

A grantor executed an instrument in the proper form of a warranty deed purporting to convey a tract of land to his church. The granting clause of the instrument ran to the church "and its successors forever, so long as the premises are used for church purposes." The church took possession of the land and used it as its site of worship for many years. Subsequently, the church decided to relocate and entered into a valid written contract to sell the land to a buyer for a substantial price. The buyer wanted to use the land as a site for business activities and objected to the church's title. The contract contained no provision relating to the quality of title the church was bound to convey.

There is no applicable statute.

When the buyer refused to close, the church sued the buyer for specific performance and properly joined the grantor as a party.

Is the church likely to prevail?

- A. No, because the grantor's interest prevents the church's title from being marketable.
- B. No, because the quoted provision is a valid restrictive covenant.
- C. Yes, because a charitable trust to support religion will attach to the proceeds of the sale.
- D. Yes, because the grantor cannot derogate from his warranty to the church.

Explanation:

Fee simple estates

Type		Language	Future interest
Indefeasible	Fee simple absolute	"To A" "To A and his heirs"	None
Defeasible	Fee simple determinable	Durational "so long as" "during" "until"	<i>Grantor's</i> possibility of reverter <i>Third party's</i>
	Fee simple subject to condition subsequent	Conditional "but if" "provided that" "unless"	executory interest (fee simple subject to executory limitation) <i>Grantor's</i> right of entry

In a land-sale contract, the seller promises to deliver **marketable title** to the buyer 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. If the seller fails to satisfy this promise, the buyer can rescind the contract and refuse to close.

Here, the church has a defeasible fee because its title will automatically terminate if the specified event or condition occurs—ie, when the land is no longer used for church purposes. If the buyer were to purchase the land and use it for business purposes, the specified event would occur. The buyer's title would then terminate and revert back to the grantor. As a result, the church cannot deliver marketable title and its suit against the buyer will likely fail.

(Choice B) A restrictive covenant is a promise to do or not do something on one's land that has no impact on title. Since the quoted provision will divest the church (or its assigns) of title if the land is no longer used for church purposes, it is *not* a restrictive covenant but a defeasible fee.

(Choice C) Attaching the sale proceeds to a charitable trust will have no impact on the church's ability to convey marketable title. This merely means that a trustee will hold those proceeds at the church's request for some charitable purpose and title will still terminate if the specified condition occurs.

(Choice D) The grantor cannot and has not derogated any warranty (ie, [covenant of title](#)) to the church. He had the right to convey the church a defeasible fee and the right to retain a possibility of reverter in that land.

Educational objective:

Marketable title is title that is reasonably free from doubt and under no threat of litigation such that a reasonable person would accept and pay for it. The owner of a defeasible fee cannot convey marketable title since title will automatically terminate upon the happening of a specified event or condition.

References

77 Am. Jur. 2d Vendor and Purchaser § 93 (2020) (marketable title).

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