A brother and sister owned in fee simple a large piece of property as tenants in common, each owning an undivided one-half interest. The brother and sister joined in mortgaging the property to their cousin by a properly recorded mortgage that contained a general warranty clause. The brother became disenchanted with land-owning and notified the sister that he would no longer contribute to the payment of installments due to the cousin. After the mortgage was in default and the cousin made demand for payment of the entire amount of principal and interest due, the sister tendered to the cousin, and the cousin deposited, a check for one-half of the amount due to the cousin. The sister then demanded a release of her undivided one-half interest. The cousin refused to release any interest in the property. The sister promptly brought an action against the cousin to quiet title to an undivided one-half interest in the property.

In such action, should the sister win or lose?

A. Lose, because the cousin's title had been warranted by an express provision of the mortgage.

B. Lose, because there was no redemption from the mortgage.

C. Win, because the co-tenancy of the mortgagors was in common and not joint.

D. Win, because the sister is entitled to marshalling.

Explanation:

Right of redemption

(regaining title after default on loan)

	Timing	Assertion of right
Equitable right (always exists)	At any time prior to foreclosure sale	Pay full amount of debt due (including interest) to lender
Statutory right (if statute exists)	Statutory period after property has been sold in foreclosure	Pay foreclosure sale price to purchasing party

Tenants who **jointly mortgage co-owned property** are responsible for repaying that debt in proportion to their respective ownership interests (unless they agree otherwise). If the mortgage goes into default, any tenant can **avoid foreclosure** by exercising the **equitable right of redemption**. This right allows a tenant to cure the default by **paying the full amount** of the outstanding debt—including any amount owed by the other tenants. The paying tenant can then seek contribution (ie, reimbursement) from the other tenants for their share of the debt.

Here, the brother and sister (tenants in common) jointly mortgaged their property to the cousin. When the brother stopped paying his share of the debt, the mortgage went into default. And though the sister tried to redeem her one-half interest in the property by paying half the amount due, she could only cure the default by paying the *full* amount due. Therefore, there was no redemption from the mortgage, and the sister's quiet title action will fail.

(Choice A) A general warranty clause in a mortgage (as in a deed) promises that title is free of any encumbrances or defects. Although this guarantees that the cousin will acquire clear title upon foreclosure, it does not extinguish the sister's right to redeem the property.

(Choice C) The sister had to pay the full amount of the debt to redeem the property, regardless of whether she was a tenant in common or joint tenant.

(Choice D) Marshalling applies when (1) a senior creditor has a security interest in multiple assets and (2) a junior creditor has an interest in one of those assets. It requires the senior creditor to first foreclose on the asset against which it holds an exclusive security interest to preserve the junior creditor's interest in the remaining asset. But since this case only involves one security interest (the mortgage), marshalling does not apply.

Educational objective:

The equitable right of redemption allows a debtor to avoid foreclosure by paying the full amount of the outstanding debt. This means that a tenant can only redeem co-owned property by paying the amount owed by *all* tenants.

References

55 Am. Jur. 2d Mortgages § 392 (2018) (common law right of redemption).