

A husband owned a farm of 300 acres in fee simple. He died and by will duly admitted to probate devised the farm to his surviving widow for life with remainder in fee simple to his three children (twin sons and a daughter). All three children survived the husband.

At the time of the husband's death, there existed a mortgage on the farm that the husband had given 10 years before to secure a loan for the purchase of the farm. At his death, there remained unpaid \$40,000 in principal, payable in installments of \$4,000 per year for the next 10 years. In addition, there was due interest at the rate of 10% per annum, payable annually with the installment of principal. The widow took possession and out of a gross income of \$50,000 per year realized \$25,000 net after paying all expenses and charges except the installment of principal and interest due on the mortgage.

The twin sons wanted the three children, including the daughter, to each contribute one-third of the amounts needed to pay the mortgage installments. The daughter objected, contending that the widow should pay all of these amounts out of the profits she had made in operation of the farm. When foreclosure of the mortgage seemed imminent, the daughter sought legal advice.

If the daughter obtained sound advice relating to her rights, what was she told?

- A. Her only protection would lie in instituting an action for partition to compel the sale of the life estate of the widow and to obtain the value of the daughter's one-third interest in remainder.
- B. She could be compelled personally to pay her share of the amounts due because discharge of the mortgage enhances the principal.
- C. She could not be held personally liable for any amount but her share in remainder could be lost if the mortgage installments are not paid.
- D. She could obtain appropriate relief to compel the widow personally to pay the sums due because the income is more than adequate to cover these amounts.

Explanation:

Payment of preexisting mortgage on life estate

Allocation of mortgage obligation	Periodic payment of interest only – life tenant is responsible for interest payments; future-interest holder is responsible for principal payment due at later date
	Periodic payment of interest & principal – life tenant & future-interest holder are responsible for payments in proportion with their respective interests
Liability for nonpayment	No liability absent assumption of mortgage
	Failure to pay allocation may result in loss of property interest

A **mortgage obligation** that was **incurred before** the creation of a **life estate** in the mortgaged property is **subject to allocation** between the life tenant and the future-interest holder (eg, [remainderman](#)). The allocation can vary depending on the type of obligation:

If the obligation requires the periodic payment of interest until the principal amount is due, then the life tenant is responsible for interest payments and the future-interest holder is responsible for principal payments due at a later date.

If the obligation requires the periodic payment of both interest *and* the principal amount (in whole or in part), then the obligation is allocated between the life tenant and the future-interest holder based on the present value of each interest.

Here, both interest and principal payments were due on the preexisting mortgage. As a result, the widow (life tenant) and the three children, including the daughter (remaindermen), are responsible for payment of the farm's mortgage based on the present value of their respective interests. However, they are **not personally liable** for the mortgage obligation because they **did not assume the mortgage (Choices B & D)**. Instead, their **failure to pay their share** of the debt may result in the **loss of their property interest** (eg, the daughter's share in remainder).

(Choice A) [Partition](#) is a remedy available to owners of concurrent interests in property (eg, tenants in common)—not owners of successive interests in property (eg, life tenants and remaindermen).

Educational objective:

A mortgage obligation incurred before the creation of a life estate in the mortgaged property is subject to allocation between the life tenant and the future-interest holder. The parties are not personally liable for the mortgage obligation unless they assumed the mortgage, but failure to pay may result in the loss of their property interest.

References

Restatement of Property § 132 (Am. Law Inst. 1936) (discussing life tenant's obligation to contribute to a preexisting mortgage obligation when the principal amount has become due).

139 A.L.R. 711 (1942) (personal liability of heir or devisee of real property for debt secured by mortgage thereon).

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