Ten years ago, a seller sold land to a buyer, who financed the purchase price with a loan from a bank that was secured by a mortgage on the land. The buyer purchased a title insurance policy running to both the buyer and the bank, showing no liens on the property other than the buyer's mortgage to the bank. Eight years ago, the buyer paid the mortgage in full.

Seven years ago, the buyer sold the land to an investor by a full covenant and warranty deed without exceptions.

Six years ago, the investor gave the land to a donee by a quitclaim deed.

Last year, the donee discovered an outstanding mortgage on the land that predated all of these conveyances. As a result of a title examiner's negligence, this mortgage was not disclosed in the title insurance policy issued to the buyer and the bank.

Following this discovery, the donee successfully sued the buyer to recover the amount of the outstanding mortgage.

If the buyer sues the title insurance company to recover the amount he paid to the donee, is he likely to prevail?

A. No, because the buyer conveyed the land to an investor.

B. No, because the title insurance policy lapsed when the buyer paid off the bank's mortgage.

C. Yes, because the buyer is protected by the title insurance policy even though he no longer owns the land.

D. Yes, because the buyer was successfully sued by a donee and not by a bona fide purchaser for value.

Explanation:

A **title insurance policy** is a contract where the insurer agrees to **indemnify** (ie, compensate) the insureds within policy limits for any harm caused by title defects (eg, outstanding mortgages) not disclosed in the policy. There are two types of title insurance policies:

Owner's policy – issued to property owners and protects them from any **reduction in the full market value** of the property so long as it is (1) **owned** by the insureds and their heirs *or* (2) conveyed by **warranty deed**

Lender's policy – issued to lenders and protects them from any reduction in the value or priority of their mortgage until the mortgage is paid in full or otherwise discharged

Here, the buyer purchased a title insurance policy that was issued to the buyer (owner) and the bank (lender). The bank's policy lapsed once the buyer paid off the mortgage, but the *buyer's* policy remained in effect even after he conveyed the property by warranty deed **(Choices A & B)**. The buyer's right to the full market value of the property was then reduced by the donee's successful suit for the cost of the undisclosed outstanding mortgage. And since the buyer's policy protects against such losses, he can likely recover that cost from the title insurance company.

(Choice D) Since the buyer was protected by the title insurance policy, he could recover costs from a *successful* lawsuit. It is irrelevant that the buyer had been sued by a donee (ie, gift recipient) instead of a bona fide purchaser (ie, purchaser for value who lacks notice of a prior competing interest).

Educational objective:

There are two types of title insurance policies: (1) owner's policy, which remains in effect as long as the property is owned by the insured *or* conveyed by warranty deed and (2) lender's policy, which ends once the mortgage is discharged.

References

43 Am. Jur. 2d Insurance § 518 (2018) (title insurance policies).