

A man who owned a farm in fee simple conveyed it to a friend by warranty deed. An adjoining neighbor asserted title to the farm and brought an appropriate action against the friend to quiet title to the farm. The friend demanded that the man defend her title under the deed's covenant of warranty, but the man refused. The friend then successfully defended at her own expense.

The friend brought an appropriate action against the man to recover her expenses incurred in defending against the adjoining neighbor's action to quiet title to the farm.

In this action, will the friend prevail?

- A. No, because the adjoining neighbor could have elected to sue either the man or the friend.
- B. No, because the title the man conveyed was not defective.
- C. Yes, because in effect it was the man's title that was challenged.
- D. Yes, because the man's deed to her included the covenant of warranty.

Explanation:

Covenants of title

(warranty & special warranty deeds)

Present covenants	Seisin	Grantor owns interest being conveyed
(breached at time of conveyance)	Right to convey	Grantor has legal right to convey interest
	Against encumbrances	No encumbrances (eg, easements, mortgages) against interest conveyed
Future covenants (breached upon interference with possession)	Warranty	Grantor will defend & compensate grantee for lawful claims made against grantee's title
	Quiet enjoyment	Grantee's possession & enjoyment will not be disturbed by another's lawful claim of title
	Further assurances	Grantor will take any actions reasonably necessary to perfect grantee's title

A **warranty deed** conveys a grantor's real property to a grantee with assurances that there are no defects in title—ie, no one else owns the land and it is free from encumbrances. The **covenant of warranty** is an assurance that the grantor will **defend and compensate** the grantee for **lawful claims** made **against the grantee's title**—eg, when a third party prevails against the grantee in a quiet title action.

Here, the man conveyed his farm to a friend by warranty deed. The friend demanded that the man defend her under the covenant of warranty after an adjoining neighbor asserted title to the farm through a quiet title action (**Choice D**). But the man was not required to do so because the neighbor did not have a lawful claim (as evidenced by the friend's successful defense). Therefore, the friend will not recover the expenses she incurred in defending that claim.

(Choice A) In a quiet title action, the plaintiff can sue all persons claiming an interest in the property to establish superior title. Here, the neighbor could *not* have elected to sue the man since he no longer claimed an interest in the farm (he had conveyed his interest to the friend). But had the neighbor prevailed against the friend (lawful claim), the friend could recover her expenses from the man under the covenant of warranty.

(Choice C) The neighbor's action against the friend was, in effect, challenging the man's title since the neighbor would only prevail if the man had conveyed defective title to the

friend. But the man was not required to defend that suit under the covenant of warranty (or compensate the friend) since he had not conveyed defective title.

Educational objective:

Under the covenant of warranty, the grantor of a warranty deed must defend and compensate the grantee for any lawful claims made against the grantee's title—eg, when the grantee is defeated in a third party's quiet title action.

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