

A man owned land along the south side of a highway. To the south of the man's land was a lot owned by a woman who lived on it in a house.

Five years ago, the man conveyed a right-of-way easement over his land to the woman because it provided a more direct route between her house and the highway. The easement was evidenced by a clearly marked path. The document granting the easement was promptly recorded.

Three years ago, the woman conveyed the house to the man. The man never took actual possession of the house.

Two years ago, the man conveyed the house to a purchaser by a warranty deed. Two months after the purchaser moved into the house, a neighbor informed him about the easement. He then began using the path that had been marked on the man's land. When the man noticed the purchaser using the path, he erected a barricade on his land that effectively prevented the purchaser from using the path.

The purchaser has sued the man, claiming that he has an easement over the man's land.

Who is likely to prevail?

- A. The man, because the easement was extinguished.
- B. The man, because the purchaser did not have actual notice of the easement at the time of acquisition.
- C. The purchaser, because he purchased the house by warranty deed.
- D. The purchaser, because the easement was of public record when he acquired the house.

Explanation:

Ways to terminate easements

Destruction – servient estate condemned or destroyed by natural forces

Abandonment - dominant estate abandons easement

Merger - dominant & servient estates united in common ownership

Prescription - servient owner prevents use for prescriptive period

Estoppel - dominant owner estopped from asserting easement

Release - express release in writing satisfying statute of frauds

Mnemonic: **DAMPER**

An **easement** is **extinguished by merger** when the dominant estate (ie, land *benefited* by the easement) and the servient estate (ie, land *burdened* by the easement) are united in **common ownership**. Once extinguished, the easement is **not revived** simply because the land is **re-severed into two parcels**. Instead, a new easement must be created.

Here, the man conveyed an easement to the woman that allowed her to cross his land to access the highway. The easement was extinguished when the dominant estate (woman's lot) and servient estate (man's land) merged into the hands of one owner after the woman conveyed her house to the man. And it was not revived when the man re-severed the land by conveying the house to the purchaser—regardless of the purchaser's actual or record [notice](#) of the prior easement (**Choices B & D**). Therefore, the purchaser has no easement over the man's land.

(Choice C) The fact that the purchaser acquired the house by warranty deed has no impact on whether the prior easement terminated (or was then revived). But if the man had purported to convey an easement over his land to the purchaser, then the purchaser could have sued the man for breach of [warranties](#) under the deed.

Educational objective:

Under the merger doctrine, an easement is terminated if the dominant and servient estates are united in common ownership. The terminated easement is not revived by re-severing the land into two parcels.

References

Restatement (Third) of Property: Servitudes § 7.5 (Am. Law Inst. 2000) (termination by merger).

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