

A seller had promised a buyer that, if at any time the seller decided to sell his summer cottage property, he would give the buyer the opportunity to purchase the cottage.

At a time when the buyer was serving overseas with the United States Navy, the seller decided to sell the cottage for \$200,000 and spoke to the buyer's mother. Before the buyer sailed, he had arranged for the mother to become a joint owner of his various bank accounts so that the mother would be able to pay his bills when he was gone. When she heard from the seller, the mother took the necessary funds from the buyer's account and paid the seller \$200,000. Two weeks later, the seller executed and delivered to the mother a deed in the proper form purporting to convey the cottage to the buyer. The mother promptly and properly recorded the deed.

Shortly thereafter, the mother learned that the buyer had been killed in an accident at sea one week before the delivery of the deed. The buyer's last will, which has now been duly probated, leaves his entire estate to his church. The mother is the sole heir-at-law of the buyer.

There is no statute dealing with conveyances to dead persons.

Who has title to the cottage?

- A. The church.
- B. The mother.
- C. The seller.
- D. The seller, subject to a lien to secure \$200,000 to the buyer's estate.

Explanation:

Although the buyer left his entire estate to the church, the cottage would only be part of that estate if the buyer had an interest in the cottage when he died. He did not have *legal* title upon death since the seller had not yet delivered the deed. But under the **doctrine of equitable conversion**, the buyer did have **equitable title**—ie, the **right to obtain full ownership** of the property (ie, legal and equitable title) **upon closing**. That is because an enforceable sales contract was formed when the buyer's mother exercised the **option** to buy the cottage on his behalf.

Since equitable title is a **real property interest**, it passed to the church under the buyer's will. The church then obtained legal title to, and full ownership of, the cottage upon closing—when the seller delivered the deed to the mother (**Choices B & C**).

(Choice D) If a buyer conveys his/her equitable title before the purchase price has been paid, that title will be subject to the seller's equitable lien. But here, the mother paid the purchase price (\$200,000) before the cottage was devised to the church. Therefore, the seller has no lien on the church's title or any other interest in the cottage.

Educational objective:

Under the doctrine of equitable conversion, a purchaser receives equitable title to property when he/she enters an enforceable sales contract (eg, by paying the sale price). Equitable title is a real property interest that gives the purchaser the right to obtain full ownership of the property upon closing (eg, when the seller delivers the deed).

References

77 Am. Jur. 2d Vendor and Purchaser § 26 (2018) (option contract).

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