Types of Recording Acts

- Race
- Notice
- Race-Notice

Recording Acts

- **Race** – As between two successive purchasers for value, the person who wins the race to record prevails.

- **Notice** (Texas) – An unrecorded instrument is invalid against a subsequent *purchaser* for value without notice. Thus, a subsequent purchaser without notice prevails (even if the subsequent purchaser does not record).
Texas Property Code § 13.001
Validity of Unrecorded Instrument

a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.

b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.

Recording Acts

• **Race-Notice** – A subsequent purchaser for value is protected against prior unrecorded instruments only if the subsequent purchaser (1) is without notice of the prior instrument and (2) records before the prior instrument is recorded.

• **Shelter Rule** – A person who takes from a BFP that is protected by the recording act has the same rights as her grantor.
Who Wins?

O

A Receives through sale - 1970
A does not record the deed

H Receives through inheritance - 1972
transfer shown in probate record
H does not record the deed

C Receives through sale - 1985
C records the deed

B Receives through sale - 1980
B records the deed

Mortgage Example

O

A (2000)
$10,000
A does not record

B (2001)
$14,000
B records

C (2002)
$5,000
C records

Total Debt on Property = $29,000
Foreclosure Sale = $20,000
**Messersmith v. Smith**  
60 N.W.2d 276 (N.D. 1953), Casebook, p. 583

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 7, 1946</td>
<td>Caroline &amp; Frederick Messersmith are co-tenants w/ equal shares</td>
</tr>
<tr>
<td>May 7, 1946</td>
<td>Caroline executes &amp; delivers quit claim deed to Frederick</td>
</tr>
<tr>
<td>April 23, 1951</td>
<td>Caroline executes mineral lease to Smith</td>
</tr>
<tr>
<td>May 7, 1951</td>
<td>Caroline conveys 2 mineral deeds w/ warranty for undivided ½ interest in oil, gas, etc. to Smith</td>
</tr>
<tr>
<td>May 9, 1951</td>
<td>Smith executes mineral deed and conveys interest to Seale</td>
</tr>
<tr>
<td>May 14, 1951</td>
<td>Smith’s mineral lease from Caroline is recorded</td>
</tr>
<tr>
<td>May 26, 1951</td>
<td>Mineral deed from Caroline to Smith and mineral deed from Smith to Seale are recorded</td>
</tr>
<tr>
<td>July 9, 1951</td>
<td>Slow yet steady Freddie finally records his deed from Caroline</td>
</tr>
</tbody>
</table>

**Messersmith v. Smith Cont’d**

- Fraud, deceit, and misrepresentation
- Race-Notice
- Entitled to be “recorded”/legally “recorded”?
- Purpose of acknowledgement
Texas Property Code § 12.001
Instruments Concerning Property

a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgements or oaths, as applicable.

Board of Education of Minneapolis v. Hughes
136 N.W. 1095 (Minn. 1912), Casebook, p. 590

- Before May 16, 1906
  The Hoergers own the property.

- May 17, 1906
  The Hoergers execute & deliver deed w/ grantee blank to Hughes

- April 27, 1909
  Duryea & Wilson (D&W) receive quit claim deed from Mrs. Hoerger(?)

- Nov. 19, 1909
  D&W execute warranty deed to Board of Education

- Jan. 27, 1910
  Board of Education records its deed

- Shortly before Dec. 16, 1910
  Hughes makes his deed viable by filling in his name as grantee

- Dec. 16, 1910
  Hughes records his deed

- Dec. 21, 1910
  D&W record their deed
Board of Education v. Hughes Cont’d

In Fact

Hoergers

Hughes receives deed
May 17, 1906

D&W receive deed
Apr. 27, 1909

Bd. of Educ. receives deed
Nov. 19, 1909

Hughes makes deed viable shortly before
Dec. 16, 1910

In Records

Hoergers

Bd. of Educ. records
Jan. 27, 1910

D&W record
Dec. 21, 1910

Hughes records
Dec. 16, 1910

Board of Education v. Hughes Cont’d

Chain of Title Problems

- Minnesota’s recording act?
- Did Hughes’ deed ever become operative?
- If so, was he a subsequent purchaser who deed was duly recorded?
Board of Education v. Hughes Cont’d

Chain of Title Problems cont’d

- Common Grantors
- Strangers to the Title
- Wild Deeds
- Legally Recorded
- Constructive Notice