

A nephew and a niece inherited vacant land. The nephew soon discovered that the land was subject to a mortgage held by a local bank, which required monthly payments for the next 10 years. Without telling the niece or seeking her permission, the nephew paid the monthly mortgage payments for one year. The nephew then demanded immediate payment from the niece for half of the mortgage payments he had made. The niece refused.

If the nephew sues the niece for contribution, who will likely prevail?

- A. The nephew, because of the doctrine of exoneration. (7%)
- B. The nephew, because without his payments, the bank could have foreclosed the mortgage and they could have lost the land. (50%)
- C. The niece, because any such payment is not due until a partition proceeding is held. (20%)
- D. The niece, because the nephew did not seek or obtain her consent before he made the payments. (20%)

Incorrect

Correct answer B

50% Answered correctly

01 min, 28 secs Time Spent

2023 Version

Explanation:

Rights & duties of cotenants

- Rights**
- Possess & enjoy entire property
 - Receive proportionate shares of net profits from removal of natural resources
 - Receive pro rata shares of rent from third parties
- Duties**
- Pay proportionate shares of expenses that may give rise to lien (eg, mortgage, property tax)
 - Contribute to repair or improvement costs, but only upon agreement

A **concurrent estate** (ie, cotenancy) arises when two or more persons own real property at the same time. In any cotenancy, the **cotenants** have certain rights and duties—including the **duty to pay necessary property-related expenditures** (eg, property taxes, mortgage payments). As a result, a cotenant who pays **more than his/her fair share** of necessary property-related expenses can generally **compel** the other **cotenant(s) to contribute** based on the ownership interest of each cotenant.

Here, the nephew and the niece inherited the vacant land as tenants in common. Neither is personally liable on the mortgage as there is no indication that they **assumed** the mortgage when they inherited the lot. But since the mortgage payments must be made to the bank to avoid foreclosure and loss of the land, they are a property-related expense. Therefore, the nephew will likely prevail in a contribution action against the niece for paying more than his fair share of this expense.

(Choice A) The common-law doctrine of exoneration applies when a testator makes a specific devise of real property subject to an encumbrance (eg, mortgage). It allows the devisee to have the property "exonerated" by payment of the encumbrance from the remaining assets in the testator's estate. But most states have abolished this doctrine, and the nephew is seeking contribution—not exoneration.

(Choice C) A cotenant can unilaterally request a **partition** of co-owned property, but a partition need not be requested before seeking contribution.

(Choice D) A cotenant need not obtain the consent of the other cotenants before paying necessary property-related expenses.

Educational objective:

Cotenants have a duty to pay their fair share of necessary property-related expenses (eg, mortgage payments). Therefore, a cotenant who pays more than his/her fair share can seek contribution from the other cotenants.

References

20 Am. Jur. 2d Cotenancy and Joint Ownership § 64 (2022) (discussing a cotenant's right to seek contribution from other cotenants).

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.