

A man decided to give his farm to his nephew. The man took a deed to his attorney and told the attorney to deliver the deed to the nephew upon the man's death. The man also told the attorney to return the deed to him if he asked. None of these instructions to the attorney were in writing, and the deed was not recorded. The man then e-mailed the nephew informing him of the arrangement.

Shortly thereafter, the nephew died testate. In his will, he devised the farm to his daughter. Several years later, the man died intestate, survived by two sons. The nephew's daughter immediately claimed ownership of the farm and demanded that the attorney deliver the deed to her.

Must the attorney deliver the deed to the nephew's daughter?

- A. No, because a gratuitous death escrow is void unless supported by a written contract.
- B. No, because the man never placed the deed beyond his control.
- C. Yes, because the death of the nephew rendered the gratuitous death escrow irrevocable by the man.
- D. Yes, because the deed to the nephew was legally delivered when the man took it to his attorney.

Explanation:

A **deed** effectively transfers ownership of a landowner's (grantor's) real property to another (grantee) when it is delivered to, and accepted by, the grantee. To **deliver** a deed through a valid **death escrow**, the grantor must:

give the deed to an escrow agent (eg, attorney) with **instructions** to **transfer it to the grantee** upon the **grantor's death** *and*

relinquish the **right to take back** the deed (ie, by placing the deed beyond his/her control).

Here, the man attempted to deliver a deed to the farm through a death escrow. Though he gave his attorney the deed with instructions to deliver it to the nephew upon the man's death, the man explicitly retained the right to have the deed returned to him if he asked. Since the man never placed the deed beyond his control, the death escrow was invalid (no delivery). As a result, the nephew never acquired ownership of the farm and could not devise it to his daughter. And since she has no interest in the farm, the attorney need not deliver the deed to her.

(Choice A) Since most death escrows are gratuitous, a contract (written or oral) is not required. Instead, the death escrow was void because the man retained the right to take back the deed.

(Choice C) A gratuitous death escrow becomes irrevocable once the grantor delivers the deed—not when the grantee dies.

(Choice D) Delivery is presumed when a deed is given to the grantee directly. But when the deed is given to an escrow agent, there is no delivery unless the grantor relinquishes his/her right to recover it. And since the man retained the right to have the deed returned, giving it to his attorney (escrow agent) did not constitute delivery.

Educational objective:

A deed is delivered through a valid death escrow when (1) the deed is given to an escrow agent with instructions to transfer it to the grantee upon the grantor's death, and (2) the grantor relinquishes the right to take back the deed.

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Deed delivered through death escrow

