A seller contracted to sell land to a buyer for $300,000. The contract provided that the closing would be 60 days after the contract was signed and that the seller would convey to the buyer a "marketable title" by a quitclaim deed at closing. The contract contained no other provisions regarding the title to be delivered to the buyer.

A title search revealed that the land was subject to an unsatisfied $50,000 mortgage and a right-of-way easement over a portion of the land.

The buyer now claims that the title is unmarketable and has refused to close.

Is the buyer correct?

A. No, because nothing under these facts renders title unmarketable.

B. No, because the buyer agreed to accept a quitclaim deed.

C. Yes, because the right-of-way easement makes the title unmarketable.

D. Yes, because the unsatisfied mortgage makes the title unmarketable.

Explanation:

All land-sale contracts have an **implied warranty** that the seller will convey **marketable title** to the buyer upon closing unless otherwise stated. For example, the parties can eliminate this warranty by expressly contracting to transfer whatever title the grantor has to the buyer by a quitclaim deed (ie, *without* any warranties). But since the seller here has expressly promised to convey to the buyer a "marketable title" by quitclaim deed, this warranty remains in their land-sale contract **(Choice B)**.

A warranty of marketable title (ie, merchantability) is a promise that **title is reasonably free from doubt** and under **no threat of litigation** such that a reasonable person would accept and pay for it. Title can be rendered unmarketable by encumbrances, existing zoning violations, or defects in the chain of title. Although a mortgage is an encumbrance, the seller has the right to satisfy the mortgage up to the time of closing—and will often use the sale proceeds to do so. As a result, the closing itself often renders title marketable **(Choice D)**.

An easement is another type of encumbrance that will render title unmarketable if it reduces the property's value. Utility easements, for example, *benefit* the property by allowing others to service it, so they often have no effect on marketability. But right-of-way easements often *burden* the property by allowing another to travel over it—thereby reducing its value. Therefore, the buyer's claim that the title is unmarketable is correct, and the buyer can refuse to close **(Choice A)**.

Educational objective:

Marketable title is implied in all land-sale contracts. Title can be rendered unmarketable by easements that reduce the land's value or by existing zoning violations—but not typically by mortgages since sale proceeds are often used to satisfy the mortgage debt.