

**QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK
V OR IN SOFTEST ANSWER SCREEN 13**

In May 2014, friends Randy, Porter, and Zeke bought a home together in Motor City, Michigan (the "property"). They pooled their money to cover \$50,000 of the \$150,000 purchase price. The three decided to get a mortgage loan for the other \$100,000, but determined they should not apply as co-owners because Randy and Zeke had terrible credit. Porter alone applied for a mortgage loan with Motor City Bank for the necessary \$100,000, representing himself as the sole purchaser.

The Bank approved Porter's mortgage loan and closing on the purchase of the home was completed in June 2014. While the Bank believed Porter to be the sole purchaser, the warranty deed conveying the property in fact listed the three friends as "equal co-owners." An inattentive bank employee failed to both review the documents and to immediately record the mortgage lien with the register of deeds. The Bank's unrecorded mortgage lien merely stated that the \$100,000 loan was secured by Porter's interest in the home without any reference to Zeke and Randy.

In September 2014, both Zeke and Randy lost their jobs. Porter became very concerned that any failure to make mortgage payments would ruin his credit rating, so he sold his interest in the home to his uncle, Mark Meters, for \$30,000. He did not tell Mark about the mortgage. Mark immediately recorded his interest.

No one paid the following October or November mortgage payments. The Bank initiated foreclosure proceedings to take possession of the home. At that point, however, the Bank discovered it had never recorded the mortgage and that the warranty deed listed Randy, Zeke, and Porter as "equal co-owners" of the home followed by an assignment of Porter's interest to Mark. Frustrated, the Bank has come to your law firm for advice.

Applying Michigan law and WITHOUT addressing any issues of fraud or mistake, assess the following:

1. Can the Bank proceed against Porter and Mark personally for the balance due on the mortgage loan?

2. When Porter sold his interest in the home to Mark, what type of concurrent interest did Mark receive in the property?

3. Can the Bank foreclose on the home and take possession?

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