

For 22 years, the land records have shown a man as the owner of an 80-acre farm. The man has never physically occupied the land.

Nineteen years ago, a woman entered the farm. The character and duration of the woman's possession of the farm caused her to become the owner of the farm under the adverse possession law of the jurisdiction.

Three years ago, when the woman was not present, a neighbor took over possession of the farm. The neighbor repaired fences, put up "no trespassing" signs, and did some plowing. When the woman returned, she found the neighbor in possession of the farm. The neighbor vigorously rejected the woman's claimed right to possession and threatened force. The woman withdrew.

The woman then went to the man and told him of the history of activity on the farm. The woman orally told the man that she had been wrong to try to take his farm. She expressly waived any claim she had to the land. The man thanked her.

Last month, unsure of the effect of her conversation with the man, the woman executed a deed purporting to convey the farm to her son. The son promptly recorded the deed.

The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Who now owns the farm?

- A. The man, because the woman's later words and actions released title to the man.
- B. The neighbor, because the neighbor succeeded to the woman's adverse possession title by privity of possession.
- C. The son, because he succeeded to the woman's adverse possession title by privity of conveyance.
- D. The woman, because she must bring a quiet title action to establish her title to the farm before she can convey the farm to her son.

Explanation:

Contracts subject to statute of frauds

Marriage – promise in consideration of marriage

Year – contract cannot be completed within one year

Land – sale or other transfer of real property

Executor – promise to pay estate's debt from executor's personal funds

Goods – sale of goods for \$500 or more

Suretyship – promise to pay another's debt

Mnemonic: **MY LEGS**

The **statute of frauds** requires that a conveyance of real property:

be in **writing**

identify the parties and property *and*

be **signed** by the donor (the person conveying the property).

Here, the woman acquired title to the man's farm by adverse possession. Although the woman later apologized to the man and orally waived her claim to the farm (**Choice A**), the man did not regain title because the woman's oral statement did not satisfy the statute of frauds since there was *no signed writing*. Therefore, the woman still owned the farm when she conveyed it to her son.

(Choice B) The neighbor did not succeed the woman's adverse possession title because they lacked *privity*—a mutual or successive interest in the same property right. Instead, the neighbor took possession of the farm without the woman's permission and excluded her from the property. But since the neighbor has only possessed the farm for 3 years, he has not acquired title by adverse possession and he has no other ownership interest.

(Choice D) The woman could have brought a quiet title action to establish her title to the farm (acquired by adverse possession) above all others before conveying it, but was not required to do so.

Educational objective:

The statute of frauds requires that a conveyance of real property (1) be in writing, (2) identify the parties and property, and (3) be signed by the donor.

References

Restatement (Third) of Property: Wills & Other Donative Transfers § 6.3 (Am. Law Inst. 2003) (gifts of land subject to statute of frauds).

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