

## Property

- Module 19
- Recording Acts

## Recording

- The Most Basic Problem:
  - A Sells Blackacre to B
  - A Sells Blackacre *again*, this time to C, a good-faith purchaser (without notice of the sale to B)
  - Who owns Blackacre?
- A More Common Problem:
  - A mortgages Blackacre to B
  - A sells the possessory interest Blackacre to C, a good-faith purchaser (without notice of B's mortgage)
  - Is C's interest encumbered by the mortgage?

## Recording

- Competing Concerns:
  - Protecting Good-Faith Purchasers
  - Ensuring Reliability of Interests in Real Property
- A Possible Solution: Increasing Information
  - Public title records could provide all parties with authoritative information about who owns what interests in real property.
  - But this only works if interest-holders actually provide their information to the public records system.
  - How do we get them to do that?

## Recording

- Recording Acts: A Multi-Pronged Solution
  - Protect Good-Faith Purchasers (and Mortgagees) against unrecorded prior interests
  - Give potential purchasers and mortgagees a reliable basis to judge whether their seller/mortgagor has the interest she claims
  - Give owners of interests in real property an incentive to record information in the public record (by threatening them with risk of loss to a good-faith purchaser if they don't).

## Recording

- Recording Acts in Action:

*Argent Mortgage Co. v. Wachovia Bank N.A.*

- Timeline:
  - August 31, 2004: Mortgage from Burkes to Olympia
  - December 10, 2004: Mortgage from Burkes to Argent
  - January 5, 2005: Olympia Records
  - January 31, 2005: Argent Records
- Why might it matter when an instrument is recorded in a notice jurisdiction?

## Recording

- Varieties of Recording Acts: How to Prevail over an Earlier Interest

- Race Statute:
  - Purchase for Value
  - Record First
- Notice Statute:
  - Purchase for Value
  - Purchase in Good Faith (i.e., without actual or constructive notice of the prior interest)
- Race-Notice Statute:
  - Purchase for Value
  - Purchase in Good Faith
  - Record First

## Recording

- Structure of the Typical Recording Act:
  - Typical structure: “No interest is valid against [protected persons] unless [certain conditions are satisfied]”
  - Our tasks:
    - Identify the protected persons
      - Purchasers for value (always)
      - In good faith (sometimes)
      - Who first record (sometimes)
    - Identify the Conditions
      - Recording before the subsequent purchase (inverse of good faith: recording provides constructive notice)
      - Winning the Race to Record (inverse of extending protection to a purchaser who first records)
  - Be Flexible! Elements of a recording act can often be framed either as a criterion for protection against earlier interests or as a condition for enforcing a prior interest against subsequent purchasers (or both).

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## FLA. STAT. § 695.01

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law ... .

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## N.C. STAT. § 47-18

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, bargainer or lesser but from the time of registration thereof in the county where the land lies ... .

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## ALASKA STAT. § 40.17.080

... A conveyance of real property in the state, other than a lease for a term of less than one year, is void as against a subsequent innocent purchaser in good faith for valuable consideration of the property or a part of the property whose conveyance is first recorded. ...

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## Recording

- Recording Acts: The Central Tensions
  - When is “record notice” sufficient to invalidate the later buyer’s claim of good faith?
  - How strictly will we impose the duty to record in order to preserve a prior interest?
  - What should we do about errors by the clerk?
  - In each case, the question is one of fairness: do our hard-edged rules invalidating one interest seem too harsh? If so, is there some way to soften them?

## Recording

- The Chain of Record Title
  - Hartig v. Stratman
    - Timeline:
      - May 31, 1994:
        - Connell sells 2210 E. Walnut St. to Holmes
        - Connell and Stratmans cross-convey easements to a shared driveway
      - June 8, 1995, 2:24 p.m.: Deed from Connell to Holmes recorded
      - June 8, 1995, 2:25 p.m.: Easement from Connell to Stratmans recorded
      - Sept. 28, 1995: Holmes sells 2210 E. Walnut St. to Hartig
    - Is the easement good against Hartig? Does Hartig have notice of it?
    - Is there anything the Stratmans can do now?

## Recording

- The Shelter Rule:
  - Once a purchaser comes under the protection of the recording statute, all successors to that purchaser's interest enjoy the same protection against the invalidated unrecorded interest.
  - One exception: The grantor who created the interest that has become void under the recording act cannot later claim the benefit of the shelter rule.

## Recording

- Wild Deeds: *Board of Education of Minneapolis v. Hughes*
  - Timeline:
    - May 17, 1906: Hoerger delivers blank deed to Hughes
    - April 27, 1909: Hoerger sells by quitclaim to Duryea & Wilson
    - November 19, 1909: Duryea & Wilson sell by warranty deed to Bd. of Ed.
    - January 27, 1910: Bd. of Ed records
    - December 11, 1910: Hughes fills in blank deed; records
    - December 21, 1910: Duryea & Wilson record
  - When did Hughes "purchase"? What would the title records have shown on that date?
  - What kind of recording act does Minnesota have? Would the result differ under another variety of recording act?

## Recording

- Errors at the Clerk's Office; Effects on Notice:
  - Errors by the filer: *Nat'l Packing Corp. v. Belmont*
  - Errors by the Clerk?
  - Recording Fraud: Pages 733-734, Notes 7-8

## Nat'l Packing Corp. v. Belmont (Ohio Ct. App. 1988)

- J against Bolan in favor of NPC
  - J recorded with name of BOLEN
- Property (Indian Hill Rd.) sold at sheriff's sale to satisfy obligations to Bolan's ex-wife; NPC not notified of sheriff's sale due to mistake in the name of recorded J
- Sheriff's sale buyer is Belmont; sells property to DeCamp
- Issue
  - Did incorrect name "give rise to a valid lien for the benefit of NPC and to provide the appropriate constructive notice to title searchers"
- Rulings
  - Whatever the utility of idem sonans in other legal settings, it creates too many problems to be applied in a title index
  - Bolan was not otherwise identifiable as BOLEN

### *idem sonans*

"It is not every mistake in names which will invalidate an instrument or proceeding. *This effect will follow where the person can not be identified, or where the error is such as to describe another. But words are intended to be spoken; and where the sound is substantially preserved, bad spelling will not vitiate. \* \* \**"

## Recording

### ● Problems: Pages 742-743

#### ● Problem 1:

##### ● Chronology:

1. P & N own land as JTWROS
2. P conveys his interest to A, a good-faith purchaser
3. A gratuitously transfers to C
4. C records
5. P & N sell their interests to M, a purchaser without notice of P's prior sale to A
6. M records

- Recording statute: "Every conveyance is void as against any subsequent purchaser of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded."

## Recording

### ● Problems: Pages 742-743

#### ● Problem 2:

##### ● Chronology:

1. **B & D** own land as JTWROS
2. **B & D** convey an easement to W, who doesn't record
3. D gratuitously transfers her interest to A, who does not know about the easement.
4. A records
5. D dies
6. B sells the land to P, who has seen W's use of the land and been told P allows it.
7. P records

- Recording statute: "No conveyance or mortgage of an interest in land is valid against any subsequent purchaser for value without notice thereof, unless it is recorded."

## Recording

- Problems: Pages 742-743

- Problem 2:

- Chronology:

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- **Change the recording statute:** "Every unrecorded conveyance of an interest in land shall be void as against any subsequent purchaser in good faith and for a valuable consideration whose conveyance shall be first duly recorded"?

## Recording

- Problems: Pages 742-743

- Problem 3a:

- Chronology:

1. D conveys to B
2. D conveys to C, a gfp
3. B records
4. C records
5. C sells lot 1 to J, lot 2 to D

- Statute A: "No conveyance or mortgage of an interest in land is valid against any subsequent purchaser for value without notice thereof, whose conveyance is first recorded."

## Recording

- Problems: Pages 742-743

- Problem 3b:

- Chronology:

1. D conveys to B
2. D conveys to C, a gfp
3. B records
4. C records
5. C sells lot 1 to J, lot 2 to D

- Statute B: “No conveyance or mortgage of an interest in land is valid against any subsequent purchaser for value without notice thereof, unless it is recorded.”

## Recording

- Problems: Pages 742-743

- Problem 3c:

- Chronology:

1. D conveys to B
2. D conveys to C, a gfp
3. B records
4. C records
5. C sells lot 1 to J, lot 2 to D

- Statute C: “No conveyance or mortgage of an interest in land is valid against any subsequent purchaser whose conveyance is first recorded.”

## Recording

- Information Commons and Resource Management: Broader Issues
  - The Mortgage Crisis Revisited: MERS
  - Record Title and Economic Development: DeSoto and his Discontents