

A man owned in fee simple Lots 1 and 2 in an urban subdivision. The lots were vacant and unproductive. They were held as a speculation that their value would increase. The man died and, by his duly probated will, devised the residue of his estate (of which Lots 1 and 2 were part) to his wife for life with remainder in fee simple to his sister. The man's executor distributed the estate under appropriate court order and notified the wife that future real estate taxes on Lots 1 and 2 were her responsibility to pay.

Except for the statutes relating to probate and those relating to real estate taxes, there is no applicable statute.

The wife left the lots vacant and did not pay the real estate taxes due for Lots 1 and 2. To prevent a tax sale of the fee simple, the sister paid the taxes and demanded that the wife reimburse her for same. When the wife refused, the sister brought an appropriate action against the wife to recover the amount paid.

In such action, what should the sister recover?

- A. Nothing, because the wife never received any income from the lots.
- B. Nothing, because the wife's sole possession gave the right to decide whether or not taxes should be paid.
- C. The amount paid, because a life tenant has the duty to pay current charges.
- D. The present value of the interest that the amount paid would earn during the wife's lifetime.

## Explanation:

### Life tenant's duties

<b>Duty to pay current charges</b>	Life tenant must pay all current charges due during life tenancy (eg, property taxes, mortgage interest) up to financial benefit received from property
<b>Duty to prevent waste</b>	Life tenant must prevent affirmative waste (ie, voluntary waste), permissive waste & ameliorative waste
<b>Duty to make ordinary repairs</b>	Life tenant must make reasonable repairs to preserve property

The **holder of a life estate** (ie, the life tenant) has a **duty to pay current charges** on the land that become due during the life tenancy (eg, property taxes, mortgage interest). But this duty is **limited to the financial benefit** that the life tenant receives from the property. Therefore, there is **no duty** to pay these charges if the life tenant is **not in possession** of the property and **does not receive rent** or other income from the property.

Here, the man's wife received a life estate ("to his wife for life") and the remainder was owned by his sister ("remainder in fee simple to his sister"). Although a life tenant generally has the duty to pay real estate taxes, the lots were left vacant and unproductive. As a result, the wife received no financial benefit from the lots and had no duty to pay the real estate taxes. The sister should therefore recover nothing.

**(Choice B)** The wife's duty to pay taxes depends on the financial benefit she received from the land, not merely her possession of it.

**(Choices C & D)** Had the wife been obligated to pay the real estate taxes, the sister could have recovered the amount paid and possibly the interest that accrued during the repayment period (but not during the wife's lifetime).

### Educational objective:

A life tenant's duty to pay current charges on the land is limited to the financial benefit that the life tenant receives from the property. Therefore, this duty is not owed if the life tenant is not in possession of and receives no income from the property.

### References

Restatement (First) of Property §§ 129–130 (Am. Law Inst. 1936) (duty to pay current charges).

Copyright © 2002 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

