

ANSWER TO QUESTION 15

"Michigan is a race-notice state, and owners of interests in land can protect their interests by properly recording those interests." *Richards v Tibaldi*, 272 Mich App 522 (2006), quoting *Lakeside Ass'n v Toski Sands*, 131 Mich App 292 (1983). A recorded instrument, such as a deed or mortgage, is considered "notice to all persons except the recorded landowner . . . of the liens, rights, and interests acquired by or involved in the proceedings. All subsequent owners or encumbrances shall take subject to the perfected liens, rights, or interests." MCL 565.25(4). Pursuant to Michigan's recording statute, MCL 565.29, "the holder of a real estate interest who first records his interest generally has priority over subsequent purchasers." *Richards, supra* at 539.

It is clear from the facts above that although Bank Zero's mortgage was made first, MyBank's mortgage was recorded first. Therefore, MyBank's mortgage takes priority if MyBank is a good-faith purchaser who paid valuable consideration. There is no dispute that MyBank is a purchaser who paid valuable consideration, so the only question is whether MyBank is a purchaser in good faith.

A bona fide purchaser is a party who acquires an interest in real estate for valuable consideration and in good faith, without notice of a third party's claimed interest. *Richards, supra* at 539. Notice can be actual or constructive. *Richards, supra*. Constructive notice exists ([w]hen a person has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries concerning the possible rights of another in real estate, and fails to make" such inquiries. *Kastle v Clemons*, 330 Mich 28, 31 (1951). The relevant issues are whether the facts were sufficient to give rise to the need to make further inquiry and, if so, whether due diligence was exercised in making the inquiry. *American Fed S & L Ass'n v Orenstein*, 81 Mich App 249, 252 (1978).

As the facts indicate, Mike clearly disclosed the name of the primary lender on his application. This could be considered actual notice to MyBank. In the very least, it should have lead MyBank to make further inquiries concerning the possibility of a superior lien. Therefore, before MyBank executed its mortgage, it had constructive, if not actual, notice that its mortgage was intended to be subordinate to the one issued by Bank Zero. As such, MyBank is not a good faith purchaser and Bank Zero's interests would be entitled to priority despite the fact that it did not record its mortgage first.