

Exam:

Exam Form:

C2502 - Static Form

Response

DID CARLOS TAKE TITLE SUBJECT TO LENDER'S MORTGAGE?

A lender may record a mortgage against a property to secure their interest in that property. This creates a security interest in the property so the property may be held as collateral for repayment of the loan (infra).

Here, Lender loaned money to Allison to buy the house. This is a purchase money loan.

Thus, Lender may record the mortgage to create a security interest in the House to ensure repayment of the loan. Upon recording the mortgage, Lender will have a valid lien against the house.

Race/Notice Recording Act

Recording statutes establish how title to real property will be memorialized. Most jurisdictions have a grantor-grantee index that keeps track of property ownership rights. This ensures an orderly indexing of real property interests.

Under a race notice recording act, a party who records their interest in real property first has first priority in vesting rights so long as they do so without notice.

Actual vs Constructive vs Inquiry Notice

Notice may be actual, constructive, or inquiry (person would discover upon reasonable investigation property is occupied in obvious way). When a deed is recorded, the world is on constructive notice of the property rights conferred even though one may not have actual notice.

BonaFide Purchaser (BFP)

A BFP takes without notice of a prior encumbrance takes free of that encumbrance.

Here, Barry purchased the house from Allison. Although Allison secured the purchase of the house with a mortgage, at the time of the sale between Allison and Barry, Lender had not yet recorded the mortgage. Barry had neither actual, or constructive notice of the mortgage.

Thus, Barry took the house free of the mortgage.

After Barry bought the house but before he sold to Carlos, Lender recorded the mortgage. Although Carlos wasn't aware of the mortgage, this gave Carlos constructive notice of the lien.

Thus, under the race notice statute, Carlos took the house subject to Lender's mortgage.

CARLOS' CLAIMS AGAINST BARRY UNDER GENERAL WARRANTY DEED**Valid Deed**

A valid deed follows formation requirements (writing, identity of grantee, description of the property, signed by grantor) delivery and acceptance.

Warranty Deed

A warranty deed represents the conveyance of valid, marketable title by the Grantor to Grantee. Unlike a quitclaim deed or other form of conveyance, a warranty deed is a guarantee of good marketable title.

Here, Barry gives Carlos a warranty deed to the House even though Lender already recorded the mortgage. Had Carlos verified title prior to closing, he would have discovered the mortgage and he could have argued that the mortgage was not contemplated in the purchase contract thus allowing Carlos to avoid the contract. Because Barry gave Carlos the general warranty deed w/o knowledge of the recorded mortgage, the warranty deed did not include any disclosure of the encumbrance created by Lender.

Thus, Carlos has a legitimate claim against Barry because he had an expectation that he was taking free of any encumbrances. Notwithstanding, Lender's mortgage will create a lien against the house (supra).

LIABILITY FOR VALUE OF A/C

Merger Doctrine

A contract for the purchase of real property will merge into an executed deed. If a dispute arises subsequently, the aggrieved party must sue under the deed (breach of deed covenants).

Fixtures

Fixtures are chattel that are affixed to real property in a permanent manner. Anything that cannot be readily removed without use of tools or special equipment is deemed to be a fixture and must remain with the property unless the sales contract expressly identifies the fixture to be removed and retained by the seller.

Here, Barry and Carlos enter a sales contract for the house (inclusive of all fixtures) which was silent as to the a/c.

Thus, the failure to identify the a/c as personal property to be retained by Barry in the contract, Carlos may sue for implied breach of a deed covenant and is entitled to recover for the a/c (affixed to the house via screws and a bracket to the exterior). Carlos may recover damages for the a/c and any diminution of value of the house caused by its removal.

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DID CARLOS TAKE TITLE SUBJECT TO LENDER'S MORTGAGE? A lender may record a mortgage against a property to secure their interest in that property. This creates a security interest in the property so the property may be held as collateral for repayment of the loan (infra). Here, Lender loaned money to Allison to buy the house. This is a purchase money loan. Thus, Lender may record the mortgage to create a security interest in the House to ensure repayment of the loan. Upon recording the mortgage, Lender will have a valid lien against the house. **Race/Notice Recording Act** Recording statutes establish how title to real property will be memorialized. Most jurisdictions have a grantor-grantee index that keeps track of property ownership rights. This ensures an orderly indexing of real property interests.

Under a race notice jurisdiction, a party who records their interest in real property first has first priority in vesting rights so long as they do so without notice. Actual vs Constructive vs Inquiry Notice Notice may be actual, constructive, or inquiry (person would discover upon reasonable investigation property is occupied in obvious way). When a deed is recorded, the world is on constructive notice of the property rights conferred even though one may not have actual notice. **Bona Fide Purchaser (BFP)** A BFP takes without notice of a prior encumbrance takes free of that encumbrance. Here, Barry purchased the house from Allison. Although Allison secured the purchase of the house with a mortgage, at the time of the sale between Allison and Barry, Lender had not yet recorded the mortgage. Barry had neither actual, or constructive notice of the mortgage. Thus, Barry took the house free of the mortgage. After Barry bought the house but before he sold to Carlos, Lender recorded the mortgage. Although Carlos wasn't aware of the mortgage, this gave Carlos constructive notice of the lien. Thus, under the race notice statute, Carlos took the house subject to Lender's mortgage. **CARLOS' CLAIMS AGAINST BARRY UNDER GENERAL WARRANTY DEED** A valid deed follows formation requirements (writing, identity of grantee, description of the property, signed by grantor) delivery and acceptance. A warranty deed represents the conveyance of valid, marketable title by the Grantor to Grantee. Unlike a quitclaim deed or other form of conveyance, a warranty deed is a guarantee of good marketable title. Here, Barry gives Carlos a warranty deed to the House even though Lender already recorded the mortgage. **LIABILITY FOR VALUE OF A/C** A contract for the purchase of real property will merge into an executed deed. If a dispute arises subsequently, the aggrieved party must sue under the deed (breach of deed covenants). **Fixtures** Fixtures are chattel that are affixed to real property in a permanent manner. Anything that cannot be readily removed without use of tools or special equipment is deemed to be a fixture and must remain with the property unless the sales contract expressly identifies the fixture to be removed and retained by the seller. Here, Barry and Carlos enter a sales contract for the house (inclusive of all fixtures) which was silent as to the a/c. Thus, the failure to identify the a/c as personal property to be retained by Barry in the contract, Carlos may sue for implied breach of a deed covenant and is entitled to recover for the a/c (affixed to the house via screws and a bracket to the exterior).