

A woman owned land subject to a mortgage held by a bank. She fell behind in her mortgage loan payments, and the bank properly initiated foreclosure proceedings. The land was sold at a foreclosure sale that resulted in surplus proceeds to which the woman was entitled. Before payment of the surplus proceeds to her, she died testate.

In her duly probated will, which she had executed before granting the mortgage to the bank, the woman specifically devised the land to a charity. The remainder of the woman's estate was given by the will to her brother, her sole heir.

A dispute has arisen in the administration of the woman's estate about the foreclosure sale surplus proceeds. The woman's brother contends that he is now entitled to those proceeds.

Is the brother correct?

- A. No, because the foreclosure sale was an involuntary act.
- B. No, because the woman's will clearly indicated her intent for the charity to have the land.
- C. Yes, because the foreclosure sale was completed before the woman's death.
- D. Yes, because the woman's will was written before the mortgage was granted.

Incorrect

Correct answer C

Collecting Statistics

01 min, 41 secsTime Spent

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## Explanation:

### Classification of devises

(conveyance by will)

Type	Definition	Examples
<b>Specific</b>	Devise of specifically identified asset	"my farm to my nephew"
<b>General</b>	Devise (often of money) payable from general assets of estate	"\$2,000 to my daughter" "one-half of my estate to my son"
<b>Demonstrative</b>	Devise primarily payable from designated source, but secondarily payable from general assets	"\$2,000 to my daughter out of my bank account"
<b>Residuary</b>	Devise of all property not disposed of by specific, general, or demonstrative devise	"all of the remainder of my estate to my niece"

A will speaks at the time of the testator's death. If the **testator does not own a specifically devised asset** at the **time of death** (eg, because it was sold before death), then the doctrine of **ademption by extinction** will cause the **devise to fail** and the devisee takes nothing—not even the sale proceeds. Instead, proceeds from the sale of the specifically devised asset become part of the general estate, which will then be distributed in accordance with the remainder of the will.

Here, the woman's land was sold at a foreclosure sale *before* her death, so she did not own the land when she died. As a result, her specific devise of the land to the charity adeemed (ie, failed). However, the woman had an interest in the surplus proceeds from the foreclosure sale because the sale was completed before her death. Those proceeds are considered personal property and are part of the woman's general estate. Accordingly, as the residuary legatee under the woman's will, the brother is entitled to the proceeds.

**(Choice A)** Whether the brother or the charity prevails depends on whether the woman owned the land when she died. How the woman lost ownership of the land (eg, involuntary foreclosure sale) is irrelevant.

**(Choice B)** Although the woman intended for the charity to have the land, she did not own the land at the time of her death. As a result, her specific devise of the land to the charity adeemed.

**(Choice D)** Whether the woman's will was written before or after the mortgage was granted is irrelevant. The dispositive issue is whether the woman owned the land at the time of her death.

**Educational objective:**

The doctrine of ademption by extinction causes a devise of a specific asset to fail if the testator does not own it at the time of death. Proceeds from the sale of the asset then become part of the general estate.

**References**

Restatement (Third) of Prop.: Wills & Don. Trans. § 5.2 (Am. Law Inst.1999) (discussing ademption of specific devises by extinction).

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