

A man owned land in fee simple of record on January 10. On that day, a friend loaned the man \$50,000 and the man mortgaged the land to her as security for the loan. The mortgage was recorded on January 18.

The man conveyed the land to a buyer for valuable consideration on January 11. The friend did not know of this, nor did the buyer know of the mortgage to the friend, until both discovered the facts on January 23, the day on which the buyer recorded the man's deed.

The recording act 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." There is no provision for a period of grace and there is no other relevant statutory provision.

The friend sued the buyer to establish that her mortgage was good against the land.

For whom should the court decide?

- A. The buyer, because he paid valuable consideration without notice before the friend recorded her mortgage.
- B. The buyer, because the friend's delay in recording means that she is estopped from asserting her priority in time.
- C. The friend, because after the mortgage to her, the man's deed to the buyer was necessarily subject to her mortgage.
- D. The friend, because the buyer did not record his deed before her mortgage was recorded.

Explanation:

Recording acts seek to promote certainty of title by creating a framework to determine the priority of competing property interests. In a **race-notice jurisdiction** (as seen here), a **bona fide purchaser's** (BFP's) property interest will have **priority** over an earlier 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.

Here, the buyer was unaware of the friend's prior mortgage when he purchased the land. But since he did not record his deed until *after* the friend had recorded her mortgage, the court should decide for the friend.

(Choice A) Although the buyer paid valuable consideration without notice before the friend recorded her mortgage (ie, he was a BFP who lacked notice), he did not also *record* his deed before the friend recorded her mortgage.

(Choice B) The friend's delay in recording does not estop (ie, preclude) her from asserting her priority in time since there is no deadline for recording. She only needed to record her mortgage *first* (ie, before the buyer recorded his deed) to prevail in this race-notice jurisdiction. And since she did so, the court should find for the friend.

(Choice C) The man's deed to the buyer was not necessarily subject to the friend's mortgage. Instead, the friend will prevail because this jurisdiction has a race-notice statute and her mortgage was recorded first.

Educational objective:

In a race-notice jurisdiction, a bona fide purchaser's (BFP's) property interest has priority over an earlier competing property interest if the BFP (1) lacked notice of the earlier interest and (2) recorded first.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

