

A creditor received a valid judgment against a debtor and promptly filed the judgment in the county land records. Two years later, the debtor purchased land in the county and promptly recorded the warranty deed to the land. Subsequently, the debtor borrowed \$30,000 from his aunt, signed a promissory note for that amount, and secured the note with a mortgage on the land. The mortgage was promptly recorded. The aunt failed to make a title search before making the loan. The debtor made no payment to the creditor and defaulted on the mortgage loan from his aunt. A valid judicial foreclosure proceeding was held, in which the creditor, the aunt, and the debtor were named parties. A dispute arose as to which lien had priority. A statute of the jurisdiction provides: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered." A second statute of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record."

Who has the prior lien?

- A. The aunt, because a judgment lien is subordinate to a mortgage lien.
- B. The aunt, because she is a mortgagee under a purchase-money mortgage.
- C. The creditor, because its judgment was filed first.
- D. The creditor, because the aunt had a duty to make a title search of the property.

Explanation:

Notice of competing property interests

Actual notice	Buyer has direct knowledge of prior interest in land
Record notice	Document showing prior interest in land is properly recorded & appears in buyer's chain of title
Inquiry notice	Buyer knows, or should know, of circumstances that would prompt reasonable person to investigate (eg, visible use of property, reference to unrecorded transaction in recorded instrument)

The priority of competing property interests is evaluated under the jurisdiction's **recording act**. Under a **race-notice statute** (as seen here), a **bona fide purchaser's** (BFP's) subsequent property interest has **priority** over an earlier competing property interest if the BFP:

lacked notice of the earlier interest at the time the BFP acquired his/her interest *and* **recorded** his/her interest at any time **before the earlier interest** was recorded.

And a purchaser had **constructive notice** (ie, record notice) of an earlier property interest if a document showing that interest was **properly recorded** (ie, filed in the official land records) and appeared in the purchaser's **chain of title**.

Here, the creditor has the prior lien because it filed its judgment against the debtor in the county land records first. As a result, she had *constructive* notice of the creditor's prior interest when she acquired a mortgage lien on that property. Therefore, the aunt is not a BFP and the creditor has priority.

(Choices A & B) A judgment lien is not necessarily subordinate (inferior) to a mortgage. However, a judgment lien *is* subordinate to a purchase-money mortgage (PMM)—a mortgage that allows the buyer to purchase or improve the property. Here, the aunt's mortgage was not used by the debtor to purchase or improve the land (not a PMM). And since the creditor filed its judgment before the aunt recorded her mortgage, the creditor has the prior lien.

(Choice D) A purchaser (eg, the aunt) has no duty to conduct a title search before he/she acquires a property interest. But a purchaser who fails to do so cannot claim that he/she lacked notice of an earlier property interest that was properly recorded and in the purchaser's chain of title.

Educational objective:

In a race-notice jurisdiction, a bona fide purchaser's (BFP's) property interest has priority over an earlier interest if the BFP (1) lacked notice of that interest and (2) recorded first. But a BFP has constructive notice of the earlier interest if a document showing that interest was properly recorded and appeared in the purchaser's chain of title.

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