

## **EXAMINERS' ANALYSIS OF QUESTION 8**

This question requires examinees to understand Michigan's race-notice recording statute and apply it to a scenario involving after-acquired title. Examinees must determine which of the transferees' claims prevails.

As a threshold matter, examinees should recognize that Michigan is a race-notice state. MCL 565.29. Owners of interests in land can protect their interests by properly recording them. *Conventry Parkhomes Condominium Ass'n v Federal Nat'l Mort Ass's*, 298 Mich App 252, 256 (2012). When a purchaser fails to record their interest in property, that interest is void against any subsequent purchaser so long as the subsequent purchaser acts in good faith and takes the interest without notice of the prior interest. MCL 565.29; *Michigan Nat Bank & Trust Co v Morren*, 194 Mich App 407, 410 (1992). Because Investor failed to promptly record his interest, that interest is void against Buyer's if Buyer acted in good faith without notice.

### **Notice**

Despite recording first, in order for Buyer's interest in the site to prevail over Investor's interest, Buyer must have purchased the site without notice of Investor's prior interest. Notice can be either actual or constructive. *Richards v Tibaldi*, 272 Mich App 522, 539 (2006). 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 . . . ." *Kastle v Clemons*, 330 Mich 28, 31 (1951); see also *Royce v Duthler*, 209 Mich App 682, 690 (1995). Stated differently:

Notice is whatever is sufficient to direct attention of the purchaser of realty to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. [*Schepke v Dep't of Natural Resources*, 186 Mich App 532, 535 (1990).]

Typically, the open, manifest and unequivocal possession of property constitutes constructive notice. *Kastle*, 330 Mich at 31.

In this case, the site was located in a small town and the Buyer was the local developer. The general publicity surrounding the site's purchase and proposed development by a high-profile developer was likely sufficient to put Buyer on notice of Investor's interest. Even if Buyer was unaware of the general publicity surrounding the development, Investor's highly conspicuous signs are likely sufficient to demonstrate to the world his possession. Because possession is sufficient to establish constructive notice, Investor's interest will probably prevail over Buyer's under Michigan's race-notice recording statute.

#### **After-Acquired Title**

Even though Investor's interest will most likely prevail under Michigan's race-notice recording statute, examinees should still address whether Investor even holds a valid interest. At the time of the conveyance to Investor, Seller was not the legal titleholder of the property. Under the doctrine of after-acquired title, when a grantor conveys an estate by warranty deed owned by another, and the grantor later acquires title to that estate, the title inures to the benefit of the grantee. *Donohue v Vosper*, 189 Mich 78, 87-88 (1915); *Richards*, 272 Mich App at 541. The after-acquired estate passes by direct operation of law to the grantee, and the grantor is estopped from denying the grantee's title. *Id.* Because Seller executed a *warranty deed* conveying the site to Investor and subsequently acquired title to the site, Investor holds a valid interest in the site. Accordingly, Investor would likely prevail in a quiet title action.

An exceptionally well-prepared candidate might note the distinction between quitclaim and warranty deeds with regard to after-acquired title. Because a quitclaim deed warrants no title and conveys only what the grantor owns at the conveyance, a quitclaim deed is incapable of conveying after-acquired title. However, because Seller conveyed the site by *warranty deed*, not a quitclaim deed, Investor had a valid interest in the site. See *Richards*, 272 Mich App at 541.