

A woman owned her home. Her daughter lived with her and always referred to the home as "my property." Two years ago, the daughter, for a valuable consideration, executed and delivered to her ex-husband an instrument in the proper form of a warranty deed purporting to convey the home to him in fee simple, reserving to herself an estate for two years in the home. The ex-husband promptly and properly recorded his deed.

One year ago, the woman died and by will, duly admitted to probate, left her entire estate to her daughter. One month ago, the daughter, for a valuable consideration, executed and delivered to her only son an instrument in the proper form of a warranty deed purporting to convey the home to the son, who promptly and properly recorded the deed. The daughter was then in possession of the home and her son had no actual knowledge of the deed to the ex-husband. Immediately thereafter, the daughter gave possession to her son.

The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law."

Last week, the daughter fled the jurisdiction. Upon learning the facts, the son brought an appropriate action against the ex-husband to quiet title to the home.

If the son wins, what will be the reason?

- A. The daughter had nothing to convey to the ex-husband two years ago.
- B. The daughter's deed to the ex-husband was not in the son's chain of title.
- C. The daughter's deed to the ex-husband was not to take effect until after the daughter's deed to the son.
- D. The son was first in possession.

## Explanation:

**Recording acts** determine the priority of competing property interests. In a **notice jurisdiction** (as seen here), a **bona fide purchaser's** (BFP's) property interest has priority over an earlier property interest of which the BFP **lacked notice**. There are three types of notice:

**Actual** – a buyer has direct knowledge of another's prior interest in land

**Record** – a document showing a prior interest is **properly recorded** and **appears in the buyer's chain of title**

**Inquiry** – a buyer knows, or should know, of circumstances that would prompt a reasonable person to investigate (eg, visible use of the property)

In most jurisdictions, a **prematurely recorded deed**—a deed recorded by a buyer before the seller owns the property—falls **outside a later buyer's chain of title** and therefore does **not provide record notice**. That is because a buyer is only required to search the recording index for the seller's name as far back as the date on which the seller acquired the property.

Here, the son knew nothing of the ex-husband's prior claim when the son bought the home from the daughter (no actual notice), and the daughter was then in possession of the home (no inquiry notice). And since the ex-husband had recorded his deed from the daughter *before* she owned the home, that prematurely recorded deed likely fell outside the son's chain of title (no record notice). For that reason, the son (BFP) will likely win his quiet title action.

**(Choice A)** When a grantor (eg, the daughter) conveys title that he/she does not have but later acquires, the doctrine of after-acquired title applies and title automatically vests in the grantee (eg, the ex-husband). But here, the son's subsequent interest has priority since the ex-husband's deed fell outside the son's chain of title.

**(Choices C & D)** Although the ex-husband's deed did not give him an immediate right to possess the home (and the son took possession first), the deed still gave the ex-husband an ownership interest in the home that took effect before the son's. But since the ex-husband's prior deed was not in the son's chain of title, the son likely has priority.

## Educational objective:

In most jurisdictions, a prematurely recorded deed—a deed recorded by a buyer before the seller owns the property—falls outside a later buyer's chain of title and fails to provide record notice.

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## Deed recorded falls *outside* son's chain of title

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