

A seller owned a house situated on a two-acre lot in an area zoned for single-family residential uses only. Although it was not discernible from the outside, the house had been converted by the seller from a single-family house to a structure that contained three separate apartments, in violation of the zoning ordinance. The conversion was also in violation of the building code.

The seller and a buyer entered into a valid written contract for the purchase and sale of the house. The contract provided that the seller was to convey to the buyer marketable title. The contract was silent as to zoning. The buyer then fully inspected the house.

Prior to the closing, the buyer learned that the house did not conform to the zoning ordinance and refused to close although the seller was ready, willing, and able to perform his contract obligations. The seller brought an appropriate action for specific performance against the buyer.

Is the seller likely to prevail?

- A. No, because the illegal conversion of the house creates the risk of litigation.
- B. No, because the illegal conversion of the house was done by the seller rather than by a predecessor.
- C. Yes, because the buyer was charged with knowledge of the zoning ordinance prior to entering the contract.
- D. Yes, because the seller was able to convey a marketable title.

Explanation:

"Red flags" for marketable title

Covenants

Easements

Leases

Liens

Gaps in chain of title

Boundary disputes

Existing zoning violations

Adverse possession

The **warranty of marketable title** is implied in all real estate contracts unless otherwise provided. This guarantees that, upon closing, the seller will convey the buyer title that is **reasonably free from doubt** and under **no threat of litigation** such that a **reasonable person would accept** and pay for it. This does not mean that title must be free from any defect, but it should ensure peaceable and quiet enjoyment of the property.

An **existing violation** of a **zoning ordinance** exposes the real estate owner to potential litigation, so such a violation renders title **unmarketable**.^{*} This means that the seller's illegal conversion of the house in violation of the zoning ordinance prevents him from delivering marketable title to the buyer (**Choice D**). Therefore, his action for specific performance to compel the buyer to purchase the house will likely fail.

^{*}While existing zoning violations render title unmarketable, courts have consistently held that existing building code violations do not.

(Choice B) The illegal conversion of the house renders title unmarketable regardless of whether the seller or a predecessor did the conversion.

(Choice C) Although the buyer was charged with knowledge of the zoning ordinance prior to entering the contract, the buyer was not charged with knowing whether the house *complied* with that ordinance. Instead, the buyer could rely on the implied warranty of marketability in the land-sale contract and inspect the property for noncompliance prior to closing.

Educational objective:

Marketable title exists when title is reasonably free from doubt and under no threat of litigation such that a reasonable person would accept and pay for it. Therefore, an existing zoning violation renders title unmarketable.

References

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

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