

A seller entered into a written contract with a purchaser to sell a farm. The contract was dated June 19 and called for a closing date on August 19. There was no other provision in the contract concerning the closing date. The contract contained the following clause: "subject to the purchaser obtaining a satisfactory mortgage at the current rate." On the date provided for closing, the buyer advised the seller that he was unable to close because his mortgage application was still being processed by a bank. The seller desired to declare the contract at an end and consulted his attorney in regard to his legal position.

Which of the following are relevant in advising the seller of his legal position?

- A. Specific performance.
- B. Statute of frauds.
- C. Time is of the essence.
- D. All of the above.

### **Explanation:**

Under the **statute of frauds**, **real estate contracts** are enforceable only if they are in writing, are signed by the party to be charged, and contain all essential terms. As a result, this statute is relevant in advising the seller of his ability to enforce this contract for the sale and purchase of the farm **(Choice B)**.

Real estate contracts need not include a closing date. However, a closing date will be strictly enforced when the contract includes **express language** that makes **time of the essence** or the circumstances strongly suggest that the **parties intended** it to be. Therefore, the buyer would have materially breached the contract by failing to obtain a mortgage loan from the bank by August 19 if this closing date is found to be a strict deadline **(Choice C)**.

When a buyer has breached a contract, one of the **seller's remedies** includes **specific performance**. This allows the seller to seek an **injunction** ordering the **buyer to pay** the agreed purchase price in lieu of monetary damages. Since it is important to inform a client of all available remedies, specific performance is also relevant in advising the seller of his legal position **(Choice A)**.

### **Educational objective:**

Real estate contracts must comply with the statute of frauds—ie, be in writing, be signed by the party to be charged, and contain all essential terms. A closing date is not an essential term, but it will be strictly enforced if the contract makes time of the essence or the circumstances strongly suggest that the parties intended it to be.

### **References**

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

77 Am. Jur. 2d Vendor and Purchaser § 445 (2020) (seller's remedies).

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