

A woman acquired land by a deed that contained the following language in the grantee section: "to [the woman], her heirs and assigns, provided, however, that said grantee may not transfer any interest in the land for 10 years from the date of this instrument."

Two years later, the woman contracted to sell the land to an investor for a price based on a recent appraisal. When the investor's title search revealed the above language in the grantee section of the deed to the woman, the investor refused to close the transaction. The contract was silent as to the woman's title obligation.

The woman has sued the investor for specific performance.

Who is likely to prevail?

- A. The investor, because the woman cannot sell the land during the 10-year period specified in the deed.
- B. The investor, because the woman's heirs did not join in the contract.
- C. The woman, because the contract did not obligate her to provide marketable title.
- D. The woman, because the deed's restraint on transfer is void as a matter of law.

Explanation:

Restraints on alienation

(restrictions on transferability of real property)

	Validity	Examples
Direct (disfavored)	Only valid if reasonable Balance utility of restraint against harm resulting from enforcement	Prohibiting some or all types of transfers Prohibiting transfer without consent Prohibiting transfer to particular persons
Indirect	Valid unless lacking rational justification	Imposing transfer fees Limiting property's use/reducing its value

A **restraint on alienation** is a provision that restricts the transferability of real property. **Direct restraints** on alienation (eg, a restriction that prohibits some or all types of transfers—as seen here) are disfavored and are **valid only if** they are deemed **reasonable**. To determine reasonableness, courts weigh the utility of the restraint against the harm resulting from its enforcement. A **total restraint** on the alienability of a fee simple estate is **always unreasonable** because freedom of alienation is a defining attribute of this type of estate.

Here, the woman's deed states that she may not transfer *any* interest in the land for 10 years, which constitutes a direct and total restraint on alienation. But the woman has a fee simple estate in the land—as evidenced by the **words of limitation** "and her heirs" traditionally used to convey this type of estate. Therefore, the deed's restraint on transfer is a void restraint on alienation of a fee simple estate, and the woman can sell the land to the investor (**Choice A**). As a result, she is likely to prevail in her suit against the investor for specific performance.

(Choice B) The words "and her heirs" are used to convey a fee simple estate, but they do not create an ownership interest in the grantee's heirs or make them the only persons to whom the grantee can transfer the estate. Therefore, the woman's heirs need not join the contract for it to be enforceable.

(Choice C) In contracts for the sale of land, the seller has an *implied* obligation to the buyer to deliver marketable title—ie, title that is reasonably free from doubt and not under threat of litigation. Therefore, it does not matter that the contract here did not *expressly* obligate the woman to provide marketable title.

Educational objective:

Direct restraints on alienation (eg, prohibitions on some or all types of transfers) are valid only if they are deemed reasonable. Total restraints on the alienability of fee simple estates are always unreasonable.

References

Restatement (Third) of Property: Servitudes § 3.4 (Am. Law Inst. 2000) (direct restraints on alienation).

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