

By a valid written contract, a seller agreed to sell land to a buyer for \$100,000. The contract was silent as to quality of title. Shortly after entering into the contract, the buyer discovered that the record owner of the land was not the seller, but another individual. The buyer also learned that the seller had been in adverse possession of the land for 12 years. The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

The buyer no longer wants to purchase the land.

Must the buyer purchase the land?

- A. No, because the seller's failure to disclose her lack of record title constituted fraud.
- B. No, because the title is not free from an unreasonable risk of litigation.
- C. Yes, because the contract is silent regarding the quality of title.
- D. Yes, because the seller acquired good and marketable title by adverse possession.

Explanation:

"Red flags" for marketable title

Covenants

Easements

Leases

Liens

Gaps in chain of title

Boundary disputes

Existing zoning violations

Adverse possession

Absent contrary language, every **land-sales contract implies** that the seller will give **marketable title** to the buyer at closing. To meet this standard, the title must be **reasonably free from doubt** and under **no threat of litigation**, such that a **reasonable person would accept** and pay for it.

Here, the seller acquired title to the land by [adverse possession](#). Title obtained by adverse possession is generally unmarketable unless it has been quieted—ie, supported by a judicial decree (not seen here). That is because of the risk that the record owner or someone claiming entitlement to the land through the record owner could challenge the seller's ownership of the land. Therefore, the buyer need not purchase the land **(Choice D)**.

(Choice A) Fraud occurs if (1) one party to a contract knowingly or recklessly misrepresented a material fact with the intent to mislead the other party, (2) the misrepresentation induced assent to the contract, and (3) the adversely affected party justifiably relied on the misrepresentation. Here, there is no such evidence of fraud.

(Choice C) When, as here, a contract is silent regarding the quality of title, it is implied that the seller will convey marketable title.

Educational objective:

It is generally implied that a seller will convey marketable title to a buyer—ie, title that is reasonably free from doubt and under no threat of litigation, such that a reasonable person would accept and pay for it. Title obtained through adverse possession is unmarketable unless it has been quieted (ie, supported by judicial decree).

References

77 Am. Jur. 2d Vendor and Purchaser § 93 (2020) (marketable title).

