

Two years ago, a builder constructed a house for a woman and conveyed that house to her for \$300,000 at the closing by a warranty deed, which was promptly recorded. The sale contract contained no express warranties relating to the condition of the house. To finance the purchase, the woman borrowed \$200,000 from a local bank secured by a mortgage on her new house. The mortgage note provided that in the event of the woman's failure to make two consecutive monthly mortgage payments, the balance would become immediately due and payable. The mortgage was promptly recorded.

One year ago, the woman accepted a new job and moved. At that time, her house was worth \$360,000 and there was a balance on the mortgage of \$195,000. She sold the house to a man and delivered a quitclaim deed to him in exchange for \$160,000. The quitclaim deed was promptly recorded and made no reference to the woman's mortgage obligation. The mortgage obligation was not discharged at the closing. However, the man immediately began to make the woman's monthly mortgage payments to the bank after the closing.

Nine months ago, water seeped into the basement of the house during a major storm, causing substantial damage. It is undisputed that the seepage was due to defective concrete used by the builder and not to any negligence on the builder's part. The man called the builder, told him about the seepage, and demanded that the builder fix the concrete. The builder responded: "That's your problem." The man then repaired the concrete at a cost of \$80,000.

Thereafter, the man sued the builder to recover the \$80,000 he had spent to repair the concrete. While the case was pending, the man stopped making mortgage payments. The bank sued the man to foreclose on the mortgage and, if necessary, obtain a deficiency judgment against him on the note if the sale proceeds were insufficient to discharge the mortgage debt. The man has joined the woman as a third-party defendant in the lawsuit.

1. Is the man likely to prevail against the builder to recover the \$80,000 he spent to repair the concrete? Explain.
2. Is the man personally liable for the outstanding balance on the mortgage note between the woman and the bank? Explain.
3. If the bank is successful in its foreclosure action, will the man be able to recover damages from the woman? Explain.

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A builder built and sold a **new house to a woman for \$300,000 by warranty deed**; the contract had no express warranties. She borrowed \$200,000 from a bank secured by a recorded mortgage whose note accelerated on two missed payments. A year later she sold to a man by **quitclaim deed for \$160,000**; the **deed did not mention the mortgage, which was not discharged, but the man began making the payments**. A storm later sent water into the basement from **defective (non-negligent) concrete**; the builder said “That’s your problem,” and the man paid \$80,000 to repair. The man sued the builder, then stopped paying; the bank foreclosed and sought a deficiency against the man, who joined the woman.

← *The implied warranty of quality runs to the buyer; the man lacks privity with the builder.*

← *A grantee who takes “subject to” a mortgage, without assuming it, is not personally liable on the note.*

← *A quitclaim deed carries no covenants, so the man cannot recover from the woman.*

Section 1: Implied Warranty of Quality

Issue. Whether the man can recover the \$80,000 repair cost from the builder.

Rule. G/R: most jurisdictions imply a warranty of quality in a builder-vendor’s sale of a new home, covering significant latent defects from poor workmanship discovered within a reasonable time; jurisdictions split on whether it extends to subsequent purchasers and on recovering purely economic loss.

Analysis. Here, the man bought from the woman, not the builder, so he lacks privity with the builder; whether the warranty reaches a subsequent purchaser and whether economic loss is recoverable both vary by jurisdiction, making recovery doubtful.

Conclusion. Therefore, Section 1: the man is unlikely to prevail against the builder for the \$80,000.

The builder claim.

New-home warranty; splits on reach.

No privity; jurisdictional splits.

Builder claim likely fails.

Section 2: Personal Liability on the Note

Issue. Whether the man is personally liable for the outstanding balance on the mortgage note.

Rule. G/R: a grantee who takes title subject to an existing

Subject-to vs assumption.

Assumption creates personal liability;

mortgage, without expressly assuming it, is not personally liable on the note; the lender may still foreclose on the land, but a deficiency judgment lies only against a grantee who assumed the debt.

Analysis. Here, the quitclaim deed did not mention or assume the mortgage, and merely making payments is not an assumption; the man took subject to the mortgage, so the bank may foreclose but cannot hold him personally liable on the note.

Conclusion. Therefore, Section 2: the man is not personally liable on the mortgage note.

subject-to does not.

No assumption language; payments are not enough.

No deficiency against the man.

Section 3: Quitclaim Deed and Recovery from the Woman

Issue. Whether the man can recover damages from the woman if the bank forecloses.

Rule. G/R: a quitclaim deed conveys only whatever interest the grantor has and contains no title covenants; a general warranty deed, by contrast, would warrant against encumbrances such as the mortgage.

Analysis. Here, the woman conveyed by quitclaim and made no warranties, so even though foreclosure defeats the man's interest, he has no covenant on which to sue her.

Conclusion. Therefore, Section 3: the man cannot recover damages from the woman.

Deed-type question.

Quitclaim = no warranties.

No covenant → no claim.

Quitclaim leaves him no remedy.

Step-by-Step: New-Home Defect, Mortgage Transfer, and Deed Type

Take the builder claim, the mortgage-liability question, and the deed-warranty question in turn.

1. Implied warranty of quality: builder-vendor, new home, latent defect. Watch privity and the subsequent-purchaser split.

→ **No privity → man unlikely to recover**



2. Mortgage: subject-to (no assumption) vs assumption. Making payments alone is not an assumption.

→ **Not personally liable; bank may still foreclose**



3. Deed type: a quitclaim carries no covenants; a warranty deed would warrant title.

→ **No recovery from the woman**