

A man owned a tract of land improved with a one-family house. His friend orally offered to pay the man \$250,000 for the tract and the house, the fair market value, and the man accepted. The friend paid the man \$5,000 down in cash and agreed to pay the balance of \$245,000 at an agreed closing time and place.

Before the closing, the friend inherited another home and asked the man to return his \$5,000. The man refused and, at the time set for the closing, the man tendered a good deed to the friend and declared his intention to vacate the house on the tract the next day. The man demanded that the friend complete the purchase. The friend refused. The fair market value of the tract has remained \$250,000.

The man has brought an appropriate action against the friend for specific performance.

If the man loses, what is the most likely reason?

- A. Retaining the \$5,000 down payment is the owner's exclusive remedy.
- B. The friend had a valid reason for not closing.
- C. The owner remained in possession on the day set for the closing.
- D. There was no written agreement.

Explanation:

Statute of frauds requirements for real estate contracts

Writing	Physical or electronic document(s) containing reasonable basis to believe contract was formed
	eg, receipt, check, emails
Signature	Handwritten signature from, or other mark identifying, party to be charged
	eg, letterhead, electronic signature, initials
Essential terms	Typically includes: identity of parties words of intent to buy or sell property description sales price

Real estate contracts are subject to the **statute of frauds**. As a result, such contracts are **enforceable** only if they are **in writing**, are **signed** by the party against whom enforcement is sought, and contain all **essential terms**. Since the man and the friend's agreement was *oral*, it is unenforceable. Therefore, the lack of a written agreement is the most likely reason the man will lose.

(Choice A) Most states allow sellers to retain the buyer's deposit if the buyer breaches the land-sale contract. However, most jurisdictions *also* allow a seller to seek specific performance to compel the buyer to pay the agreed-upon sales price.* But neither remedy is available here since the contract is unenforceable.

(Choice B) A buyer's failure to close may be excused by a contingency in the agreement (eg, when closing is conditioned on the buyer's ability to obtain a loan). However, inheriting another home is *not* a valid reason for not closing.

(Choice C) A seller must deliver a **valid deed** to the buyer at the time of closing. Delivery occurs when the deed is in the buyer's possession—even if the seller remains on the property at the time. Therefore, had there been an enforceable contract, the man would have satisfied his duty despite staying in the house until the following day.

*A minority of jurisdiction may deny specific performance to the seller if the land is not unique and monetary damages provide adequate compensation.

Educational objective:

Under the statute of frauds, an oral agreement for the sale of land is unenforceable. Instead, the agreement must be in writing, be signed by the party against whom enforcement is sought, and contain all essential terms.

References

73 Am. Jur. 2d Statute of Frauds §§ 289, 305, 325, 329 (2020).

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