NOTICE

(The New Texas Title Standards)

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Significant Differences in Oil and Gas Principles between Producing States: From the Landman's Perspective - Texas and Oklahoma - Co-author - published in The Landman, 11-12/89 and 1-2/90 issues;

Title Examination of Fee Lands (Constructive Notice Revisited) Author/speaker - Mineral Title Examination III (1992) Rocky Mountain Mineral Law Foundation, Denver, Colorado;

Probate Estates in Texas, Oklahoma and Louisiana Author/Speaker - 19th Annual NADOA Institute (1992), Dallas, Texas;

A Comparative Review of Oil & Gas Law: Texas-Oklahoma-Arkansas -Co-Author/Co-Speaker - Natural Resources Law Institute (1993), Hot Springs, Arkansas;

Due Diligence Title Review: The Problem Areas, Where to Look and How to Solve. -Author/Speaker - Sixth Annual Dallas Energy Symposium (1994), Dallas, Texas;

Suspense Issues that Affect the Division Order Analyst. - Author/Speaker - 21st Annual NADOA Institute (1994), San Antonio, Texas;

Non-Consenting Mineral Owners. -Author/Speaker - 24th Annual NADOA Institute (1997), New Orleans, Louisiana;

Drafting Tips For Oil & Gas Leases and Conveyance - Author/Speaker - University of Texas 24th Annual Oil, Gas and Mineral Law Institute (1998), Houston, Texas;

State Royalty Payment Statutes - State Check Stub Requirement Statutes - Author/Speaker - 2nd Annual National Oil & Gas Royalty Conference (1998), Houston, Texas;

A Model Form Title Opinion Format - Is it Possible? Is it Practical? - Author -Vol. 25, No. 2 - Oil, Gas and Mineral Law Section Report (December, 2000) - State Bar of Texas;

Shut-In Gas Royalty - How to Avoid a Train Wreck - Author/Speaker - St. Mary's University School of Law Mineral/Royalty Owners & Producers Institute (2002), Midland, Texas;

Constructive Notice (A Multi-state perspective) - Author/Speaker - 20th Annual Advanced Oil, Gas & Energy Resources Law Institute (2002), Dallas, Texas;

Pooling - From A to Horizontal - Author/Speaker - St. Mary's University School of Law, Mine Fields & Minerals Institute (2003), Midland, Texas;

Accessing Local Records - Preparing the Chain of Title - Author/Speaker - Mineral Title Examination IV (2007) Rocky Mountain Mineral Law Foundation, Denver, Colorado;

Legal Descriptions and Wellbore Assignments - Co-Author/Speaker - 25th Annual Advanced Oil, Gas & Energy Resources Law Institute (2007), Houston, Texas.

Preparing Oil and Gas Title Opinions – How Title Standards Can Help – Author/Speaker – 34th Ernest E. Smith Oil, Gas & Mineral Law Institute (2008), Houston, Texas.

Basics of Oil & Gas Conveyances - Author/Speaker - 29th Annual Advanced Oil, Gas & Energy Resources Law Course (2011), Houston, Texas.

Indices, Recording Systems and Notice – Author/Speaker - Mineral Title Examination V (2012), Rocky Mountain Mineral Law Foundation, Denver, Colorado.

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ACCESSING TEXAS TITLE EXAMINATION STANDARDS

The Texas Title Standards Joint Editorial Board has met quarterly since its inception in 1992. Its purpose is to prepare standards, accurate and practical statements of real estate law and procedure, for all Texas real estate practitioners. The standards presently contain 16 chapters with 100 standards. The topics discussed in this paper are contained within Chapter IV. – Execution, Acknowledgment and Recordation, which consists of the following standards:

4.10. Omissions and Inconsistencies

4.20. Defective Acknowledgments.

4.30. Delivery; Effective Date; Delay in Recordation.

4.40. Notice Recording System.

4.50. Constructive Notice

4.60. Recitals in Instruments In Chain of Title.

4.70. Duty Of Inquiry Based On Actual Notice.

4.80. Duty Of Inquiry Based On Possession.

4.90. Qualification As Bona Fide Purchaser.

4.100. Qualification As Lien Creditor.

4.110. Electronic Filing and Recordation.

4.120. Estoppel by Deed.

Standards 4.40 – 4.90 and 4.120 are the focus herein.

The standards can be obtained for free at the two website identified below or by purchase of the two legal sources identified.

Oil, Gas and Energy Resources Law Section Website - www.oilgas.org

Click - Library
Click - Title Standards

Real Estate, Probate and Trust Law Section Website - www.reptl.org

Click - General - Information
Click - Lawyers - Texas Title Examination Standards

Texas Property Code - An Appendix following Title 2. Conveyances (pocket part in Volume 1 of the hard copy)

Volume 3A of Texas Practice Series (2005 Thomson/West)) - Leopold, Land Titles and Title Examination, (pages 116-228)

PROPERTY CODE
TITLE 2—APPENDIX
TEXAS TITLE EXAMINATION STANDARDS

By request of the Title Standards Joint Editorial Board of the Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Sections of the State Bar of Texas, the Texas Title Examination Standards are published in their entirety in the Cumulative Annual Pocket Part for V.T.C.A., Property Code Volume 1 and the V.T.C.A. Interim Update pamphlets. The most recent text may also be found on WestlawNext and Westlaw.

As Initially Adopted by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas on June 27, 1997, as revised to date.

By

THE TITLE STANDARDS JOINT EDITORIAL BOARD OF THE SECTION

OF REAL ESTATE, PROBATE AND TRUST LAW AND

THE OIL, GAS AND ENERGY RESOURCES LAW SECTION

OF THE STATE BAR OF TEXAS

CHAPTER XVI
FORECLOSURES

PREFACE
TEXAS TITLE EXAMINATION STANDARDS

In 1989, the Council of the Section of Real Estate, Probate and Trust Law of the State Bar of Texas approved the formation of a committee to study the formulation and development of title examination standards. Through the newsletter of that Section, Section members were notified of the project. Lawyers from all parts of Texas responded evidencing their interest in working as active participants on this project. Subsequently, the Oil, Gas and Mineral Law Section (now the Oil, Gas and Energy Resources Law Section) of the State Bar of Texas asked to co-sponsor this project.

After substantial study of the use of title examination standards and many hours of drafting and meeting time, proposed standards were published for comment in 1996 in the newsletters of both of the sponsoring sections. Following the receipt of comments from lawyers across Texas, additional revisions were made by the committee (now the ‘‘Title Standards Joint Editorial Board’’) and the proposed standards were once again published for comment in the Spring of 1997.

At the State Bar of Texas Convention on June 27, 1997, 33 standards were approved by both the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Mineral Law Section. The initial standards constituted the beginning of title examination standards in Texas. Under current procedure, the Title Standards Joint Editorial Board, appointed by these two sections, meets at least semiannually to consider amendments to existing standards and additional standards. As with the initial standards, amendments or new standards are presented to the membership of these two sections prior to formal adoption; however, the Board makes changes to the comments and cautions as needed. In keeping with this process, the Comments, Cautions, Sources, and Histories have been updated from the initial Standards.

DISCLAIMER AND INTRODUCTION

Disclaimer: These title examination standards represent the collective consensus of The Title Standards Joint Editorial Board established by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas. These standards should not be construed as reflecting the opinion of the State Bar of Texas, its officers, members or staff. These standards are presented with the understanding that neither the publisher nor the Joint Editorial Board is engaged in rendering legal services. In no event shall the Joint Editorial Board, the reviewers, or the publisher be liable for any direct, indirect, or consequential damages resulting from the use of this publication, including damages resulting from the sole or concurrent negligence of the Joint Editorial Board, its members, the reviewers, or the publisher.

Because statutory law prohibits title insurance companies from insuring against loss by reason of unmarketable title, these standards do not apply to title examination for purposes of title insurance. See Tex. Ins. Code Ann. Section 2502.002. Moreover, these standards do not apply to the exercise of discretion by a title insurance company in determining the insurability of title. Title insurance is a contract of indemnity. Southern Title Guaranty Co., Inc. v. Prendergast, 494 S.W.2d 154 (Tex. 1973).

Standards for real estate title examinations are statements that declare an answer to a question or a solution for a problem that is commonly encountered in the process of a title examination. Their purpose is to alleviate disagreements among members of the bar regarding real estate transactions and to set forth propositions (standards) with which title lawyers can generally agree

concerning title documents to promote uniformity in the preparation, use, and meaning of such documents. In other words, title standards can be viewed as a reference that can be consulted in the preparation and examination of title documents. Although standards do not, by themselves, impose compulsory legal requirements, they do establish guidelines upon which a reasonable and practical examination can be based. And although standards should state fundamental and enduring principles, they are subject to amendment as required by changes in governing law and in title and conveyancing practice.

Title standards may address a variety of concerns, including the attitudes and relationships among examiners and between examiners and the public, the appropriate duration of a title search, the effect of the lapse of time on a defective or improperly recorded title document, the appropriate presumptions of fact that can be relied upon in the course of an examination, and the law applicable to commonly encountered situations. Standards should represent the near unanimous opinion of the experienced and competent title bar.

Even with title standards, however, title examiners should advise their clients honestly as to their beliefs and opinions regarding the ownership of a particular interest in land. The judgment of an examiner should necessarily reflect rules of law (both legislative and case law) as well as justifiable presumptions that are applicable to title documents and to fact situations arising from the chain of title appearing of record. For example, when the name of a grantee in one deed corresponds with the name of the grantor in a later deed, the universal practice is to presume that they are the same person. And although there is nothing of record to show that the grantor was competent, that the signature is genuine, or that the deed was actually delivered, the universal practice is to presume that these are facts. Indeed, any attempt to require proof of these matters regarding each document in the chain of title would create chaos.

Of course, when minor title questions do arise, the reaction of different examiners may not always be the same. For example, title examiners may respond differently regarding the effect of a recorded, unacknowledged deed; of a deed that fails to state the marital status of the grantor; or of a deed from a married grantor that does not contain the signature of the grantor's spouse. Thus, a chief objective of title standards is to set forth uniform principles to resolve certain common title problems.

Users of these Standards are cautioned that individual Standards, Comments, and Cautions may not reflect current case law and statutes. There is a lapse of time between the time that changes in law occur and the updating of the Standards, Comments, and Cautions. Users are invited to notify the Joint Editorial Board if they believe that any of the Standards, Comments, or Cautions fail to reflect current law.

Standard 4.40. Notice Recording System

Because Texas has a ''notice'' recordation statute, an examiner should not presume that the order of filing or recording of competing instruments establishes priority of right or that unrecorded instruments are subordinate to recorded instruments.

Comment:

Common Law Background: ''Our system of registration was unknown to the common law.'' Ball v. Norton, 238 S.W. 889, 890 (Tex. Comm'n App. 1922, judgm't adopted). ''At common law in England, there was no system of registration or recording, and the rule between claimants of the same title was found in the maxim 'prior in tempore potior est in jure,' which means, he who is first in time has the better right.'' 2 Maurice Merrill, Merrill on Notice § 921 (Vernon 1952). This is still the law except as abrogated by statute. Thus, as between claimants who are

not entitled to the special protections conferred by recording statutes, the first in time is first in right.

Types of Recording Statutes: In general, recording statutes limit the first-in-time, first-in-right rule and were enacted to protect a bona fide purchaser, as defined in the comments to Standard 4.90, including a lienholder, who is without notice of prior unrecorded claims to real property. Three basic types of recording systems are recognized in the United States: race, race-notice, and notice.

A race statute provides that a purchaser or lienholder who is second in time of conveyance prevails if she records first, regardless of whether that person has notice of other unrecorded interests. Under a race-notice statute, the subsequent purchaser or lienholder must acquire an interest without notice of the prior unrecorded interest and also must file for record before recordation of the prior unrecorded interest.

A notice statute protects a subsequent purchaser or lienholder who acquires an interest without notice of a prior unrecorded conveyance or lien, regardless of when the subsequent purchaser's deed is recorded, if ever. Nevertheless, because a party who takes without notice may lose out to another subsequent purchaser or lienholder who takes without notice, every grantee should promptly record. Texas has a notice recordation statute. Tex. Prop. Code Ann. § 13.001.

How A Notice Recordation Statute Operates: Under a notice statute, if the subsequent instrument is executed and delivered before the prior instrument is filed for record and if the subsequent purchaser or lienholder pays value and has no notice of the prior instrument, then the subsequent instrument prevails regardless of whether the prior instrument is filed for record before the subsequent instrument is filed. Houston Oil Co. v. Kimball, 122 S.W. 533 (Tex. 1909); Watkins v. Edwards, 23 Tex. 443 (1859); White v. McGregor, 50 S.W. 564 (Tex. 1899); Penny v. Adams, 420 S.W.2d 820 (Tex. Civ. App.—Tyler 1967, writ ref'd); Matthews v. Houston Oil Co., 299 S.W. 450 (Tex. Civ. App.—Beaumont 1927, no writ); Raposa v. Johnson, 693 S.W.2d 43 (Tex. App.—Ft. Worth 1985, writ ref'd n.r.e.). For example, assume that Homeowner grants an oil and gas lease on February 1 to A, who does not file for record. Thereafter, Homeowner gives another oil and gas lease to B, a bona fide purchaser, as defined in the comments to Standard 4.90, on February 5. As between A and B, B prevails regardless of whether either A or B records. And, under Texas case law, if A assigned his lease to C on February 10, B would also prevail over C even if B has not recorded. Houston Oil Co. v. Kimball, 122 S.W. 533 (Tex. 1909). However, if Homeowner, on February 15, granted a third oil and gas lease to D for value, who took without notice of B's lease (and assuming that B has still not recorded), D would prevail over B.

Filing and Recording: A paper document filed for record may not be validly recorded or serve as notice of the paper document unless: (1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law; or (2) on or after September 1, 2007, the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a proper jurat, or proved according to law. Tex. Prop. Code Ann. § 12.0011. An original signature is not required for an electronic document that complies with the requirements of Chapter 15, Tex. Prop. Code Ann. (Uniform Real Property Electronic Recording Act); Chapter 195, Tex. Local Gov't Code Ann. (electronic filing of records); Chapter 322, Tex. Bus. & Comm. Code Ann. (Uniform Electronic Transactions Act); ''or other applicable law.'' Tex. Prop. Code Ann. § 12.0011. See Standard 4.120. If made as provided by

law, a certified copy, when recorded, has the same effect as the original. Tex. Local Gov't Code Ann. § 191.005 and Tex. Evid. Rules 902(4).

An instrument meeting the requirements of the preceding paragraph imparts constructive notice upon filing. An instrument is filed ''when deposited for that purpose in the county clerk's office, together with the proper recording fees.'' Jones v. MacCorquodale, 218 S.W. 59, 61 (Tex. Civ. App.—Galveston 1919, writ ref'd). Tex. Local Gov't Code Ann. § 191.003. ''The county clerk [is] not authorized to 'impose additional requirements' for filing or recording a legal paper such as the removal of irrelevant notations.'' Ready Cable, Inc. v. RJP Southern Comfort Homes, Inc., 295 S.W.3d 763 (Tex. App.—Austin 2009, no pet.) (the words ''unofficial document'' on the top of an exhibit was an irrelevant notation). Tex. Local Gov't Code Ann. §191.007(k).

''[A]n electronic document or other instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.'' Tex. Local Gov't Code Ann. § 195.009. ''An electronic document or other instrument that is recorded electronically … is considered to be recorded in compliance with a law relating to the recording of electronic documents or other instruments as of the county clerk's business day on which the electronic document or other instrument is filed electronically.'' Id. § 195.005. In general, the county clerk must confirm or reject an electronic filing ''not later than the first business day after the date the electronic document or other instrument is filed.'' Id. § 195.004. See Standard 4.110.

County Clerk's Records: The county clerk is required to:

(1) Record instruments in a well-bound book, microfilm records, or other medium (such as optical imaging). Tex. Local Gov't Code Ann. § 191.002;

(2) Record, within a reasonable time after delivery, any instrument that is authorized or required to be recorded in that clerk's office and that is proved, acknowledged, or sworn to according to law. Tex. Prop. Code Ann. § 11.004(a)(1);

(3) Record instruments relating to the same property in the order the instruments are filed. Tex. Prop. Code Ann. § 11.004(a)(3); and

(4) Make a record of the names of the parties to the instrument in alphabetical order, the date of the instrument, the nature of the instrument, and the time the instrument was filed. Tex. Local Gov't Code Ann. § 193.001.

Although local practice varies, county clerks may maintain separate books with corresponding indices for:

(1) Deed Records (since 1836)

(2) Probate Records (since 1836)

(3) Release Records (since 1836)

(4) Marriage Records (since 1837)

(5) Deed of Trust Records (since 1879)

(6) Abstract of Judgment Records (since 1879)

(7) Vendor's Lien Records (since 1879)

(8) Lis Pendens Records (since 1905)

(9) Oil and Gas Lease Records (since 1917)

(10) Federal Tax Lien Records (since 1923)

(11) Mechanic's and Materialmen's Lien Records (since 1939)

(12) State Tax Lien Records (since 1961)

(13) Financing Statements (since 1966)

(14) Utility Security Records (since 1966)

As of September 1, 1987, a clerk may consolidate the real property records into a single class known as ''Official Public Records of Real Property'' or ''Official Public Records.'' Tex. Local Gov't Code Ann. §§ 193.002, 193.008.

The clerk must maintain alphabetical indices, Direct (Grantor) Index and Reverse (Grantee) Index, for all recorded deeds, powers of attorney, mortgages, and other instruments relating to real property. The Grantor Index must refer to the names of the corresponding grantees, and the Grantee Index must refer to the names of the corresponding grantors. If the instrument is executed by a representative (e.g., executor, administrator, guardian, agent, attorney in fact, or trustee), then both that person and the principal's name must be indexed. Tex. Local Gov't Code Ann. §§ 193.003, 193.004. Records maintained on microfilm and microfiche must also contain a brief description of the property, if any, and the location of the microfilm or microfiche image. Tex. Local Gov't Code Ann. §§ 193.009 and 193.010.

Caution:

An instrument properly filed for record but not yet indexed or not properly indexed nevertheless imparts constructive notice upon filing. See Standard 4.50.

A properly filed instrument imparts constructive notice even if the records have been destroyed. For a list of Texas counties whose records are not complete because of fires or other record deficiencies, see 3 Aloysius A. Leopold, Land Titles and Title Examination §3 8.7 (Texas Practice 3d ed. 2005). In some cases, copies of or information pertaining to destroyed records may have been maintained by an independent abstract or title company, and examiners customarily rely on such records.

Source:

Citations in the Comment.

History:

Adopted August 2, 2013; amended July 17, 2014.

The prior standard provided: ''Because Texas has a 'notice' recordation statute, an examiner must not assume that the order of filing or recording of competing instruments establishes priority of right or that unrecorded instruments are subordinate to recorded instruments.''

Standard 4.50. Constructive Notice

An examiner should examine all instruments within the record chain of title as of the date and time of the examination, including instruments that have been recently filed for record but not yet indexed.

Comment:

Definition: Instruments filed for record within the chain of title impart constructive notice. Constructive notice is notice imputed as a matter of law as a result of an instrument having been filed for record. ''An instrument that is properly recorded in the proper county is … notice to all persons of the existence of the instrument.'' Tex. Prop. Code Ann. §13.002. An instrument that

appears of record but does not meet the statutory requirements for recordation does not impart constructive notice, Hill v. Taylor, 14 S.W. 366 (Tex. 1890); however, such an instrument may impart actual or inquiry notice to one who learns of its existence. See Farmers Mut. Royalty Synd. v. Isaacks, 138 S.W.2d 228 (Tex. Civ. App.—Amarillo 1940, no writ).

Effect of filing: Except for abstracts of judgment and lis pendens, instruments that meet the statutory requirements for recordation, once filed, impart constructive notice even though never actually or accurately recorded or indexed. A party claiming under a properly filed instrument has no duty to verify that the clerk actually or accurately recorded it. William Carlisle & Co. v. King, 133 S.W. 241 (Tex. 1910); Throckmorton v. Price, 28 Tex. 605 (1866); David v. Roe, 271 S.W. 196 (Tex. Civ. App.—Fort Worth 1925, writ dism'd w.o.j.). Recordation in the wrong records (such as a mortgage in the deed records) does not defeat constructive notice. Kennard v. Mabry, 14 S.W. 272 (Tex. 1890); Knowles v. Ott, 34 S.W. 295 (Tex. Civ. App. 1895, writ ref'd).

An electronic instrument is deemed filed and generally imparts constructive notice when it is received by the county clerk, unless rejected by the next business day. Tex. Local Gov't Code Ann. § 195.009 and 13 Tex. Admin. Code Ann. § 7.144.

Abstracts of judgment are not effective to create judgment liens until recorded and indexed. Belbaze v. Ratto, 7 S.W. 501 (Tex. 1888). See Standard 15.30. However, a federal tax lien is effective as constructive notice from the time filed, even though it was never recorded or indexed. Hanafy v. United States, 991 F. Supp. 794 (N. D. Tex. 1998).

''To be effectively recorded [to impart constructive notice], an instrument relating to real property must be eligible for recording and must be recorded in the county in which a part of the property is located.'' Tex. Prop. Code Ann. § 11.001(a). Thus, if a tract of land is partly located in more than one county, recordation of an instrument affecting the tract in any of the counties imparts constructive notice in each of the counties of its existence and contents. Hancock v. Tram Lumber Co., 65 Tex. 225, 232 (1885); Aston Meadows, Ltd. v. Devon Energy Production Co., 359 S.W.3d 856 (Tex. App.—Fort Worth 2012, pet. denied).

If an instrument was recorded in the proper county at the time but a new county containing the land conveyed was subsequently created, that event does not affect the validity of the prior recording. Tex. Prop. Code Ann. § 11.001(b); Lumpkin v. Muncey, 17 S.W. 732 (Tex. 1886).

Like most instruments, a lis pendens filed for record before September 1, 2011, imparts constructive notice from date of filing; thus proper indexing of a lis pendens was not required. A lis pendens filed for record on or after September 1, 2011 must be filed for record and indexed in order to be constructive notice. Tex. Prop. Code Ann. § 13.004. However, a lis pendens does not impart constructive notice of matters not appearing on the face of the pleadings as of the time of the title examination, although it is effective as to papers that were lost by the clerk. Kropp v. Prather, 526 S.W.2d 283 (Tex. Civ. App.— Tyler 1975, writ ref'd n.r.e.); Latta v. Wiley, 92 S.W. 433 (Tex. Civ. App. 1905, writ ref'd). A lis pendens imparts constructive notice only while the underlying cause of action is pending; however, it may nevertheless impart actual or inquiry notice, unless ''expunged.'' Tex. Prop. Code Ann. § 12.0071(f). For more information on lis pendens, including termination of constructive notice, see Standard 15.110.

Interests Not Subject To The Recording Statutes: Various rights and interests are not subject to the recording statutes and thus are not rendered void by the recording statutes as to a subsequent purchaser or lienholder without notice even though the rights or interests are not of record in the county clerk's office. Those rights and interests include:

(1) Patents. Arrowood v. Blount, 41 S.W.2d 412 (Tex. 1931) (holding that the record of a patent in the General Land Office is notice to the world).

(2) Heirship. New York & T. Land Co. v. Hyland, 28 S.W. 206 (Tex. Civ. App. 1894, writ ref'd); Ross v. Morrow, 19 S.W. 1090 (Tex. 1892). See Standard 11.70.

(3) The appointment of a receiver. First Southern Properties, Inc. v. Vallone, 533 S.W.2d 339 (Tex. 1976) (the property is in custodia legis).

(4) An equitable interest or title. However, equity may protect a bona fide purchaser, as defined in the comments to Standard 4.90, against outstanding equitable interests. Cetti v. Wilson, 168 S.W. 996, 998 (Tex. Civ. App. 1914, writ ref'd).

(5) A forfeiture order in favor of the United States. United States v. Colonial National Bank, N.A., 74 F.3d 486 (4th Cir. 1996) (if the United States recovers land by forfeiture order, it does not have to file the order in the real property records or to file a lis pendens to protect its interest from the effect of a subsequent lien or conveyance by the former owner of the land).

(6) Title acquired by prescription or adverse possession. Houston Oil Co. v. Olive Sternenberg & Co., 222 S.W. 534 (Tex. Comm'n App. 1920, judgm't adopted); Heard v. Bowen, 184 S.W. 234 (Tex. Civ. App.–San Antonio 1916, writ ref'd); MacGregor v. Thompson, 26 S.W. 649 (Tex. Civ. App. 1894, no writ).

(7) An easement by necessity. Fletcher v. Watson, No. 14-02-00508, 2003 WL 22901026 at *8, 2003 Tex. App. LEXIS 10493 at *25 (Tex. App.—Houston [14th Dist.] Dec. 4, 2003, pet. denied) (''[I]t makes sense that an easement by estoppel could be defeated by a purchaser in good faith without notice, but that an estoppel by necessity would not be defeated.'').

(8) Uniform Commercial Code (UCC) filings covering growing crops and promissory notes, whether or not secured by an interest in land. These security interests are perfected by filing in the central filing office of the state of location of the debtor, whether they specifically or generally describe the collateral and with or without a legal description of the affected lands. Tex. Bus. & Com. Code Ann. §§ 9.301, 9.501. However, security interests in fixtures, in as-extracted collateral (oil, gas, and other minerals), and in timber to be cut are perfected by filing in the real property records of the county where the property is located. Tex. Bus. & Com. Code Ann. § 9.501.

(9) A bankruptcy court order (confirming a reorganization plan) that extends the maturity date of a mortgage debt. Wind Mountain Ranch, LLC v. City of Temple, 333 S.W.3d 580 (Tex. 2010).

Title under a will probated in Texas may not be subject to the recording statutes, so that notwithstanding that the will is not of record in the county where the land is located, a purchaser from the decedent's intestate heirs without knowledge of the will cannot acquire title free of the devisees' title. See Howth v. Farrar, 94 F.2d 654 (5th Cir. 1938) (holding that the probate of a will is an in rem proceeding and notice to the world). Although that case has never been overruled, some commentators have expressed serious doubt that it accurately represents Texas law. See 17 M. K. Woodward & Ernest E. Smith, III, Tex. Prac., Prob. & Decedents' Estates § 87 (1971) § 87 (1971), in which the authors, pointing out that a purchaser should not be expected to search all of the counties in the state, offer the opinion that to impart notice to persons other than the parties to a probate proceeding and their privies as to land outside the county of probate, the decree must be recorded in the records of the county in which the land

lies. The authors further note that title examiners customarily require the recording of proceedings for the probate of a will in the county where the land under examination is located. In view of the uncertainty whether a will and its Texas probate must be recorded in the county where the land is located, in addition to the county where the will was probated, to impart constructive notice of the devisees' title, the only prudent course for the examiner is to require that any known will and its probate be recorded in the county where the land under examination is located.

Chain Of Title: A bona fide purchaser, as defined in the comments to Standard 4.90, of property is not charged with constructive notice of instruments that, although recorded, are outside of the chain of title. ''Chain of title'' refers to the documents that show the successive ownership history of a tract of land, commencing with the severance of title from the sovereign down to and including the conveyance to the present holder. Munawar v. Cadle Co., 2 S.W. 3d 12, 18 (Tex. App.—Corpus Christi 1999, pet. denied). Note that severance from the sovereign occurs on the date of the survey of the property for severance purposes, not on the date of the patent, which always post-dates severance—sometimes by many years.

Examples of instruments that are not in the chain of title and that do not impart constructive notice include:

(1) Instruments executed by a grantor and recorded before the grantor acquired title. Breen v. Morehead, 136 S.W. 1047 (Tex. 1911).

(2) Mortgages covering land by an after-acquired property clause. First Nat'l Bank v. Southwestern Lumber Co., 75 F.2d 814 (5th Cir. 1935).

(3) Disclosure of an unrecorded deed by a grantee's affidavit recorded in the real property records. Reserve Petroleum Co. v. Hutcheson 254 S.W.2d 802 (Tex. Civ. App.–Amarillo 1952, writ ref'd n.r.e.).

(4) Instruments executed by a stranger to title. Lone Star Gas Co. v. Sheaner, 297 S.W.2d 855, 857 (Tex. Civ. App.—Waco 1956), rev'd in part on other grounds, 305 S.W.2d 150 (Tex. 957) (''It is the law of this state that the record of a deed or mortgage by a stranger to the title to real estate, although duly recorded, is not constructive notice to a subsequent purchaser from the record owner of the property, because such instrument is not in the chain of title to such property.'').

(5) Instruments executed by the grantee of a prior unrecorded instrument from a common grantor. Southwest Title Ins. Co. v. Woods, 449 S.W.2d 773 (Tex. 1970).

(6) Instruments executed by a grantor after the grantor has previously conveyed the property.

> If a grantor conveys the same property twice, and the second grantee puts his deed upon record, is it notice to one who subsequently purchases from the first grantee? We think not. The record is not notice to the first grantee, for he is a prior purchaser. Nor do we think it was intended to be notice to any one who should purchase from him. In other words, we think the subsequent purchasers who are meant are only those the origin of whose title is subsequent to the title of the grantee in the recorded deed. And it is such subsequent purchasers alone to whom the registry acts extend. The language of these statutes, so far as they affect deeds, is that, unless recorded, such deeds shall be void as against subsequent purchasers. When recorded, therefore, they have been held

> to operate as notice to such persons. The object of all the registry acts, however expressed, is the same. They were intended to affect with notice such persons only as have reason to apprehend some transfer or encumbrance prior to their own, because none arising afterwards can, in its own nature, affect them; and after they have once, on a search instituted upon this principle, secured themselves against the imputation of notice, it follows that every one coming into their place by title derived from them may insist on the same principle in respect to himself.
>
> White v. McGregor, 50 S.W. 564, 565 (Tex. 1899).

Texas cases that discuss chain of title issues are based upon a grantor-grantee title examination, not a tract index examination; however, an abstract company may provide a means of locating instruments on a geographic or tract basis.

Process Of Examination: While county clerks do not maintain tract indices, most abstract and title companies maintain records by tract, usually by section, survey, or subdivision. Unless the examiner is provided an abstract of title compiled by an abstract company, the examiner will usually use or prepare a un sheet (list of instruments in chain of title) from an abstract company's tract records and general name indices or from the indices and register of the county clerk. The information provided or used should identify all instruments affecting title that have been recorded or filed for record. The examiner should identify the source and the time interval of the records examined.

Index Search: Because Texas maintains only official grantor and grantee indices, an examiner should search under the name of each grantor from the date the grantor acquired the property forward to the date of filing for record the instrument that transfers the property to a grantee. White v. McGregor, 50 S.W. 564, 565-566 (Tex. 1899). The date of the conveyance itself, not the date of filing for record, controls whether an instrument is within the chain. Fitzgerald v. Le Grande, 187 S.W.2d 155 (Tex. Civ. App.—El Paso 1945, no writ).

However, Texas case law provides that: ''A purchaser is required to look only for conveyances made prior to his purchase by his immediate vendor, or by any remote vendor through whom he derives his title.'' Houston Oil Co. v. Kimball, 122 S.W. 533, 540 (Tex. 1909). The decision in Delay v. Truitt, 182 S.W. 732 (Tex. Civ. App.—Amarillo 1916, writ ref'd), illustrates that late-recording grantees who recorded their instrument outside the chain of title may prevail over a later grantee who recorded first. Consider the following example: O conveys Blackacre to A, who does not immediately record. Thereafter, O conveys to B, who records but with actual notice of O's prior conveyance to A. Thus, B cannot be a bona fide purchaser, as defined in the comments to Standard 4.90. Thereafter, A records. If B subsequently conveys to C, C must look beyond the date of recordation of B's deed for the late recorded O to A deed because the O to A deed imparts constructive notice under Texas law (in most states, the late-recorded O to A deed would be ''outside the chain of title'' and thus not impart constructive notice). In this example in Texas, A would defeat C. In the absence of a judicial determination of such facts, the record will not reveal whether B had actual notice of O's prior conveyance to A. Thus, the record alone will not determine title between A and C. Because this scenario is unlikely to occur, an examiner often considers it reasonably safe to forgo this extended forward search, instead opting to do the more limited search described above immediately under this subheading, especially where the risk is mitigated by factors such as the passage of time since a remote grantor's deed or the examiner's reliance on an abstract company's indices.

Source:
Citations in the Comment.
History:
Adopted August 2, 2013.

Standard 4.60. Recitals In Instruments In Chain Of Title

The examiner should advise the client of outstanding encumbrances and other matters apparently affecting the title and disclosed by recitals in instruments appearing in the chain of title.

Comment:

A purchaser will be charged with constructive notice of the contents of instruments in that person's chain of title, including instruments incorporated by reference or otherwise identified in a series of unrecorded instruments where a reference in the chain of title would lead an examiner to become aware of them. Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903 (Tex. 1982); Houston Title Co. v. Ojeda De Toca, 733 S.W.2d 325 (Tex. App.—Houston [14 Dist.] 1987), rev'd on other grounds, Ojeda de Toca v. Wise, 748 S.W.2d 449 (Tex. 1988); Abercrombie v. Bright, 271 S.W.2d 734 (Tex. Civ. App.— Eastland 1954, writ ref'd n.r.e.); MBank Abilene, N.A. v. Westwood Energy, Inc., 723 S.W.2d 246 (Tex. App.—Eastland 1986, no writ). A purchaser is charged with constructive notice of the referenced instrument unless the purchaser can prove that the purchaser made a diligent search to obtain the instrument and was unable to obtain it. Loomis v. Cobb, 159 S.W. 305 (Tex. Civ. App.–El Paso 1913, writ ref'd); Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903 (Tex. 1982); Waggoner v. Morrow, 932 S.W.2d 627 (Tex. App.—Houston [14th Dist.] 1996, no writ).

The rationale of the rule is that any description, recital of fact, or reference to other documents puts the purchaser upon inquiry, and he is bound to follow up this inquiry, step by step, from one discovery to another and from one instrument to another, until the whole series of title deeds is exhausted and a complete knowledge of all the matters referred to and affecting the estate is obtained. Loomis v. Cobb, 159 S.W. 305, 307 (Tex. Civ. App.—El Paso 1913, writ ref'd). Other examples of the binding effect of such references include:

(1) A reference to a vendor's lien even though the deed that created the lien was unrecorded, Gilbough v. Runge, 91 S.W. 566 (Tex. 1906).

(2) A reference in a deed to an unrecorded deed of trust, Garrett v. Parker, 39 S.W. 147 (Tex. Civ. App. 1896, writ ref'd).

(3) A recitation in a deed to a prior contract covering the land, Houston Ice & Brewing Co. v. Henson, 93 S.W. 713 (Tex. Civ. App. 1906, no writ); Cumming v. Johnson, 616 F.2d 1069, 1075 (9th Cir. 1979).

(4) A recitation in a deed to other deeds that granted easements over the land. Jones v. Fuller, 856 S.W.2d 597 (Tex. App.—Waco 1993, writ denied).

(5) A reference to a deed of trust in an assignment of oil and gas leases. MBank Abilene, N.A. v. Westwood Energy, Inc., 723 S.W.2d 246 (Tex. App.—Eastland 1986, no writ).

Source:
Citations in the Comment.
History:

Adopted August 2, 2013.

Standard 4.70. Duty Of Inquiry Based On Actual Notice

The examiner should advise the client of matters affecting the title that are known by the examiner even though not revealed by the record, including unfiled instruments and facts known to the examiner that would impart either actual or inquiry notice of matters affecting title.

Comment:

A purchaser is charged with notice (a) of information appearing of record (constructive notice), (b) of information within the purchaser's knowledge (actual notice), and (c) of information that the purchaser would have learned arising from circumstances that would prompt a good-faith purchaser to make a diligent inquiry (inquiry notice).

While constructive notice serves as notice as a matter of law, actual notice is notice as a matter of fact. Inquiry notice results as a matter of law from facts that would prompt a reasonable person to inquire about the possible existence of an interest in property. Noble Mortgage & Investments, LLC v. D&M Vision Investments, LLC, 340 S.W.3d 65 (Tex. App.—Houston [1st Dist.] 2011, no pet.); Mann v. Old Republic National Title Insurance Co., 975 S.W.2d 347 (Tex. Civ. App.—Houston [14th Dist.] 1998, no writ); City of Richland Hills v. Bertelsen, 724 S.W.2d 428, 430 (Tex. App.—Ft. Worth 1987, writ denied). Also see Standard 4.80.

Actual notice includes, not only known information, but also facts that a reasonably diligent inquiry would have disclosed. Hexter v. Pratt, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted); Mann v. Old Republic National Title Insurance Co., 975 S.W.2d 347 (Tex. Civ. App.—Houston [14th Dist.] 1998, no writ).

> In common parlance ''actual notice'' generally consists in express information of a fact, but in law the term is more comprehensive. … So that, in legal parlance, actual knowledge embraces those things of which the one sought to be charged has express information, and likewise those things which a reasonably diligent inquiry and exercise of the means of information at hand would have disclosed.

Hexter v. Pratt, 10 S.W.2d 692, 693 (Tex. Comm'n App. 1928, judgm't adopted). See also Flack v. First Nat'l Bank, 226 S.W.2d 628, 632 (Tex. 1950).

Circumstances that give rise to a duty to inquire include obvious ones, such as a person's assertion of a claim to an interest in property, Zamora v. Vela, 202 S.W. 215 (Tex. Civ. App.—San Antonio 1918, no writ); Price v. Cole, 35 Tex. 461 (1871), rev'd on other grounds, 45 Tex. 522 (1876), as well as others that merely arouse suspicion. For example, the refusal of a spouse to sign an instrument may give notice of the inability of the other spouse to execute it. Williams v. Portland State Bank, 514 S.W.2d 124 (Tex. Civ. App.–Beaumont 1974, writ dism'd).

A purchaser with constructive notice of a deed of trust is put on inquiry to determine the status of the deed of trust, such as whether it had been released or foreclosed. Realty Portfolio, Inc. v. Hamilton, 125 F.3d 292 (5th Cir. 1997); Clarkson v. Ruiz, 140 S.W.2d 206 (Tex. Civ. App.—San Antonio 1940, writ dism'd).

Notice to an agent will constitute notice to the principal if the agent is one who had the power to act with reference to the subject matter to which the notice relates. J.M. Radford Grocery Co. v. Citizens Nat'l Bank, 37 S.W.2d 1080 (Tex. Civ. App.—El Paso 1931, writ dism'd). Accordingly, a purchaser is generally legally charged with such facts that come to his or her attorney's knowledge in the course of employment as an attorney to examine title, Hexter v. Pratt, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted) and Ramirez v. Bell, 298 S.W.

924 (Tex. Civ. App.—Austin 1927, writ ref'd), or with such facts that would have become known to the purchaser's attorney upon further inquiry into irregularities arising in connection with the closing of a transaction. Carter v. Converse, 550 S.W.2d 322 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.). Therefore, even though a case may have been dismissed for want of prosecution, the attorney and principal have a further obligation to investigate the suit to determine if there is any claim which may remain outstanding although the lis pendens does not continue as constructive notice to the world. Hexter v. Pratt, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted). In contrast, a title company does not become an insured's agent in examining title or in acting as escrow agent, and notice that the title company acquires is not imputed to the insured. Tamburine v. Center Savings Assoc., 583 S.W.2d 942 (Tex. Civ. App.—Tyler 1979, writ ref'd n.r.e.) (in examining title in order to issue a title insurance policy, the title company does not act on behalf of the parties to the real estate transaction but acts exclusively for itself; in supervising the transfer of title in accordance with the commitment, the title company acts for its own benefit and protection; and in acting as escrow agent, the authority of the title company does not extend to examination of title).

If notice is given to a party, that party only has a reasonable obligation of investigation at that time and does not have a continued obligation of monitoring to see if an event transpires at a later day. For example, if tax agents of the Internal Revenue Service are notified that a divorce is pending, this fact does not obligate the IRS to continue to monitor to see if the divorce later occurs, and if the land is awarded to the non-taxpayer. Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986).

Source:

Citations in the Comment.

History:

Adopted August 2, 2013.

Standard 4.80. Duty Of Inquiry Based On Possession

The examiner should advise the client to inspect the land to determine possible rights in third parties that may not be reflected in the record, such as an apparent easement or third parties in possession.

Comment:

Notice of title given by possession or apparent use of property is equivalent to the notice that is afforded by recording a deed. Strong v. Strong, 98 S.W.2d 346 (Tex. 1936). The duty to inquire arises only if the possession or apparent use is inconsistent with record title and is (1) visible, (2) open, (3) exclusive, and (4) unequivocal, implying exclusive dominion over the property. Strong, 98 S.W.2d at 350 (holding that possession by a member of the record title-owner's family was not open or exclusive).

Possession by a tenant creates a duty to inquire. Mainwarring v. Templeman, 51 Tex. 205, 209 (1879). Possession of a single rental-unit dwelling was sufficient to create constructive notice. See, e.g., Moore v. Chamberlain, 195 S.W. 1135 (Tex. 1917); Collum v. Sanger Bros., 82 S.W. 459 (Tex. 1904). A purchaser is charged with constructive notice of each tenant's rights in occupied units of a multi-unit property. Inquiry of a tenant's rights may result in actual notice of the tenant's claim to additional units; however, possession of a unit in a multi-unit structure may not satisfy the criteria for claiming rights in more than just the occupied unit. Madison v. Gordon 39 S.W.3d 604 (Tex. 2001).

Ordinarily, a subsequent purchaser need not inquire whether a grantor who remains in possession has any claim to the property. For example, there is no obligation to inquire whether the grantor's deed was, instead, a mortgage, whether the deed was fraudulently secured, or whether the deed was executed by mutual mistake. Eylar v. Eylar, 60 Tex. 315 (1883). However, special circumstances may impart constructive notice of a possible claim by a grantor. See, e.g., Anderson v. Barnwell, 52 S.W.2d 96 (Tex. Civ. App.—Texarkana 1932), aff'd sub nom. Anderson v. Brawley, 86 S.W.2d 41 (Tex. 1935) (grantor was in possession over six years after conveying the property and conveyed additional interests in the property).

If possession by a third party has terminated before the buyer acquires an interest in the land, then the buyer need not inquire as to the rights of the third party in the property, even if the buyer knew of the former possession. Maxfield v. Pure Oil Co., 91 S.W.2d 892 (Tex. Civ. App.–Dallas 1936, writ dism'd w.o.j.).

Not all possession or apparent use gives rise to a duty to inquire, e.g.:

(1) A nonvisible buried pipeline. Shaver v. National Title & Abstract Co., 361 S.W.2d 867, 869 (Tex. 1962).

(2) Minor children's occupancy of mother's homestead. Boyd v. Orr, 170 S.W.2d 829, 834 (Tex. Civ. App.—Texarkana 1943, writ ref'd).

(3) A crop. De Guerin v. Jackson, 50 S.W.2d 443, 448 (Tex. Civ. App.—Texarkana 1932), aff'd 77 S.W.2d 1041 (Tex. 1935).

Caution:

The above comments do not address adverse possession and prescription. See comments to Standard 4.50, supra, under subheading ''Interests Not Subject To The Recording Statutes,'' and comments to Standard 4.90, infra, under subheading ''Bona Fide Purchaser Not Protected.''

Source:

Citations in the Comment.

History:

Adopted August 2, 2013.

Standard 4.90. Qualification As Bona Fide Purchaser

An examiner cannot determine whether any party in the chain of title is a bona fide purchaser. Accordingly, an examiner should not disregard any interest in the chain of title based solely on an assumption that it was extinguished by a bona fide purchaser under the recording laws. However, if title passed by a quitclaim deed, then the grantee and the grantee's successors are not bona fide purchasers as to claims existing at the time of the quitclaim deed.

Comment:

Definition: A bona fide purchaser is one who, in good faith, pays valuable consideration without actual, constructive, or inquiry notice of an adverse claim. Sparks v. Taylor, 99 Tex. 411, 90 S.W. 485 (1906). The terms ''good faith purchaser'' and ''bona fide purchaser'' have the same meaning. Bank of America v. Babu, 340 S.W.3d 917 (Tex. App. – Dallas 2011, no pet.). A lender acquiring a mortgage, deed of trust, or other lien based on sufficient consideration and without notice of a prior claim is a bona fide purchaser. Graves v. Guaranty Bond State Bank, 161 S.W.2d 118 (Tex. Civ. App.—Texarkana 1942, no writ). For discussion of the Texas recording law, see Standard 4.40.

This discussion will make numerous references to the following terms that were previously defined: Constructive notice—See Standard 4.50; Actual notice—See Standard 4.70; and Inquiry notice—See Standards 4.70 and 4.80.

Consideration: To be a bona fide purchaser, the party must show that, before the party had actual, constructive, or inquiry notice of an interest, the purchaser's deed was delivered and value was paid. La Fon v. Grimes, 86 F.2d 809 (5th Cir. 1936). A recital in the deed that consideration was paid is not sufficient. That consideration was paid must be independently proven, Watkins v. Edwards, 23 Tex. 443, 448 (1859), although a recital of consideration may be an element of that proof, Davidson v. Ryle, 124 S.W. 616, 619 (Tex. 1910).

The purchaser may be a bona fide purchaser even if the purchaser has paid less than the ''real value'' of the land, unless the price paid is grossly inadequate. Nichols-Stewart v. Crosby, 29 S.W. 380, 382 (Tex. 1895) ($5 paid for land then worth $8,000 is grossly inadequate); McAnally v. Panther, 26 S.W.2d 478, 480 (Tex. Civ. App.—Eastland 1930, no writ) (providing numerous examples of inadequate consideration). To show that the purchaser has paid valuable consideration, the purchaser must pay more value than merely cancelling an antecedent debt. Similarly, where a grantor executes a deed of trust or mortgage for an antecedent debt, the grantee has not paid sufficient value. Turner v. Cochran, 61 S.W. 923 (Tex. 1901); Jackson v. Waldstein, 30 S.W. 47 (Tex. Civ. App.—Austin 1895, writ ref'd).

Good Faith: To be a bona fide purchaser, a purchaser must take the property in good faith. ''A transferee who takes property with knowledge of such facts as would excite the suspicions of a person of ordinary prudence and put him on inquiry of the fraudulent nature of an alleged transfer does not take the property in good faith and is not a bona fide purchaser.'' Hahn v. Love, 321 S.W.3d 517, 527 (Tex. App.—Houston [1st Dist.] 2009, pet. denied). Whether a person takes in good faith depends on whether the purchaser is aware of circumstances within or outside the chain of title that would place the purchaser on notice of an unrecorded claim or that would excite the suspicion of a person of ordinary prudence. Noble Mortgage & Investments, LLC v. D&M Vision Investments, LLC, 340 S.W.3d 65 (Tex. App.— Houston [1st Dist.] 2011, no pet.).

Quitclaim Deed: In Texas the grantee of a quitclaim deed cannot qualify as a bona fide purchaser for value against unrecorded instruments and equities that existed at the time of the quitclaim, Threadgill v. Bickerstaff, 29 S.W.757 (Tex. 1895); Rodgers v. Burchard, 34 Tex. 441 (1870-71). The rationale is that the fact that a quitclaim deed was used, in and of itself, attests to the dubiousness of the title. See Richardson v. Levi, 3 S.W. 444, 447-48 (Tex. 1887). Although a quitclaim is fully effective to convey whatever interest the grantor owns in the property described in the deed, Harrison Oil Co. v. Sherman, 66 S.W.2d 701, 705 (Tex. Civ. App.—Beaumont 1933, writ ref'd), the grantee takes title subject to any outstanding interest or defect, whether or not recorded and whether or not the grantee is aware of it or has any means of discovering it. See, e.g., Woodward v. Ortiz, 237 S.W.2d 286, 291-92 (Tex. 1951). Moreover, in Texas not only is the grantee under a quitclaim deed subject to any outstanding claims or equities, all subsequent purchasers in his chain of title, however remote, are likewise subject to any unknown and unrecorded interests that were outstanding at the time of the quitclaim. Houston Oil Co. v. Niles, 255 S.W. 604, 609- 11 (Tex. Comm'n App. 1923, judgm't adopted).

Any title dependent on a quitclaim as a link in the chain of title cannot be marketable title, since it might at any time be defeated by some unknown claimant. Accordingly, absent passage of time or other factors that may remove the practical risk, if the chain of title includes a quitclaim, then the examiner should advise the client of its existence in the chain of title and of its effect.

Unfortunately, it is often difficult for a title examiner to reach a definite conclusion whether a deed is a quitclaim. A quitclaim deed, as traditionally defined, is one that purports to convey not the land or a specific interest but only the grantor's right, title and interest in it. See Rogers v. Ricane Enters., Inc., 884 S.W.2d 763, 769 (Tex. 1994); Richardson v. Levi, 3 S.W. 444 (Tex. 1887). Nevertheless, building on a line of reasoning that seems to have originated with F. J. Harrison & Co. v. Boring & Kennard, 44 Tex. 255 (1875), in which the court's discussion of the issue does not bear on its ultimate decision, Texas courts have developed and liberally applied the notion that if the language of a deed as a whole reasonably implies a purpose to effect a transfer of particular rights in the land, it will be treated as a conveyance of those rights, not a mere quitclaim, despite the presence of traditional quitclaim language and even the word ''quitclaim'' itself. See, e.g., Cook v. Smith, 174 S.W. 1094 (Tex. 1915); Benton Land Co. v. Jopling, 300 S.W. 28 (Tex. Comm'n App. 1927, judgm't adopted). (This manner of construction of apparent quitclaims has been treated by at least one authority as being peculiar to Texas. See Annotation, Grantee or Mortgagee by Quitclaim Deed or Mortgage in Quitclaim Form as Within Protection of Recording Laws, 59 A.L.R. 632, 648-49 (1929).) Construing a deed in which the grantors conveyed ''all of our undivided interest'' in the minerals in a tract of land, the court in Bryan v. Thomas, 365 S.W.2d 628, 630 (Tex. 1963), stated unequivocally, ''To remove the question from speculation and doubt we now hold that the grantee in a deed which purports to convey all of the grantor's undivided interest in a particular tract of land, if otherwise entitled, will be accorded the protection of a bona fide purchaser.'' See also Miller v. Hodges, 260 S.W. 168, 171 (Tex. Comm'n App. 1924, judgm't adopted).

Notwithstanding that many deeds in traditional quitclaim form have been held otherwise by Texas courts, the principle that a deed is a mere quitclaim if it conveys only a grantor's ''right, title, and interest,'' as opposed to a specific interest in described land, has never been overruled. See Geodyne Energy Income Prod. P'ship I-E v. Newton Corp., 161 S.W.3d 482 (Tex. 2005); Rogers v. Ricane Enters, Inc., 884 S.W.2d 763 (Tex. 1994). Although neither of the latter supreme court decisions addressed whether the grantee was deprived of the status of bona fide purchaser for value under the recording laws because of the nature of the conveyance, and cases such as Bryan v. Thomas might be distinguished on that basis, they are unequivocal in denominating a conveyance of a grantor's right, title and interest as a quitclaim. Unless a conveyance of only a grantor's right, title, and interest contains words that otherwise amply demonstrate the parties' intention that some particular interest be conveyed, a determination that may be very difficult for a title examiner to make objectively, the deed's quitclaim form must be considered to pose the risk that the grantee's title might be defeated by some unrecorded and unknown claim. See Enerlex, Inc. v. Amerada Hess, Inc., 302 S.W.3d 351 (Tex. App.—Eastland 2009, no writ); Riley v. Brown, 452 S.W.2d 548 (Tex. Civ. App.—Tyler 1970, no writ). Further, it is frequently overlooked that blanket conveyances, for example of all the grantor's interests in land in a particular county or in the entire state, have generally been held to be quitclaims. See, e.g., Miller v. Pullman, 72 S.W.2d 379 (Tex. Civ. App.—Galveston 1934, writ ref'd). In case of doubt the examiner should err on the side of construing deeds as quitclaims.

There are two statutory exceptions to the general rule that a grantee under a quitclaim deed cannot be a bona fide purchaser. Tex. Civ. Prac. & Rem. Code Ann. § 34.045 provides that the officer who has sold a judgment creditor's property at an execution sale is to deliver to the purchaser a conveyance of ''all the right, title, interest, and claim'' that the defendant in execution had in the property sold. Tex. Civ. Prac. & Rem. Code Ann. § 34.046 then provides, ''The purchaser of property sold under execution is considered to be an innocent purchaser without notice if the purchaser would have been considered an innocent purchaser without notice

had the sale been made voluntarily and in person by the defendant.'' Although the statute appears dispositive, and the status of a purchaser at an execution sale as a bona fide purchaser has been upheld, Triangle Supply Co. v. Fletcher, 408 S.W.2d 765 (Tex. Civ. App.—Eastland 1966, writ ref'd n.r.e.), officers' deeds resulting from execution sales have nevertheless been construed as quitclaims, affording the grantee no protection as a bona fide purchaser. Diversified, Inc. v. Hall, 23 S.W.3d 403 (Tex. App.—Houston [1st Dist.] 2000, pet. denied); Smith v. Morris & Co., 694 S.W.2d 37 (Tex. App.—Corpus Christi 1985, writ ref'd n.r.e.) (neither case addressing the effect of Tex. Civ. Prac. & Rem. Code Ann. § 34.046 or its predecessor statute). Under Tex. Tax Code Ann. §34.21(j), ''A quitclaim deed to an owner redeeming property under this section is not notice of an unrecorded instrument. The grantee of a quitclaim and a successor or assign of the grantee may be a bona fide purchaser in good faith for value under the recording laws.''

Statutes Permitting Or Requiring Recordation: Although not a complete list, the following statutes permit or require recording of particular instruments:

- Tex. Bus. Org. Code Ann. § 252.005 (reliance on recorded statement of authority of unincorporated nonprofit association).
- Tex. Civ. Prac. & Rem. Code Ann. §§ 16.035-16.037 (extension of liens).
- Tex. Civ. Prac. & Rem. Code Ann. § 34.046 (purchaser of property sold under execution considered to be an innocent purchaser without notice, if the purchaser would have been so considered had the sale been made voluntarily and in person by the defendant).
- Tex. Family Code Ann. § 3.004 (schedule of spouse's separate property).
- Tex. Family Code Ann. § 3.104 (presumed authority of spouse who is record owner).
- Tex. Family Code Ann. §§ 3.306, 3.308 (order affecting the management of community).
- Tex. Family Code Ann. § 4.106 (a partition or exchange agreement of spouses).
- Tex. Family Code Ann. § 4.206 (an agreement converting separate property to community property).
- Tex. Occ. Code Ann. § 1201.2055 (a real property election for a manufactured home is not considered perfected until a certified copy of the statement of ownership and location has been filed in the real property records).
- Tex. Estates Code Ann. § 33.055 (''a bona fide purchaser of real property who relied on a probate proceeding that was not the first commenced proceeding, without knowledge that the proceeding was not the first commenced proceeding, shall be protected with respect to the purchase unless before the purchase an order rendered in the first commenced proceeding admitting the decedent's will to probate, determining the decedent's heirs, or granting administration of the decedent's estate was recorded in the office of the county clerk of the county in which the purchased property is located.'').
- Tex. Estates Code Ann. § 201.053 (good faith purchaser relying on affidavit of heirship takes free of interest of child not disclosed in affidavit if child not found under court decree to be entitled to treatment as child and not otherwise recognized).
- Tex. Estates Code Ann. § 256.003 (if will is not probated within four years of date of death, purchaser can rely upon deed from heir).
- Tex. Estates Code Ann. § 256.201 (certified copies of the will and order probating the will may be recorded in other counties).
- Tex. Estates Code Ann. §§ 503.051, 503.052 (ancillary probate).
- Tex. Estates Code Ann. § 205.006 (reliance on small estates affidavit).

- Tex. Estates Code Ann. §§ 751.054, 751.055 (conclusive reliance on affidavit of lack of knowledge of termination of Power of Attorney).
- Tex. Prop. Code Ann. § 5.030 (correction instrument—unsettled). See Standard 5.10.
- Tex. Prop. Code Ann. § 5.063(c) (affidavit stating that executory contract is properly forfeited).
- Tex. Prop. Code Ann. § 12.005 (a court order partitioning or allowing recovery of title to land must be recorded).
- Tex. Prop. Code Ann. § 12.007 (a party seeking affirmative relief may file a notice of pending action in an eminent domain proceeding or a pending suit affecting title).
- Tex. Prop. Code Ann. § 12.0071 (procedure to expunge lis pendens).
- Tex. Prop. Code Ann. § 12.008 (procedure for cancellation of lis pendens).
- Tex. Prop. Code Ann. § 12.017 (affidavit as release of lien).
- Tex. Prop. Code Ann. § 12.018 (affidavit or memorandum of sale, transfer, purchase or acquisition agreement between receiver and conservator of failed depository institution and another depository institution).
- Tex. Prop. Code Ann. § 13.004 (a recorded lis pendens is notice to the world of its contents).
- Tex. Prop. Code Ann. § 64.052 (recordation and perfection of security interest in rents).
- Tex. Prop. Code Ann. § 101.001 (conveyance by trustee if trust not identified and names of beneficiaries not disclosed).
- Tex. Prop. Code Ann. § 141.017 (third party, ‘‘in the absence of knowledge,’’ may deal with any person acting as custodian under Texas Uniform Transfers to Minors Act).
- Tex. Prop. Code Ann. § 202.006 (effective January 1, 2012, a dedicatory instrument has no effect until the instrument is filed in the real property records).
- Tex. Prop. Code Ann. § 209.004(e) (a lien of a property owners’ association that fails to file a management certificate to secure an amount due on the effective date of a transfer to a bona fide purchaser is enforceable only for an amount incurred after the effective date of sale).
- Tex. Transp. Code Ann. § 251.058 (a copy of the order closing, abandoning, and vacating a public road shall be filed in the deed records).
- 11 U.S.C. §§ 362(b)(20), 362(d)(4) (lift of stay order finding that filing of bankruptcy petition part of scheme to delay, hinder, or defraud creditors shall be binding in any other bankruptcy case filed within two years of order, if recorded in real property records).
- 11 U.S.C. § 544 (trustee and debtor in possession are treated as bona fide purchasers and lien creditors for avoidance of unperfected interests).
- 11 U.S.C. § 547 (deed, mortgage, or other instrument may be avoidable preference in bankruptcy unless perfected within 30 days after it takes effect).
- 11 U.S.C. § 549(c) (protection of transfer from debtor to good faith purchaser without knowledge of commencement of bankruptcy case unless a copy or notice of the bankruptcy petition is filed).
- Bankruptcy Rule 4001(c)(1)(B)(vii) (a motion for authority to obtain a mortgage during a bankruptcy case may include a waiver or modification of the applicability of non-bankruptcy law relating to the perfection of a lien on property of the estate).
- 28 U.S.C. § 1964 (recordation of notice of action concerning real property pending in a United States district court, if required by state law).

Equitable Interests: A bona fide purchaser will be protected as a matter of equity and take title free of unrecorded equitable interests. Hill v. Moore, 62 Tex. 610, 613 (1884). For example, a bona fide purchaser may take free and clear of the following equitable interests:

- A right to reform due to a mutual mistake. Farley v. Deslande, 69 Tex. 458, 6 S.W. 786 (1888).
- A claim that the deed was induced by fraud. Pure Oil Co. v. Swindall, 58 S.W.2d 7 (Tex. Comm'n App. 1933, holding approved); Ramirez v. Bell, 298 S.W. 924 (Tex. Civ. App.–Austin 1927, writ ref'd); Hickman v. Hoffman, 11 Tex. Civ. App. 605, 33 S.W. 257 (1895, writ ref'd).
- Any rights of parties based on adoption by estoppel. Moran v. Adler, 570 S.W.2d 883 (Tex. 1978).
- A claim of equitable subrogation, AMC Mortgage Services Inc. v. Watts, 260 S.W.3d 582 (Tex. App.—Dallas 2008, no pet.).
- An easement by estoppel. Cleaver v. Cundiff, 203 S.W.3d 373 (Tex. App.—Eastland 2006, pet. denied). (However, if possession and use are sufficient to place the purchaser on inquiry, then the purchaser will not be bona fide).
- A claim that the deed was, in actuality, given as a mortgage. Brown v. Wilson, 29 S.W. 530 (Tex. Civ. App. 1895, no writ).
- A party also can be a bona fide purchaser even though the party acquires only an equitable title (such as a contract purchaser who has paid the contract price). Batts & Dean v. Scott, 37 Tex. 59, 64 (1872).

Bona Fide Purchaser Not Protected: Even a bona fide purchaser's title is subject to certain claims, whether or not these claims are disclosed in the real property records:

- A claim of title by adverse possession or prescription, Houston Oil Co. v. Olive Sternenberg & Co., 222 S.W. 534 (Tex. Comm'n App. 1920, judgm't adopted); Heard v. Bowen, 184 S.W. 234 (Tex. Civ. App.–San Antonio 1916, writ ref'd); MacGregor v. Thompson, 26 S.W. 649 (Tex. Civ. App. 1894, no writ).
- A claim that a deed was given while the person was a minor or insane, Gaston v. Bruton, 358 S.W.2d 207 (Tex. Civ. App.–El Paso 1962, writ dism'd w.o.j.); Pure Oil Co. v. Swindall, 58 S.W.2d 7 (Tex. Comm'n App. 1933, holding approved); McLean v. Stith, 112 S.W. 355 (Tex. Civ.App. 1908, writ ref'd).
- A claim that the deed was forged, Pure Oil Co. v. Swindall, 58 S.W.2d 7 (Tex. Comm'n App. 1933, holding approved).
- A claim of heirs, regardless of whether known by the bona fide purchaser, New York & Tex. Land Co. v. Hyland, 28 S.W. 206 (Tex. Civ. App. 1894, writ ref'd).
- A conveyance by a person who had the identical name of the record owner but who was not the same person, Blocker v. Davis, 241 S.W.2d 698 (Tex. Civ. App.–Fort Worth 1951, writ ref'd n.r.e.); Pure Oil Co. v. Swindall, 58 S.W.2d 7 (Tex. Comm'n App. 1933, holding approved).

Burden Of Proof: Although status as a bona fide purchaser is an affirmative defense in a title dispute, Madison v. Gordon, 39 S.W.3d 604, 607 (Tex. 2001), a person claiming title through principles of equity has the burden to establish that the subsequent purchaser is not a bona fide purchaser. Noble Mortgage & Investments, LLC v. D&M Vision Investments, LLC, 340 S.W.3d 65 (Tex. App.—Houston [1st Dist.] 2011, no pet.); NRG Expl., Inc. v. Rauch, 671 S.W.2d 649

(Tex. App.—Austin 1984, writ ref'd n.r.e.); see Westland Oil Dev. Corp. v. Gulf Oil Corp., 637 S.W.2d 903 (Tex. 1982). On the other hand, a claimant under a junior deed has the burden to prove bona fide purchaser status against a prior unrecorded conveyance of legal title, Watkins v. Edwards, 23 Tex. 443 (1859); Ryle v. Davidson, 115 S.W. 28 (Tex. 1909); Raposa v. Johnson, 693 S.W.2d 43 (Tex. App.—Fort Worth 1985, writ ref'd n.r.e.), unless the junior deed was delivered before the passage of the registration act of 1840. Kimball v. Houston Oil Co., 99 S.W. 852 (Tex. 1907).

Source:

Citations in the Comment.

History:

Adopted August 2, 2013; amended July 17, 2014.

The prior standard provided: ''An examiner cannot determine whether any party in the chain of title is a bona fide purchaser. Accordingly, an examiner must not disregard any interest in the chain of title based solely on an assumption that it was extinguished by a bona fide purchaser under the recording laws. However, if title passed by a quitclaim deed, then the grantee and the grantee's successors are not bona fide purchasers as to claims existing at the time of the quitclaim deed.''

Standard 4.100. Qualification As Lien Creditor

A lien creditor without notice has a status similar to a bona fide purchaser.

Comment:

The recording statutes provide that a lien creditor without notice takes free of a prior deed, mortgage, or other instrument that has not been acknowledged, sworn to, or proved and filed for record. Tex. Prop. Code Ann. § 13.001. A ''creditor'' is a claimant whose claim is fixed by some legal process as a lien on the land, such as by attachment, execution, judgment, landlord or mechanic's lien, or a tax lien (such as IRS or state tax lien). Johnson v. Darr, 272 S.W. 1098, 1100 (Tex. 1925.) (''The Texas courts have construed the words 'all creditors' of the statute to mean creditors who acquired a lien by legal proceedings without notice of the unrecorded instrument.''); Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986); United States v. Creamer Industries, Inc., 349 F.2d 625 (5th Cir. 1965); Underwood v. United States, 118 F.2d 760 (5th Cir. 1941); Bowen v. Lansing Wagon Works, 43 S.W. 872 (Tex. 1898). A junior lender whose mortgage secures an antecedent debt is not a lien creditor and cannot take priority over a prior unrecorded deed. Turner v. Cochran, 61 S.W. 923 (Tex. 1901). A trustee or debtor-in-possession in a bankruptcy will be treated as a judgment creditor in order to set aside unrecorded interests. 11 U.S.C. § 544; Faires v. Billman, 849 S.W.2d 455 (Tex. App.—Austin 1993, no pet.); Segrest v. Hale, 164 S.W.2d 793 (Tex. Civ. App.—Galveston, 1941, writ ref'd w.o.m.).

A lien creditor will take free and clear of prior unrecorded (but recordable) interests, unless the creditor has notice of them. Examples of such recordable interests are:

(1) An equitable right to have a deed corrected to convey a lot originally intended to be included in the conveyance (but not included due to mutual mistake), United States v. Creamer Industries, Inc., 349 F.2d 625 (5th Cir. 1965); Henderson v. Odessa Building & Finance Co., 24 S.W.2d 393 (Tex. Comm'n App. 1930); North East Independent School District v. Aldridge, 528 S.W.2d 341 (Tex. Civ. App.–Amarillo 1975, writ ref'd n.r.e.).

(2) An unrecorded contract for sale, Linn v. Le Compte, 47 Tex. 440 (1877).

(3) A prior unrecorded deed, Whitaker v. Farris, 101 S.W. 456 (Tex. Civ. App. 1907, writ ref'd).

(4) A divorce decree not filed of record in the real property records; Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986).

(5) An unrecorded sheriff's deed; Wiggins v. Sprague, 40 S.W. 1019 (Tex. Civ. App. 1897, no writ).

(6) An unrecorded extension of deed of trust. Cadle Co. v. Butler, 951 S.W.2d 901 (Tex. App.—Corpus Christi 1997, no writ).

(7) An entry of a constable's sale in the litigation records (execution docket) of the county clerk's office. Noble Mortgage & Investments, LLC v. D&M Vision Investments, LLC, 340 S.W.3d 65 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Bona fide purchasers for value are protected against the assertion of equitable titles because of the doctrine of estoppel, and not because of the registration statutes. Johnson v. Darr, 272 S.W. 1098 (Tex. 1925). Unlike a bona fide purchaser, a lien creditor cannot invoke estoppel, and must rely solely upon the recording statute to assert that its rights are superior to an unrecorded interest. The lien creditor will not extinguish ''unrecorded equities'' such as:

(1) An executory contract to convey real property where the purchaser goes into possession of the property. Cadle Co. v. Harvey, 46 S.W.3d 282, 287 (Tex. App.—Fort Worth 2001, pet. denied).

(2) A completed contract for sale where no deed had been executed to the purchaser, Texas American Bank v. Resendez, 706 S.W.2d 343 (Tex. App.—Amarillo 1986, no writ).

(3) A deed intended as a mortgage, Michael v. Knapp, 23 S.W. 280 (Tex. Civ. App. 1893, no writ).

(4) A deed of trust released by mutual mistake, First State Bank v. Jones, 183 S.W. 874 (Tex. 1916).

(5) A right to reform a deed where by mutual mistake the grantor conveyed a greater interest than intended, Cetti v. Wilson, 168 S.W. 996 (Tex. Civ. App.—Fort Worth 1914, writ ref'd).

Standard 4.110. Electronic Filing And Recordation

An examiner may presume that any additional requirements for electronic filing of instruments (beyond those required for recordation of paper instruments) have been met.

Comment:

Electronic filing of instruments in the real property records is governed by (1) the Uniform Electronic Transactions Act (Tex. Bus. & Com. Code Ann. §§ 322.001-322.021) (UETA), (2) the Uniform Real Property Electronic Recording Act (Tex. Prop. Code Ann. §§ 15.001-15.008) (URPERA), (3) Tex. Local Gov't Code Ann. §§ 195.001-195.009, and (4) 13 Tex. Admin. Code Ann. §§ 7.141-7.145. The federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) (E-SIGN) has been largely modified, limited, and superseded by Texas law. Tex. Prop. Code Ann. § 15.007; Tex. Bus. & Com. Code Ann. § 322.019. The Texas State Library and Archives Commission has adopted rules by which a county clerk may accept

electronic documents by electronic filing and record electronic documents and other instruments. Tex. Local Gov't Code Ann. § 195.002(a).

The persons (authorized filers) who may file electronic documents or other documents electronically with a county clerk that accepts electronic filing and recording are specified in Tex. Local Gov't Code Ann. § 195.003.

An electronic instrument or instrument filed electronically must be available for public inspection in the same manner and at the same time as an instrument filed by other means. Tex. Local Gov't Code Ann. § 195.007(a). An electronic document or instrument filed electronically is filed with the county clerk when it is received, unless the county clerk rejects the filing within the time and manner provided by Chapter 195 or by applicable rules. Tex. Local Gov't Code Ann. § 195.009. A county clerk that accepts an electronic filing shall confirm or reject the filing no later than the first business day after the date of filing. If the county clerk fails to provide notice of rejection within the time provided, the filing is considered accepted and may not subsequently be rejected. Tex. Local Gov't Code Ann. § 195.004. An electronic document or other instrument that is filed electronically is considered recorded in compliance with a law relating to electronic filing as of the county clerk's business day of filing. Tex. Local Gov't Code Ann. § 195.005.

If a law requires as a condition for recording that a document be an original or be in writing, the requirement is satisfied by an electronic document (a document received by a county clerk in an electronic form) that complies with Chapter 15, Texas Prop. Code Ann. If a law requires as a condition for recording that a document be signed, the requirement is satisfied by an electronic signature. A requirement that a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. Tex. Prop. Code Ann. § 15.004; Tex. Bus. & Com. Code Ann. § 322.011. An original signature may not be required for an electronic instrument or other document that complies with Chapter 15, Tex. Prop. Code Ann.; Chapter 195, Tex. Loc. Gov't. Code Ann.; Chapter 322, Tex. Bus. & Com. Code Ann., or other applicable law. Tex. Prop. Code Ann. § 12.0011.

Source:

Citations in the Comment.

History:

Adopted August 2, 2013; amended July 17, 2014.

The prior standard provided: ''An examiner may assume that any additional requirements for electronic filing of instruments (beyond those required for recordation of paper instruments) have been met.''

Standard 4.120. Estoppel By Deed

The examiner may rely upon the doctrine of estoppel by deed for vesting of an interest in title, where applicable.

Comment:

If a grantor does not own the interest he purports to convey, estoppel by deed (also called the doctrine of after-acquired title) will automatically vest title in the grantee or the grantee's successors if the grantor later acquires title to the interest. Estoppel by deed also applies more broadly to bind the parties to a deed by the recitals in the deed. Box v. Lawrence, 14 Tex. 545

(1855); Surtees v. Hobson, 4 S.W.2d 245 (Tex. Civ. App.—El Paso 1928), aff'd, 13 S.W.2d 345 (Tex. Comm'n App. 1929); XTO Energy Inc. v. Nikolai, 357 S.W.3d 47 (Tex. App.—Fort Worth 2011, pet. denied).

A deed will operate to vest the after-acquired title of the grantor in the grantee if the deed is not a quitclaim deed, Wilson v. Wilson, 118 S.W.2d 403 (Tex. Civ. App.–Beaumont 1938, no writ), and it is not essential that a deed contain a warranty in order for the doctrine to apply. Wilson v. Beck, 286 S.W. 315, 320 (Tex. Civ. App.—Dallas 1926, writ ref'd); Lindsay v. Freeman, 18 S.W. 727 (Tex. 1892); Blanton v. Bruce, 688 S.W.2d 908 (Tex. App.—Eastland 1985, writ ref'd n.r.e.); Texas Pacific Coal & Oil Co. v. Fox, 228 S.W. 1021 (Tex. Civ. App.—Fort Worth 1921, no writ). Estoppel will apply even in the case of a gift deed. Robinson v. Douthit, 64 Tex. 101 (1885). See discussion of quitclaim deeds in the comment to Standard 4.90.

If the grantor conveys without excepting to a lien and thereafter acquires title (at a foreclosure sale or later), then the title it acquires will inure to its prior grantee. Burns v. Goodrich, 392 S.W.2d 689 (Tex. 1965); Robinson v. Douthit, 64 Tex. 101 (1885). Presumably the benefits to a grantee of the doctrine of estoppel by deed are assigned to a later grantee who receives a quitclaim from the first grantee. Burns v. Goodrich, 392 S.W.2d 689 (Tex. 1965); Robinson v. Douthit, 64 Tex. 101 (1885).

The rule of after-acquired title also applies to mortgages. Shield v. Donald, 253 S.W.2d 710 (Tex. Civ. App.—Fort Worth 1952, writ ref'd n.r.e.). A party who executes notes and mortgages on land (or assumes existing liens) cannot take title under a foreclosure of a prior lien without discharging the notes secured by inferior mortgages; the mortgagees' liens will be reinstated. Milford v. Culpepper, 40 S.W.2d 163 (Tex. Civ. App.—Dallas 1931, writ ref'd).

Where a deed conveys land and reserves a mineral interest, but fails to except prior reserved minerals, thus creating an overconveyance, the grantor loses his title as necessary to make his grantee whole. Duhig v. Peavy-Moore Lumber Co, 144 S.W.2d 878 (Tex. 1940). The Duhig rule of estoppel will not apply, however, if the deed refers to a prior deed reserving a mineral interest by language such as ''reference to which is made for all purposes'' or ''for all legal purposes.'' Harris v. Windsor, 294 S.W.2d 798 (Tex. 1956).

A grantee in a deed will be bound by the deed's contents, including a reference to a disputed prior reservation of minerals, and may not thereafter acquire superior title free of the reservation. Adams v. Duncan, 215 S.W.2d 599 (Tex. 1948); Greene v. White, 153 S.W.2d 575 (Tex. 1941). However, before the grantor can secure a mineral interest by estoppel, the grantee must have all of the interest that the grantor purported to convey. Dean v. Hidalgo County Water Imp. Dist. No. Two, 320 S.W.2d 29 (Tex. Civ. App.—San Antonio 1959, writ ref'd n.r.e.).

A conveyance signed by a party only in a representative capacity will, nevertheless, convey whatever interest that person owns individually where that party's deed purports to convey the property (as opposed to a quitclaim deed). Conveyances where such estoppel has been recognized include those by an estate representative, Tomlinson v. H.P. Drought & Co., 127 S.W. 262 (Tex. Civ. App. 1910, writ ref'd); agents on behalf of principals, Ford v. Warner, 176 S.W. 885 (Tex. Civ. App.—Amarillo 1915, no writ); trustee, Grange v. Kayser, 80 S.W.2d 1007 (Tex. Civ. App.–El Paso 1935, no writ); and corporations by officers, Carothers v. Alexander, 12 S.W. 4 (Tex. 1889) (where the issue was discussed although estoppel was inapplicable); see also American Savings & Loan Assoc. v. Musick, 517 S.W.2d 627 (Tex. Civ. App.— Houston [14th Dist.] 1974), rev'd on other grounds, 531 S.W.2d 581 (Tex. 1975).

Source:

Citations in the Comment.

History:

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