

A son loaned his father a large sum of money. The father signed a 10-year promissory note and secured the note with a mortgage on his farm. The mortgage was promptly recorded.

The next year, the father died intestate. The father's heirs were the son and his two sisters. The sisters first learned of the mortgage just after their father died.

The sisters now assert that the son, their brother, holds the mortgage for their benefit as well as for himself because as a tenant in common with his sisters, he has a fiduciary duty toward them.

There are no applicable statutes.

Are the sisters correct?

- A. No, because the mortgage was granted before the tenancy in common was created.
- B. No, because the three siblings took the farm as tenants in common rather than as joint tenants with right of survivorship.
- C. Yes, because a fiduciary relationship exists among tenants in common.
- D. Yes, because their three interests are equal.

Explanation:

Cotenants generally do not share a **fiduciary relationship** unless they became cotenants at the same time (eg, by the same deed or will, by inheritance from a common ancestor). Additionally, this fiduciary relationship **exists only** with respect to **transactions** involving co-owned property that take place **during the tenancy (Choice C)**.

Here, the son's mortgage on the farm was granted *before* the siblings inherited the farm from their father as tenants in common. As a result, the son does *not* have a fiduciary duty toward his sisters with respect to the mortgage, and the sisters are incorrect that he holds the mortgage for their benefit as well as for himself.

(Choice B) The son would hold the mortgage solely for his own benefit even if the siblings had taken the farm as joint tenants with [right of survivorship](#).

(Choice D) The three siblings have equal interests in the farm because this is presumed when cotenants inherit property by intestate succession. However, this fact has no effect on the outcome of their dispute.

Educational objective:

Cotenants share a fiduciary relationship if they become cotenants at the same time. But this fiduciary relationship exists only with respect to transactions that occur during the tenancy.

Copyright © 2019 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

