

The existence of an express right-of-way easement over land was discovered during a title search conducted by an individual who had contracted to buy the land. The seller desired to secure a release of the easement, so he traveled to the easement holder's neighboring property. When the seller arrived, the neighbor's adult daughter informed him that the neighbor had been living in a nursing home for the past year and that she had been taking care of his land. In exchange for a small sum, the neighbor's daughter executed the requested document. The document stated that the neighbor "hereby releases" the easement over the seller's land, which was described in full.

The seller then deeded the land to the buyer, and the neighbor died shortly thereafter. The neighbor's property passed by will to the neighbor's daughter. The daughter claims that she continues to possess a right-of-way easement over the buyer's land.

Is the neighbor's daughter correct?

- A. No, because the daughter signed the release of the easement.
- B. No, because the release was valid and terminated the easement.
- C. Yes, because the property interest was not a license and did not expire upon the neighbor's death.
- D. Yes, because the release was not signed by the neighbor and violated the statute of frauds.

## 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 a nonpossessory interest in someone else's land that gives the easement holder the right to enter and use the land for a specific purpose. An easement can be **terminated by a release**—ie, a **writing that expressly relinquishes** the easement right—so long as it **complies with the statute of frauds**. To comply with the statute of frauds, the writing must do the following:

Reasonably **identify the parties** (the neighbor and the seller)

Contain **words of transfer** ("hereby releases")

Describe the **nature of the easement** (the easement over the seller's land was described in full)

Be **signed by the easement holder** (the neighbor)

Since the neighbor did not sign the release (the daughter did), the document secured by the seller was not a valid release that terminated the easement (**Choices B & D**). But since the daughter *did* sign the release, she will be estopped from asserting that she inherited the neighbor's right-of-way over the buyer's land.

**(Choice C)** Although a license typically expires upon the death of the licensee, an easement does not expire upon the death of the easement holder. This means that the neighbor's easement passed by will to his daughter. However, she will be estopped from asserting the easement's validity because she signed the release.

### Educational objective:

An easement can be terminated by a written release that complies with the statute of frauds. To do so, the release must (1) reasonably identify the parties, (2) contain words of transfer, (3) describe the nature of the easement, and (4) be signed by the easement holder.

### References

Restatement (Third) of Property: Servitudes § 7.3 (Am. Law Inst. 2000) (termination of an easement by release).

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