

A woman executed and delivered to her unmarried nephew a warranty deed conveying her home to him "on the date of his marriage." The nephew promptly recorded the deed.

Several years later, when the nephew was still unmarried, the woman died testate, leaving her entire estate to her sister.

The executor of the woman's estate has asserted that the nephew has no interest in the home.

Is the executor correct?

- A. No, because the nephew recorded the deed before the woman's death. (5%)
- B. No, because the woman's death did not affect the nephew's future interest in the home. (58%)
- C. Yes, because a deed that does not transfer immediate possession to a grantee is rendered void by the grantor's death. (22%)
- D. Yes, because the nephew did not marry before the woman's death. (14%)

Correct

58% Answered correctly

43 secs Time Spent

2023 Version

Explanation:

Fee simple estates

| Type | | Language | Future interest |
|--------------|---|--|--|
| Indefeasible | Fee simple absolute | "To A" "To A and his heirs" | None |
| Defeasible | Fee simple determinable | Durational "so long as" "during" "until" | <i>Grantor's</i> possibility of reverter <i>Third party's</i> |
| | Fee simple subject to condition subsequent | Conditional "but if" "provided that" "unless" | executory interest (fee simple subject to executory limitation) <i>Grantor's</i> right of entry |

A **defeasible fee simple estate** is an ownership interest that may last for an indeterminate duration but is limited by specific durational or conditional language (see table above). There are three types of defeasible fees:

Fee simple determinable (FSD) – terminates automatically upon the happening of the stated event, then ownership returns to the grantor

Fee simple subject to a condition subsequent (FSSCS) – upon the occurrence of a specific condition, the grantor has the right to terminate the estate

Fee simple subject to an executory limitation (FSSEL) – upon the occurrence of the stated event or condition, **title passes to a third party** (ie, someone other than the grantor or the holder of the present fee)

The **future interest held by a third party** that follows an FSSEL is called an **executory interest**. There are two types of executory interests:

Shifting – divests the grantee's estate, such that the estate **shifts from the grantee** to the executory-interest holder

Springing – divests the grantor's estate, such that the estate **springs from the grantor** to the executory-interest holder

Here, the woman (grantor) conveyed her home to her unmarried nephew "on the date of his marriage." Since title will pass to the nephew (third party) upon the occurrence of this condition, the woman held an FSSEL and the nephew acquired a *springing* executory interest. The woman's FSSEL passed to her estate upon her death, but this did not impact the nephew. He still holds an executory interest that will vest as a fee simple absolute (FSA) if he marries. If he dies unmarried, then the woman's estate will swell into an FSA **(Choices C & D)**.

(Choice A) By **recording** the deed, the nephew protected his executory interest from any future conflicting claims. But this had no other impact on his interest.

Educational objective:

A fee simple subject to an executory limitation (FSSEL) arises when title will pass to a third party upon the occurrence of a stated event or condition. The future interest that follows an FSSEL is a shifting (shifts from the grantee) or springing (springs from the grantor) executory interest.

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