

A woman wanted to purchase a tract of land but could not immediately obtain a loan. Her friend agreed to loan her the entire purchase price if, immediately following the purchase, the woman would deed the land to him. They also agreed that the woman would have 10 years in which to repay the loan and that the friend would deed the land back to the woman when the loan was fully repaid. Lastly, they agreed that during the 10-year period the woman could live on the land. The deed to the friend did not refer to their agreement.

At the end of the 10th year and after the loan had been repaid, the woman demanded that the friend deed the land back to her. The friend refused, claiming that he owned the land and that the payments the woman had made over the preceding 10 years were rent, not loan repayments.

The woman sued to compel the friend to convey the land to her.

Is she likely to prevail?

- A. No, because a rebuttable presumption arises under these facts that the transaction was a lease, and the presumption has not been rebutted. (4%)
- B. No, because the contract between the woman and her friend merged into the deed. (18%)
- C. Yes, because the parties agreed that the woman could live on the land. (1%)
- D. Yes, because the woman's agreement with the friend constituted an equitable mortgage. (74%)

Correct

74% Answered correctly

01 min, 15 secs Time Spent

2023 Version

## Explanation:

### Mortgage alternatives

<b>Absolute deed</b>	Debtor gives deed to creditor with intent to secure loan (ie, equitable mortgage)
<b>Deed of trust</b>	Debtor gives deed of trust to third-party trustee as collateral for debt, & creditor can instruct trustee to foreclose upon default
<b>Installment land contract</b>	Debtor agrees to buy land through installment payments & gets immediate possession, but seller keeps legal title until paid in full
<b>Sale-leaseback</b>	Seller leases property from buyer immediately after sale, & seller's rental payments function as repayments on loan
<b>Equitable vendor's lien</b>	Seller finances buyer's purchase with equitable vendor's lien when seller transfers title to buyer but purchase price not fully paid

An **equitable mortgage** can be established when a debtor gives an **absolute deed**—ie, a deed that is free of encumbrances and transfers unrestricted title to property—to a lender with the **intent to secure repayment of a loan**. The debtor-grantor must prove by clear and convincing evidence that the deed was intended as security for a loan—not as an outright transfer.

Here, the facts clearly establish that the woman deeded the land to the friend with the intent to secure repayment of the friend's loan to the woman. As a result, the woman can establish that her agreement with the friend constituted an equitable mortgage—not an outright transfer of the land. And since the woman repaid the loan, she is likely to prevail in her suit to compel the friend to convey the land back to her.

**(Choice A)** There is no **presumption** that a transaction is a lease. And though an outright transfer may be presumed under the deed, the woman can overcome that presumption by showing that the agreement constituted an equitable mortgage.

**(Choice B)** Under the common-law merger doctrine, an obligation in a land-sale contract (eg, the seller's duty to deliver marketable title) merges into the deed and cannot thereafter be enforced unless it is contained in the deed. As a result, this doctrine applies to contractual promises relating to the quality of transferred title—not to determining whether the terms of a conveyance were intended to secure repayment of a loan.

**(Choice C)** The fact that the parties agreed that the woman could live on the land has no bearing on the characterization of the transaction as an equitable mortgage.

### Educational objective:

An equitable mortgage is created when an absolute deed—ie, a deed that is free of encumbrances and transfers unrestricted title to property—is given with the intent to secure a debt.

### **References**

Restatement (Third) of Property: Mortgages § 3.2 (Am. Law Inst. 1997) (discussing an absolute deed as a mortgage alternative).

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