

Seven years ago, a man conveyed vacant land by warranty deed to a woman, a bona fide purchaser for value. The woman did not record the warranty deed and did not enter into possession of the land.

Five years ago, the man conveyed the same land to a neighbor, also a bona fide purchaser for value, by a quitclaim deed. The neighbor immediately recorded the quitclaim deed and went into possession of the land.

Two years ago, the neighbor conveyed the land to a friend, who had notice of the prior conveyance from the man to the woman. The friend never recorded the deed, but he went into immediate possession of the land.

The jurisdiction has a notice recording statute and a grantor-grantee index system.

If the woman sues to eject the friend, will the woman be likely to succeed?

- A. No, because the friend took possession of the land before the woman did.
- B. No, because the neighbor's title was superior to the woman's title.
- C. Yes, because the friend had notice of the conveyance from the man to the woman.
- D. Yes, because the woman, unlike the friend, took title under a warranty deed.

### Explanation:

**Recording acts** are used to evaluate the priority of competing interests in the same property. Most recording acts protect **bona fide purchasers** (BFPs)—ie, persons who:

**pay value** for an interest in property *and*  
**lack notice** of a prior interest.

In a jurisdiction with a **notice recording act** (as seen here), a **BFP's property interest** is always **superior** to an earlier competing property interest. And under the **Shelter Rule**, a person who receives a **property interest from a BFP** is **protected** from prior interests by the recording act to the same extent as the BFP.

Here, the man first conveyed the vacant land to the woman (BFP) and then conveyed it to the neighbor (BFP). Since the neighbor was a BFP, the neighbor's title was superior to the woman's earlier title under the notice statute. And though the friend knew about the earlier conveyance to the woman when the neighbor conveyed the land to him (not a BFP), he is sheltered by the neighbor's BFP status **(Choice C)**. As a result, the woman will likely lose her suit to eject (ie, remove) the friend from the land.

**(Choice A)** The priority of competing property interests is not determined by who took possession first. Therefore, the friend's prior possession is not the reason the woman will lose. Instead, she will lose because the neighbor was a BFP and the friend is protected by the neighbor's BFP status under the Shelter Rule.

**(Choice D)** A warranty deed, unlike a quitclaim deed, contains assurances regarding the quality of title conveyed. But the type of deed is irrelevant in determining priority among competing property interests. Therefore, the fact that the woman took title under a warranty deed is not a basis for her to succeed in her suit to eject the friend.

### Educational objective:

In a notice jurisdiction, a bona fide purchaser (BFP) without notice of an earlier competing property interest has priority over that competing interest. And under the Shelter Rule, a person who receives a property interest from a BFP is protected from prior interests to the same extent as the BFP.

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