TITLE ASSURANCE
The Recording System

• Functions
  • Public recordation
  • Preservation in a secure place
  • Equitable doctrine of bona fide purchaser (BFP) (and lien creditors)

• Indexes
  • Grantee
  • Grantor

Bona Fide Purchasers and Recording

• Recording acts broadened the equitable doctrine of BFP to protect a subsequent BFP against prior unrecorded interests.

• Common law rule of “first in time, first in right” still controls unless a person qualifies for protection under the recording act.
Grantee-Grantor Indexes

- Charles II
- Duke of York
- Grandpa Farmer (1860)
- Farmer (1900)
- Developer (1911)
- Rockefeller (1910)
- City (1935)
- FDR (1920)
- Van Valkenburgh (1960)
- Mario Cuomo (1945)

Luthi v. Evans,
576 P.2d 1064 (Kan. 1978), Casebook, p. 565

The Recording System

- Mother Hubbard Clause
- Type of recording system in Kansas?
- Notice (constructive and actual)
- Mistake in indexing and constructive notice (note 1)
Improper Indexing

Must a deed be properly indexed to be legally “recorded”? In other words, who prevails when there is an improperly indexed deed?

The prior grantee or the subsequent grantee?

Choice A

[The rule appears to well established that in the absence of a statutory provision to that effect, an index is not an essential part of the record. In other words, a purchaser is charged with constructive notice of a record even though there is no official index which will direct him to it.

4 American Law Property § 17.52 (1952).]
Improper Indexing

Choice B

“To record” means to present to the recording officer for the place in which the land is situated a document which he accepts and either enters in a daily log or notes thereon an identifying number, regardless of whether under applicable law the recording officer is directed to file the document or otherwise to maintain a record of it.

Uniform Simplification of Land Transfers Act, § 1-201(17). See also Uniform Land Transactions Act, § 1-201(16).

Improper Indexing

Choice B Cont’d

Thus the grantee has the duty only of the initial indexing; the subsequent purchaser takes the risk of faulty indexing thereafter (upon consolidation).
Improper Indexing

Choice B Cont’d

Rule chosen so as to not burden a grantee beyond the initial filing.

It would be inefficient (and unrealistic) to think that a grantee would constantly check on the operations of the recorder to make sure that he properly indexes at every point in time.

Orr v. Byers,
244 Cal. Rptr. 13 (1988), Casebook, p. 574

Idem Sonans

- William Duane Elliott
  - William Duane Elliot
  - William Duane Eliot
- Abstract of Judgment
- Record Notice
- Majority v. Minority View
Orr v. Byers Cont’d

Idem Sonans Example

• O coveys property to William Elliott (with 2 “t’s”). This deed is not recorded.
• A deed from William Elliot (with 1 “t”) to A is recorded.
• B wants to buy the property from A.
• B discovers the misspelling and wants to rescind the contract. May he?