

A retiree owned a condo, subject to a mortgage securing a debt that he owed to a lender. The retiree conveyed the condo to "my son for life, remainder to my granddaughter, subject to the lender's mortgage thereon." At the time of the conveyance, there was an unpaid balance on the mortgage of \$25,000. The mortgage required monthly payments covering the interest to date and a portion of the principal.

For the past six months, the son has been living alone in the condo and paying the full monthly payment due to the lender. The son has since asked his lawyer for advice regarding the parties' obligations with respect to the monthly payment.

What should the lawyer tell him?

- A. The granddaughter and the son must pay based on the present value of their respective interests.
- B. The granddaughter must pay the full monthly payment.
- C. The son must pay the full monthly payment.
- D. The son must pay the principal, but the granddaughter must pay the interest to the lender.

Explanation:

Payment of preexisting mortgage obligation

Periodic payment of interest only	Life tenant is responsible for interest payments
	Future-interest holder is responsible for principal payments due at later date
Periodic payment of interest & principal	Life tenant & future-interest holder are responsible for payments equal to present value of each interest in property

A life estate is a present possessory interest in real property that terminates on the death of an individual and is followed by a [reversion or a remainder](#). **Payments due on** an obligation secured by a **mortgage** of the property that was **incurred *before*** the creation of the **life estate** are **subject to allocation** between the holder of the life estate (ie, life tenant) and the future-interest holder (ie, reversioner or remainderman). The allocation can vary depending on the type of obligation:

If the obligation requires the **periodic payment of interest** until the principal amount is due, then the **life tenant** is responsible for **interest payments** and the **future-interest holder** is responsible for **principal payments** due at a later date.

If the obligation requires the **periodic payment** of both **interest *and* the principal amount** (in whole or in part), then the obligation is **allocated** between the **life tenant and the future-interest holder** based on the **present value of each interest**.

Here, the retiree conveyed a life estate in the condo to his son and a remainder to his granddaughter, subject to the lender's mortgage on the condo. The mortgage required monthly payments covering the interest to date *and* a portion of the principal. Therefore, the lawyer should tell the son that both he (life tenant) and the granddaughter (remainderman) are obligated to pay the monthly mortgage payments based on the present values of their respective interests (**Choices B, C & D**).

Educational objective:

If a preexisting mortgage obligation requires the periodic payment of interest only, then the life tenant pays the interest and the future-interest holder pays the later-due principal. But if periodic payment of interest *and* principal is required, then both payments must be allocated between the parties based on the present value of each interest.

References

Restatement of Property § 132 (Am. Law Inst. 1936) (discussing life tenant's obligation to contribute to a preexisting mortgage obligation when the principal amount has become due).

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