

A seller and a buyer signed a contract for the sale of vacant land. The contract was silent concerning the quality of title, but the seller agreed in the contract to convey the land to the buyer by a warranty deed without any exceptions.

When the buyer conducted a title search for the land, she learned that the applicable zoning did not allow for her planned commercial use. She also discovered that there was a recorded restrictive covenant limiting the use of the land to residential use.

The buyer no longer wants to purchase the land. Must the buyer purchase the land?

- A. No, because the restrictive covenant renders the title unmarketable.
- B. No, because the zoning places a cloud on the title.
- C. Yes, because the buyer would receive a warranty deed without any exceptions.
- D. Yes, because the contract was silent regarding the quality of the title.

Explanation:

"Red flags" for marketable title

Covenants

Easements

Leases

Liens

Gaps in chain of title

Boundary disputes

Existing zoning violations

Adverse possession

All **land-sale contracts**, unless otherwise provided, **imply** that the seller will convey the buyer **marketable title** on the date of closing. Title need not be perfect to be marketable. But it must be **reasonably free from doubt** and under **no threat of litigation** such that a **reasonable person would accept** and pay for it.

A restrictive covenant is a promise to restrict the use of one's land. Here, the covenant limits the use of the land to residential use. This allows a third party to enforce the covenant, thereby posing a threat of litigation. As a result, the restrictive covenant renders title unmarketable and the buyer need not purchase the land.

(Choice B) An existing zoning *violation* may render title unmarketable, but the mere existence of a zoning code does not.

(Choice C) A buyer is not required to accept a **warranty deed** if the seller cannot deliver marketable title upon closing. The reason is that the doctrine of merger will cause the deed, once accepted, to subsume the land-sale contract. Any title issues will then be based on the deed instead of the guarantees in the contract.

(Choice D) When, as here, a contract is silent regarding the quality of title, it is implied that the seller will convey marketable title.

Educational objective:

It is generally implied that the seller will convey marketable title upon closing. Title is marketable if it is reasonably free from doubt and under no threat of litigation such that a reasonable person would accept and pay for it. Therefore, a restrictive covenant renders title unmarketable.

References

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

Copyright © 2013 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.