

A woman who owned an apartment building decided to give the building to a man whose wife she did not care for. The woman signed and promptly recorded a deed properly describing the property and identifying the man by name. The deed specified that under no circumstances was the property "to ever pass to [the man's wife]."

Unbeknownst to the woman, the man had died before she executed and recorded the deed. Under the man's duly probated will, he had devised all of his property to his wife. When the woman learned of the man's death, she said in the presence of several witnesses, "I must take back that deed, because I don't want [the man's wife] to own the apartment building."

Before the woman could do anything about the deed, however, she died. By her duly probated will, she left all of her estate to her niece.

There are no applicable statutes.

In an appropriate action to determine the ownership of the apartment building, who will likely prevail?

- A. The man's wife, because the deed to the man was recorded. (18%)
- B. The man's wife, because the man's will was probated. (7%)
- C. The niece, because of the woman's clearly stated intent to take back the gift. (10%)
- D. The niece, because the deed to the man is void. (64%)

Correct

64% Answered correctly

06 mins, 05 secs Time Spent

2023 Version

Explanation:

Deed requirements

Requirements	Valid	Invalid
Written & signed by grantor	Any written instrument signed by grantor	Oral (except permissible gift) Signed only by grantee
Identifies grantor & grantee	Separate grantor & grantee (except concurrent estates) Identifiable by name or description	Ambiguous/unidentifiable grantee(s) Nonexistent grantee
Identifies land	Identifiable by reasonable certainty—eg: Government survey Metes & bounds Street, lot, house number	Ambiguous description (but extrinsic evidence admissible) Undefined part of larger parcel
Includes words of transfer	"Convey" "Transfer" "Grant" "Sell"	"Lease" "Rent" "License"

A **deed** is a legal instrument that transfers ownership of real property from the grantor (old owner) to the grantee (new owner). To be **valid**, a deed must:

be in writing and signed by the grantor

unambiguously identify the **grantor** and the **grantee**

unambiguously describe the property *and*

include words of transfer.

As a result, a deed to a **nonexistent (eg, deceased) grantee** is **void** as to that grantee.

Here, the deed to the apartment building was made to a nonexistent grantee because the man (grantee) had died before the woman (grantor) executed the deed. Since the deed to the man is void, the building was devised by will to the woman's niece. Therefore, the niece will likely prevail.

(Choice A) [Recording acts](#) establish priorities among conflicting claims to real property interests and promote certainty of title. But recording does not validate an otherwise void deed.

(Choice B) The man had no interest in the apartment building, so he could not devise an interest in the building to his wife through his probated will or by other means.

(Choice C) Because the deed is void, the woman's stated intent to take back the gift of the apartment building is irrelevant.

Educational objective:

To be valid, a deed must unambiguously identify the grantor and the grantee. Therefore, a deed to a nonexistent grantee is void as to that grantee.

References

23 Am. Jur. 2d Deeds § 12 (2021) (listing the requirements for a valid deed).

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