

PROPERTY

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CLASS 21(B): RECORDING ACTS

Class Outline

1. Title Search and “Chain of Title”
2. Types of Recording Acts
 1. Race
 2. Notice
 3. Race-Notice
 4. Mixed
3. The Shelter Rule
4. Electronic Land Records

Title Search Example

On April 15, 2006, you are considering a purchase from D of a parcel known as Blackacre, located in the town of Springfield. You must perform a title search to ascertain the state of the title. Assume the state in question only requires a title search going back 40 years.

Types of Recording Acts

1. Race
2. Notice
3. Race-Notice
4. Mixed

Types of Recording Acts: Race

The first to record prevails. This was the original type of statute, but now at most two states have the simple race statute.

If O sells to A and then sells to B, but B records before A, then B has title; A has only a claim against O. Race statutes create an exception to the *nemo dat* principle and a partial exception to the good faith purchaser doctrine, insofar as the first party to record wins even if she has actual notice of a prior conveyance.

Example of a race statute:

“No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainor or lessor but from the time of registration thereof in the county where the land lies * * *” (N.C. Stat. § 47-18.)

Types of Recording Acts: Notice

A subsequent bona fide purchaser wins unless such person has notice (actual, constructive, or inquiry), and a recorded interest gives constructive or "record" notice. Note the incentive to record immediately in order to be protected from subsequent good faith purchasers.

An example of a notice statute:

“A conveyance of an estate in fee simple, fee tail or for life, or a lease for more than seven years from the making thereof, * * * shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it * * * is recorded in the registry of deeds for the county or district in which the land to which it relates lies.” (Mass. Gen. Laws Ann. Ch. 183, § 4).

Types of Recording Acts: Race - Notice

A subsequent good faith purchaser wins only if such person has no notice *and* records before the prior instrument is recorded. This is like the race statute but solves the problem of the unscrupulous subsequent buyer under the race approach.

An example of a race-notice statute:

“Every conveyance of real property or an estate for years therein, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded * * *” (Cal. Civ. Code § 1214.)

Recording Acts Problem #1

What result under each type of statute?

O conveys to A. O then conveys to B, who is unaware of the conveyance to A. B records immediately. Then A records.

Recording Acts Problem #2

O conveys to A. O then conveys to B, who is aware of the conveyance to A. B records immediately. Then A records.

Recording Acts Problem #3

O conveys to A, who does not record. Then O conveys to B, who also does not record. Then O conveys to C, who does not record. What result if B and C are each unaware of the previous grants from O? What if each of them *is* aware?

Recording Acts Problem #4

O conveys to A. O then conveys to B, who has no knowledge of A's deed. Then A records. B then records and sells to C.