

A widow owned a house in fee simple. Three years ago, the widow and her sister agreed to a month-to-month tenancy with the sister paying the widow rent each month. After six months of the sister's occupancy, the widow suggested to the sister that she could buy the house for a monthly payment of no more than her rent. The widow and the sister orally agreed that the sister would pay \$25,000 in cash, the annual real estate taxes, the annual fire insurance premiums, the costs of maintaining the house, plus the monthly mortgage payments that the widow owed on the house. They further orally agreed that within six years, the sister could pay whatever mortgage balances were then due and the widow would give the sister a warranty deed to the property.

The sister fully complied with all the obligations she had undertaken. She made structural modifications to the house that increased its value by more than 50% compared to when the widow and the sister made their oral agreement. The sister then made her financing arrangements and was ready to complete the purchase of the house, but the widow refused to close.

The sister brought an appropriate action for specific performance against the widow to enforce the agreement.

Who will likely prevail?

- A. The sister, because the doctrine of part performance applies.
- B. The sister, because the statute of frauds does not apply to oral purchase and sale agreements between landlords and tenants in possession.
- C. The widow, because the agreements were oral and violated the statute of frauds.
- D. The widow, subject to the return of the \$25,000, because the arrangement was still a tenancy.

Explanation:

Statute of frauds requirements for real estate contracts

Writing	Physical or electronic document(s) containing reasonable basis to believe contract was formed
	eg, receipt, check, emails
Signature	Handwritten signature from, or other mark identifying, party to be charged
	eg, letterhead, electronic signature, initials
Essential terms	Typically includes: identity of parties words of intent to buy or sell property description sales price

The [statute of frauds](#) applies to *all* real estate contracts—including purchase and sale agreements between landlords and tenants in possession—and requires that the contract (1) be in writing, (2) be signed by the party against whom it is to be enforced, *and* (3) contain all essential terms. Therefore, the widow and the sister's *oral* agreement regarding the sale and purchase of the house violates this statute **(Choice B)**.

However, an oral agreement may still be enforceable if it falls within the **doctrine of part performance**. This exception to the statute of frauds **applies when the buyer** has done the following:

taken **possession** of the property (eg, the sister continued to live in the house)
made **substantial improvements** to the property (eg, the sister's modification increased its value by 50%) *and/or*
paid some or all of the **purchase price*** (eg, the sister's \$25,000 cash payment and monthly payments)

The buyer can then enforce the oral agreement in equity, typically by seeking specific performance. As a result, the sister will likely prevail **(Choice C)**.

*Payment of some or all of the purchase price is not independently sufficient to establish part performance.

(Choice D) Although the arrangement started as a tenancy, it transformed into an enforceable real estate contract when the sister fully complied with her contractual obligations and was ready to purchase the home. As a result, the sister has the right to enforce the agreement under the doctrine of part performance.

Educational objective:

Part performance is an exception to the statute of frauds. This exception entitles the buyer to equitable relief (eg, specific performance) if the buyer has (1) taken possession of the property, (2) substantially improved the property, and/or (3) paid any amount of the purchase price.

References

73 Am. Jur. 2d Statute of Frauds §§ 289, 305, 325, 329 (2020).

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