

A buyer entered into a valid written contract with a seller to purchase vacant land. Unbeknownst to the seller, the buyer planned to construct a gas station on the land. The contract provided that the buyer could rescind the contract if the seller failed to deliver marketable title.

After a title search, the buyer discovered that a restrictive covenant prohibited using the land for commercial purposes. The buyer had not had actual knowledge of the restrictive covenant before executing the contract. The buyer refused to close on the contract, and the seller has sued for specific performance.

Should the seller prevail?

- A. No, because the restrictive covenant rendered the title unmarketable. (63%)
- B. No, because the seller was required to deliver perfect title to the buyer. (1%)
- C. Yes, because the restrictive covenant did not render the title unmarketable. (29%)
- D. Yes, because the seller was unaware of the buyer's plans to construct a gas station. (6%)

Incorrect

Correct answer A

63% Answered correctly

01 min, 54 secs Time Spent

2023 Version

Explanation:

"Red flags" for marketable title

Covenants

Easements

Leases

Liens

Gaps in chain of title

Boundary disputes

Existing zoning violations

Adverse possession

Absent contrary language, all land-sale contracts have an **implied warranty** that the seller will convey **marketable title** to the buyer upon closing. Title need not be perfect to be marketable **(Choice B)**. But title 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—eg, the covenant here prohibits using the land for commercial purposes. This allows a third party to prevent the buyer from using the land as desired, so the covenant poses a threat of litigation that renders title unmarketable **(Choice C)**. Therefore, the buyer need not purchase the land, and the seller should *not* prevail.

(Choice D) The seller was required to deliver marketable title regardless of whether the seller was aware of the buyer's plans to construct a gas station.

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) (discussing marketable title).

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