, thus extinguishing the tax lien on the premises in question.

13. Plaintiff has expending \$2500 in attorney's fees and recording costs in his efforts to cure all of the title defects caused by the encumbrances.

14. Prior to paying said sums, plaintiff demanded that defendants cure all of the described encumbrances and they refused to do so.

15. By reason of having to extinguish the encumbrances, plaintiff has been damaged in the sum of \$22,900, for the payment of which sums demand has been made on defendant, but defendant has not paid the sum nor any part of that sum.

Plaintiff requests judgment against defendant for:

- A. Damages in the amount of \$22,900;
- B. Legal interest on that amount from the time of payment until paid;
- C. Costs of suit; and
- D. Such other and further relief as the court deems just and proper.

BENJAMIN SMENJAMIN, Plaintiff

By: _____
Traci E. Nally, Attorney for Plaintiff

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

BENJAMIN SMENJAMIN, Plaintiff)
)
v.) 2021 L 100
)
JOSEPH SMOSEPH and SALLY SMOSEPH,)
Defendants)

COMPLAINT FOR BREACH OF WARRANTY OF QUIET ENJOYMENT

Plaintiff, BENJAMIN SMENJAMIN, by his attorneys Nally, Bauer, Feinen & Mann, P.C. alleges:

1. Plaintiff resides at 1000 E. Sunnycrest, Urbana, Champaign County, Illinois.
2. Defendants, JOSEPH SMOSEPH and SALLY SMOSEPH, reside at 413 Brookwood, Champaign, Champaign County, Illinois.
3. On June 30, 2020, defendants in consideration of \$100,000 paid to them by plaintiff, conveyed and warranted, by warranty deed in fee simple to plaintiff, that certain tract of land, commonly known as 1000 E. Sunnycrest, Urbana, situated in Champaign County Illinois, and legally described as follows:

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

4. The deed was a warranty deed made in accordance with 765 ILCS 5/9 and contained a warranty on the part of defendants of quiet enjoyment. A copy of the deed is attached as Exhibit A and is incorporated by reference.

[If there has been an eviction]

6. Defendants, in breach of their warranty, have not maintained and kept plaintiff in peaceable and quiet enjoyment of the premises. On the contrary, Mary McDonald, lawfully claiming the premises by a paramount title, brought an ejectment action on January 5, 2021, in the Circuit Court of Champaign County, Illinois against plaintiff to recover possession of the premises and damages for withholding possession of the property.
7. On March 15, 2021, judgment was rendered in the action, declaring that Mary McDonald was the owner in fee simple of the premises in question, and awarding her possession of the premises, and damages in the sum of \$25,000. The judgment still remains in full force and effect. A

certified copy of said judgment is attached hereto as Exhibit B and incorporated herein by reference.

8. Defendants were duly notified of the action contesting plaintiff's right to possession at the commencement of that action, but failed and refused to come in and defend plaintiff's right to quiet and peaceable possession of the described premises.

9. By virtue of the judgment, Mary McDonald lawfully entered upon the premises, ousted plaintiff, and continues to lawfully withhold possession of the premises from plaintiff.

[If there is an easement]

6. Defendants breached this covenant in that on January 5, 2021, Mary McDonald lawfully claimed a private easement over part of the described premises by an older and better title.

7. Mary McDonald then commenced an action on February 1, 2021 in the Circuit Court of Champaign County, Illinois, in which she was plaintiff and this plaintiff was the defendant, and of which action defendant in this proceeding was given due notice.

8. On April 15, 2021, Mary McDonald was awarded a judgment from the Circuit Court of Champaign County, Illinois against this plaintiff, confirming the existence of an easement over part of the described premises, which easement is described as follows:

THE NORTH 50 FEET OF LOT 100 IN
SUNNYCREST, INC., TENTH SUBDIVISION,
AS PER PLAT RECORDED IN PLAT BOOK "M"
AT PAGE 93, SITUATED IN CHAMPAIGN
COUNTY, ILLINOIS.

9. The judgment permanently enjoined plaintiff from obstructing, or in any manner interfering with, the easement.

10. Plaintiff defended the action in good faith and expended the following sums in defending that action: for witness fees and other disbursements, \$1500; for attorney's fees, \$15,000; and judgment for costs in that action, \$750.

11. Plaintiff's land has diminished in value in the amount of \$50,000 as a result of the existence of the easement as set for in the appraisal attached as Exhibit C and incorporated herein by reference.

[Concluding allegations]

10. By reason of the above, plaintiff has been deprived of the ownership and possession of the premises, has demanded damages from defendants in the amount of \$ ____, but defendant has refused to pay.

Plaintiff requests judgment against defendant for:

- A. Damages in the amount of \$_____;
- B. Legal interest on that amount from the time of payment until paid;
- C. Costs of suit; and
- D. Such other and further relief as the court deems just and proper.

BENJAMIN SMENJAMIN, Plaintiff

By: _____
Traci E. Nally, Attorney for Plaintiff

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

BENJAMIN SMENJAMIN, Plaintiff)
)
v.) 2021 L 100
)
JOSEPH SMOSEPH and SALLY SMOSEPH,)
Defendants)

COMPLAINT FOR BREACH OF WARRANTY OF SEISIN

Plaintiff, BENJAMIN SMENJAMIN, by his attorneys Nally, Bauer, Feinen & Mann, P.C. alleges:

1. Plaintiff resides at 1000 E. Sunnycrest, Urbana, Champaign County, Illinois.
2. Defendants, JOSEPH SMOSEPH and SALLY SMOSEPH, reside at 413 Brookwood, Champaign, Champaign County, Illinois.
3. On June 30, 2020, defendants in consideration of \$100,000 paid to them by plaintiff, conveyed and warranted, by warranty deed in fee simple to plaintiff, that certain tract of land, commonly known as 1000 E. Sunnycrest, Urbana, situated in Champaign County Illinois, and legally described as follows:

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

4. The deed was a warranty deed made in accordance with 765 ILCS 5/9 and contained a warranty on the part of defendants against of seisin or good right to convey, A copy of the deed is attached as Exhibit A and is incorporated by reference.
5. At the time of the execution and delivery of the deed, defendants were not the true, lawful, or rightful owners, nor were defendants lawfully seised in their own right of a good and indefeasible estate of inheritance in fee simple, nor had defendant good right, full power, or lawful authority to grant, bargain, sell, or convey the property in the manner and form as set forth in the deed, or in any other form or manner, but rather Mary McDonald was then seised in fee simple.
6. In addition to the sum of \$100,000, paid by plaintiff as the consideration to Mary McDonald so that Plaintiff could remain in the premises, plaintiff has been compelled to pay the costs and charges associated with curing the title defect namely, attorneys fees for \$2500 and other charges of \$1000.

6. By reason of the above, plaintiff has sustained damages in the sum of \$103,500.

Plaintiff requests judgment against defendant for:

- A. Damages in the amount of \$103,500;
- B. Legal interest on that amount from the time of payment until paid;
- C. Costs of suit; and
- D. Such other and further relief as the court deems just and proper.

BENJAMIN SMENJAMIN, Plaintiff

By: _____
Traci E. Nally, Attorney for Plaintiff