

A builder borrowed \$10,000 from a lender to finance a small construction job under a contract with a homeowner. The builder gave the lender a writing that stated, "Any money I receive from the homeowner will be paid immediately to the lender, regardless of any demands from other creditors." The builder died after completing the job but before the homeowner paid. The lender demanded that the homeowner pay the \$10,000 due to the builder directly to the lender. The homeowner refused, saying that he would pay directly to the builder's estate everything that he owed the builder.

Is the lender likely to succeed in an action against the homeowner for \$10,000?

- A. No, because the builder's death terminated the lender's right to receive payment directly from the homeowner.
- B. No, because the writing the builder gave to the lender did not transfer to the lender the right to receive payment from the homeowner.
- C. Yes, because the builder had manifested an intent that the homeowner pay the \$10,000 directly to the lender.
- D. Yes, because the lender is an intended beneficiary of the builder-homeowner contract.

Explanation:

Assignment of contractual rights

Limitations	<ul style="list-style-type: none">• Assignment permitted unless it:<ul style="list-style-type: none">– materially increases obligor's contractual duties or risks– materially reduces obligor's chance of obtaining performance <i>or</i>– is void (not merely prohibited) under contract provision
Requirements	<ul style="list-style-type: none">• Present intent to immediately assign right• Consideration generally required to make assignment irrevocable<ul style="list-style-type: none">– Exceptions: promissory estoppel, delivery of document symbolizing assigned right (eg, stock certificate), delivery of written & signed assignment
Assignee's rights	<ul style="list-style-type: none">• Assumes all of assignor's rights as contract stands at time of assignment, subject to claims/defenses that:<ul style="list-style-type: none">– accrued before obligor received notice of assignment <i>or</i>– stem from assignor's present or future failure to perform• Assignor loses rights & therefore cannot enforce contract

An **assignment** is the transfer of rights under a contract to another (ie, assignee). No formalities are needed for an assignment, but there must be a ***present intent to transfer*** the rights immediately. A party's **promise to pay money received** pursuant to a contract to a third party is ***not an assignment*** of the party's contractual rights, but a **promise of future payment**. Therefore, the third party in that situation is not an assignee.

Here, the builder promised to pay the lender the \$10,000 the builder received from the homeowner pursuant to the builder-homeowner contract. This promise of future payment was *not* an assignment and therefore did not transfer to the lender the right to receive payment directly from the homeowner. As a result, the lender is unlikely to succeed in an action against the homeowner for \$10,000.

(Choice A) A gratuitous assignment (ie, one that is not supported by consideration) is automatically revoked upon the death, incapacity, or bankruptcy of the assignor. But no valid assignment occurred here, so the builder's death is irrelevant.

(Choice C) Regardless of the builder's subjective intent, the lender was not an assignee and therefore has no right to receive the \$10,000 payment directly from the homeowner.

(Choice D) The lender was *not* an **intended beneficiary** of the builder-homeowner contract because the contract did not provide that the homeowner would pay the \$10,000 directly to the lender.

Educational objective:

A party's promise to pay money received pursuant to a contract to a third party is *not* an assignment of the party's contractual rights, but a promise of future payment.

References

- Restatement (Second) of Contracts § 321 (Am. Law Inst. 1981) (assignment of future rights).

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