

Twenty years ago, the owner of a one-acre tract of land duly delivered a deed of the land "to the school district so long as it is used for school purposes." The deed was promptly and properly recorded. Five years ago, the owner died, leaving a son as his only heir; however, by his duly probated will, he left "all my estate to my friend."

Last month, the school district closed its school on the land and for valid consideration duly executed and delivered a quitclaim deed of the land to a developer, who planned to use the land for commercial development. The developer has now brought an appropriate action to quiet title against the son, the friend, and the school district.

The only applicable statute is a provision in the jurisdiction's probate code which provides that any property interest that is descendible is devisable.

In such action, the court should find that title is now in whom?

- A. The developer.
- B. The friend.
- C. The school district.
- D. The son.

Explanation:

Fee simple estates

Type		Language	Future interest
Indefeasible	Fee simple absolute	"To A" "To A and his heirs"	None
Defeasible	Fee simple determinable	Durational "so long as" "during" "until"	<i>Grantor's</i> possibility of reverter <i>Third party's</i>
	Fee simple subject to condition subsequent	Conditional "but if" "provided that" "unless"	executory interest (fee simple subject to executory limitation) <i>Grantor's</i> right of entry

A **fee simple determinable** (FSD) is created with durational language (eg, "until") and automatically terminates upon the happening of a specified event or condition (eg, when land is no longer used for school purposes). An FSD is followed by either:

a **possibility of reverter** – when the estate automatically **reverts back to the grantor** upon the happening of the specified event (presumed if not expressly stated) *or*

an **executory interest** – when the estate automatically **passes to a third party** upon the happening of the specified event (must be expressly stated).

Both these future interests are **freely transferable** during life, **devisable** by will, and **descendible** by inheritance.

Here, the deed **conveyed** created an FSD in the school district and a possibility of reverter in the owner. The owner devised all of his estate—including the possibility of reverter—to the friend, leaving no interest for the son to inherit upon the owner's death (**Choice D**). And since the school district's estate automatically terminated when it closed the school, it had nothing to convey to the developer in the quitclaim deed (**Choices A & C**). Instead, title to the land automatically transferred to the friend, the reversionary interest holder.

Educational objective:

A fee simple determinable is followed by either a possibility of reverter (if it reverts to the grantor) or an executory interest (if it passes to a third party). Both future interests are freely transferable during life, devisable by will, and descendible by inheritance.

References

Restatement of Property §§ 159, 164–65 (Am. Law Inst. 1936) (transferability of reversionary interests).

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