

A man defaulted on a loan that was secured by a mortgage on his home. The lender brought an appropriate action to foreclose the mortgage and, at the judicial foreclosure sale, the home was sold to a buyer. Shortly thereafter, the man inherited sufficient funds to enable him to reacquire the home from the buyer, but the buyer declined to sell.

Which of the following would provide the man with legal justification for pursuing an action for specific performance to compel the buyer to transfer ownership of the home to the man?

- A. The jurisdiction adheres to the doctrine of equitable redemption.
- B. The jurisdiction does not follow the doctrine of merger.
- C. The jurisdiction has enacted a statute that permits redemption.
- D. The jurisdiction recognizes the lien theory of mortgages.

Explanation:

Right of redemption

(regaining title after default on loan)

	Timing	Assertion of right
Equitable right (always exists)	At any time prior to foreclosure sale	Pay full amount of debt due (including interest) to lender
Statutory right (if statute exists)	Statutory period after property has been sold in foreclosure	Pay foreclosure sale price to purchasing party

When a debtor (here, the man) defaults on mortgage payments, the creditor can initiate foreclosure proceedings to force the sale of the mortgaged property to satisfy the unpaid debt. Once the property has been sold, jurisdictions with a **statutory right of redemption** allow the debtor to **reclaim the property** by **paying the foreclosure sale price** to the purchaser within a **fixed period of time** (typically between three months and two years).

Therefore, if the jurisdiction has enacted a statute that provides this right, the man would have legal justification to pursue an action for specific performance to compel the buyer to transfer ownership of the home to the man.

(Choice A) The doctrine of equitable redemption allows a debtor to reclaim mortgaged property at any time *before* a foreclosure sale by paying the full amount of the outstanding debt, plus any accrued interest. But a debtor can only reclaim mortgaged property *after* a foreclosure sale if the jurisdiction has enacted a statute providing this right.

(Choice B) The doctrine of merger applies in the mortgage context when the same person acquires ownership of both the mortgage and the mortgaged property. When this occurs, the mortgage merges into fee simple ownership of the property. But the fact that the jurisdiction does not follow this doctrine would not affect the outcome of this dispute.

(Choice D) Regardless of which [mortgage theory](#) the jurisdiction recognizes, the man will have the right to redeem his home from the buyer only if the jurisdiction has a statutory right of redemption.

Educational objective:

In jurisdictions with a statutory right of redemption, a debtor can reclaim property *after* a foreclosure sale by paying the foreclosure sale price to the purchaser within a fixed period of time.

References

30 Am. Jur. 2d Executions and Enforcement of Judgments § 291 (2020) (statutory right of redemption).

Copyright © UWorld. All rights reserved.