

An unmarried couple had been living together in an apartment for several years when they decided to purchase a starter home as tenants in common. In lieu of drafting wills, the couple verbally agreed that if either of them died, the other should own the entire home.

The couple was later involved in a serious plane crash. The man died instantly, and the woman died one day later. Each was survived by a single heir.

Common law marriage is not recognized in the jurisdiction in which the home is situated. The only applicable statute is the statute of frauds.

In an appropriate action between the couple's heirs to determine ownership of the home, how will the court likely rule?

- A. Each heir owns an undivided one-half interest in the home because the couple died in the same plane crash.
- B. Each heir owns an undivided one-half interest in the home because the statute of frauds applies.
- C. The woman's heir owns the entire home because the couple reasonably relied upon their verbal agreement and never made wills.
- D. The woman's heir owns the entire home because the deed will be reformed to reflect the subsequent verbal agreement.

Explanation:

A **tenancy in common** is a concurrent estate in which each co-tenant holds a separate share of the property and the right to possess the entire property with **no right of survivorship**. But a right of survivorship can be **created by an agreement** that satisfies the [statute of frauds](#)—ie, the agreement must:

be **in writing**

be **signed by the parties** against whom it is to be enforced *and* contain all **essential terms**.

A right of survivorship causes a co-tenant's property interest to disappear upon his/her death and allows the remaining co-tenants' interests to expand proportionately.

Here, the couple (tenants in common) agreed that whoever survived the other would own the entire home (right of survivorship). But since their agreement was *verbal*, it is unenforceable under the statute of frauds. Therefore, when the man died, his one-half interest transferred to his sole heir—not the woman. And when the woman died one day later, her one-half interest transferred to her sole heir.

(Choice A) Under the Uniform Simultaneous Death Act, when two or more persons die without a will and within 120 hours of each other, each is considered to have predeceased the others. This act does not apply here since the only applicable statute is the statute of frauds.

(Choice C) The doctrine of promissory estoppel allows a party to enforce an otherwise unenforceable promise upon which it reasonably and detrimentally relied. But reliance on a conditional promise (eg, a promise of property conditioned upon survivorship) is unreasonable. Therefore, the couple's reliance upon the right-of-survivorship agreement does not make it enforceable.

(Choice D) Reformation is an equitable remedy that is used to correct *mistakes* in a deed. Since the deed here accurately reflects the couple's apparent agreement to create a tenancy in common, the court will not reform it to reflect the later verbal agreement.

Educational objective:

A right of survivorship can be created by an agreement that satisfies the statute of frauds—ie, (1) is in writing, (2) is signed by the parties against whom it will be enforced, and (3) contains all essential terms.

Right of survivorship

