

A man owned two adjacent vacant tracts of land; he sold the westerly tract to a woman. The deed to the woman expressly stated that the use of the land was restricted to residential use and made the restriction binding on the woman and her heirs and assigns. In the deed, the man also expressly promised, for himself and his heirs, that he would insert a similar residential-use restriction in any deed to the easterly tract of land given in the future. The woman promptly recorded her deed.

Several years later, the man conveyed the easterly tract of land to an entrepreneur, who planned to open a convenience store on the land. The deed to the entrepreneur contained no restrictions on use. The entrepreneur had no actual notice of the man's promise to the woman to include a restriction in the deed.

When the woman heard of the entrepreneur's plans, she asked her attorney whether the entrepreneur is bound by the promised residential-use restriction.

Which of the following factors will be dispositive?

- A. The type of index system used in the jurisdiction.
- B. The type of recording act in the jurisdiction.
- C. Whether the entrepreneur had a duty to search the title for the westerly tract.
- D. Whether the woman has planned or built any improvements on her land.

Incorrect

Correct answer C

Collecting Statistics

01 min, 41 secsTime Spent

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Explanation:

Elements of real covenants & equitable servitudes

Real covenants

(enforceable by money damages)

Equitable servitudes

(enforceable by equitable relief)

For *burden* to run

For *benefit* to run

Express

Implied

Writing

Writing

Writing

Intent to create common scheme

Intent to run

Intent to run

Intent to run

Touch & concern

Touch & concern

Touch &

Restrictive servitude

Horizontal & vertical

Limited vertical

concern

Notice

privity

privity

Notice

Notice

No notice required

A **covenant** is a promise between parties to do or not do something on land (eg, use the land only for residential use) that is enforceable by an injunction (equitable servitudes) or an action for money damages (real covenants). The promising parties are bound under contract law, but their **successors in interest** are **bound only if** the covenant **runs with the land**.

For an equitable servitude or a burden of a real covenant to run with the land, the successor in interest must have **actual, record, or inquiry notice** of the restriction. Here, the entrepreneur had no actual or inquiry notice of the man's promise to include a residential-use restriction in deeds to the easterly tract. And whether the entrepreneur had **record (ie, constructive) notice** depends on what information a search of **land records would reveal**.

Courts are divided about whether a buyer must search deeds outside of the buyer's chain of title (eg, the man's deed to the woman for the westerly tract). Therefore, knowing whether the jurisdiction puts a buyer on notice of all land transfers by the buyer's grantor—even those outside of the buyer's chain of title—is essential. If it does, then the entrepreneur had a duty to search the title for the westerly tract.

(Choice A) The **type of index** determines how prior recorded conveyances are organized—not which instruments are in the chain of title.

(Choice B) Recording acts establish priorities among conflicting claims to real property interests and promote certainty of title. However, they do not determine which instruments fall within a buyer's chain of title.

(Choice D) The woman's intended or actual use of the land does not affect the determination of whether the entrepreneur had sufficient notice of the recorded restriction.

Educational objective:

For an equitable servitude or a burden of a real covenant to run with the land, the successor in interest must have actual, record, or inquiry notice of the restriction. Whether there was record notice depends on what information a search of land records would reveal.

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