

A son entered into a valid written contract to sell a large tract of land to a friend. At that time, the tract was owned by the son's father. The son had no title to the tract and was not the agent of the father.

After the contract was executed and before the scheduled closing date, the father died intestate, leaving the son as his sole heir. Shortly thereafter, the son received an offer of purchase that was substantially higher than the purchase price in the contract with the friend. The son refused to close with the friend although she was ready, willing, and able to close pursuant to the contract.

The friend brought an appropriate action for specific performance against the son.

In that action, what should the friend be awarded?

- A. Judgment for specific performance, because the son acquired title before the scheduled closing.
- B. Judgment for specific performance, to prevent unjust enrichment of the son.
- C. Nothing, because the doctrine of after-acquired title does not apply to executory contracts.
- D. Nothing, because the son had no authority to enter into the contract with the friend.

### **Explanation:**

The **sale of real property** typically comprises three parts:

**Execution of the sales contract** – the buyer **promises to pay the purchase price** in exchange for the seller's **promise to deliver title**

**Executory period** – the buyer can inspect the property, secure a loan, and review title documents, AND the seller can repair the property or correct imperfections in the title

**Closing** – the seller formally transfers title by delivering the deed to the buyer and the buyer pays the purchase price

Once a sales contract is executed, the exchanged promises become binding. Therefore, if the seller acquires marketable title at closing but is **unwilling to perform**, the buyer can **sue for breach** of the contract or seek specific performance.

Here, the son did not have title to the tract when he entered the sales contract with the friend. However, he inherited title before the scheduled closing. As a result, the seller has marketable title and must perform his promise to transfer it to the friend. Since he is unwilling to do so, the friend should be awarded judgment for specific performance.

**(Choice B)** Specific performance is typically used when a monetary remedy cannot make the plaintiff whole. The goal is to adequately compensate the plaintiff—not to prevent unjust enrichment of the defendant.

**(Choice C)** The doctrine of after-acquired title (ie, estoppel by deed) *would* apply to executory contracts (eg, sales contracts for real estate) if a seller formally transferred title by **warranty deed** at closing and *later* acquired title to that property. Title would then automatically transfer to the buyer once the seller received it.

**(Choice D)** The son had the authority to enter into the contract with the friend but lacked the ability to perform until he inherited the tract. Once that occurred, he was obligated to sell the property to the friend.

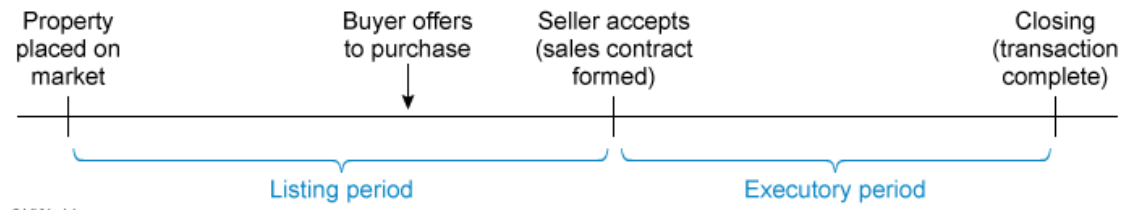
### **Educational objective:**

Once a buyer and seller execute a sales contract, their exchanged promises become binding. Therefore, if the seller is able to transfer title upon closing but refuses to do so, the buyer can sue for breach of contract or seek specific performance.

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### Timeline for sale of real estate



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