

A man decided to give a cabin he owned to his daughter at his death. To accomplish this goal, he delivered to his attorney a deed that fully complied with the applicable statute of frauds and told his attorney to record the deed when he died unless he later gave the attorney instructions to the contrary.

Three weeks after dropping off the deed, the man properly drafted and executed his own will, which left all of his real property to his son.

One year later, the man died, and the attorney immediately recorded the deed. At the time of the man's death, the cabin was titled in his name and he owned no other real property. The daughter and the son now disagree as to who is entitled to ownership of the cabin.

Other than the jurisdiction's statute of frauds and statute of wills, there are no applicable statutes.

Who is entitled to ownership of the cabin?

- A. The daughter, because the attorney was, for gift-law purposes, a trustee for the daughter.
- B. The daughter, because the deed fully complied with the statute of frauds.
- C. The son, because the deed was not delivered to the daughter during the man's lifetime.
- D. The son, because the proper execution of the will revoked the earlier gift to the daughter.

Explanation:

Presumed delivery of deed

Physical delivery (eg, by hand or mail)

Recording

Unconditional delivery to agent

Grantee obtains possession of deed

A **deed** is a document that **transfers ownership** of real property from the owner (grantor) to another (grantee) once it has been:

delivered – evidenced by the **grantor's intent to presently convey** ownership to the grantee (ie, the grantor must **not retain a right to recover the deed**) *and*

accepted – presumed when the transfer benefits the grantee.

Delivery is presumed if the deed is recorded (ie, filed in official land records). But this presumption can be rebutted by evidence that the grantor did not intend to presently transfer ownership. And if the deed is **not delivered during the grantor's lifetime**, it is **void** and conveys no interest.

Here, the attorney recorded the deed (presumed delivery). But the man retained the right to recover the deed by instructing the attorney to record it upon the man's death *unless* he gave instructions to the contrary (presumption rebutted). Therefore, the deed was not delivered to the daughter during his lifetime. And since the deed is void, the son (as the beneficiary under the man's will) is entitled to ownership of the cabin.

(Choice A) Since the man retained a right to recover the deed (no present intent to transfer), the son owns the property. But had the man relinquished that right when he gave the deed to the attorney (intending to presently transfer ownership), the attorney would have been the daughter's trustee—ie, her fiduciary who would have been legally required to hold the deed for her benefit until the man's death.

(Choice B) A deed must comply with the statute of frauds—ie, be in writing and signed by the party to be bound. But to effectively transfer ownership of property, the deed must also be delivered during the grantor's lifetime (and accepted by the grantee).

(Choice D) A properly executed will *does not* revoke an earlier gift that has been both delivered and accepted. That is because the testator (person who made the will) no longer owns the gifted property at death. Therefore, the son is not entitled to ownership of the cabin on this basis.

Educational objective:

To effectively transfer ownership of real property, a deed must be delivered during the grantor's lifetime (and then accepted by the grantee). There is no delivery if the grantor retains a right to recover the deed.

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