

Question 3 – July 2019 – Selected Answer 1

(A) Denise is the Owner of Lot 8

Denise is the true owner of Lot 8.

The traditional law regarding property is first in time, first in right. However, Texas has a pure-notice recording statute to protect bona fide purchasers for value (BFP). In Texas, a BFP that buys real property without notice of prior or conflicting ownership, takes good title to the property. Notice comes in most often through record notice (e.g., recording of a deed in the county in which the real property sits) or inquiry notice (e.g., obvious signs that there is another owner that occupies or lays claim to the property). A wild deed does not provide record notice. Notice can also be simply knowledge or awareness that someone else owns or claims to own the property. In Texas, a quitclaim deed gives the purchaser notice of conflicting claims.

Once a BFP has purchased the house, subsequent purchasers, even those with notice, are protected under the "Shelter Doctrine".

Here, Denise is sheltered by Becky's status as a BFP from Alice's claim to Lot 8. When Becky purchased the lot, she paid value and did not have record, constructive, or inquiry notice of Alice's ownership. Alice put her deed in her safety deposit box instead of recording the deed with the Hill County Real Property Records. No title search conducted by Becky would give notice to Alice's ownership. The developer executed a special warranty deed, which does not provide notice, unlike a quitclaim deed. Alice did not fence in or join Lot 8 with Lot 7. Trees and mowing the grass do not qualify as inquiry notice. From Becky's perspective, the lot was undeveloped and owned by the developer and she did not have inquiry notice. Thus, Becky was a BFP.

When Denise purchased the house from Becky, she inherited Becky's BFP protection under the Shelter Doctrine. Alice's recording of her deed in April 2018, before Denise's purchase, does not prevent the application of the Shelter Doctrine.

Becky is bound by the Deed to Denise to defend Denise from Alice's claim.

(B) Reimbursement

No, the lender is not required to reimburse Denise for the discharge of the federal tax liens because Denise cannot sue under the warranty of title.

A deed can include both future and present warranties. Warranty of title, along with the warranty of Seisin and warranty against encumbrances, are present warranties. Warranty of quiet enjoyment and further assurances are future warranties. A special warranty deed does not include all warranties. The warranty of title assures that the seller has good title to the property, and the buyer may recover if that is not the case. The warranty against encumbrances assures buyer that the property is not encumbered by any easements or liens; unless contracted for, the seller has release the encumbrances before close.

In Texas, a buyer cannot assert damages or reimbursement under the warranty of title or against encumbrances if the buyer had notice, either inquiry or record notice, of a valid lien and did not raise the concern to the seller before closing.

Denise is not protected under the notice statute because the IRS recorded the lien in the Hill County Real Property Records in Feb 2018, before Denise purchased Lot 8. Thus, Denise had record notice of the tax lien. A simple title search would reveal the federal tax lien. Thus, by not aserting requesting title be cleared by the lender at the time of sale, Denise waived her right to be reimbursed for the discharge of the federal tax lien.

Furthermore, if Denise acquire a quitclaim deed from the lender/trustee, Denise has notice under Texas Law.

If Denise is able to sue anyone, under the deed, she is able to sue Becky. The deed provides that Becky and heir successors warrant against others seeking claim on Lot 8.

(C)(1) Under the Texas Property Code, the Trustee must give the parties 21 days notice before the nonjudicial foreclosure sale. If the property is a residence, the parties must be given an additional 20 days to be able to cure the default.

(C)(2) The sale must take place on the first Tuesday of the month; if that Tuesday is a January 1 or July 4, the sale will take place on the first Wednesday of the month.

(C)(3) The sale must take place between 10am to 4pm.

(C)(4) The sale must take place at the country courthouse in which the real property resides; here, the sale must take place at the Hill County Courthouse.

Question 3 – July 2019 – Selected Answer 2

1.

(A) Denise is the true owner of Lot 8 because of the Shelter Rule.

At issue is who owns a property between an unrecorded purchaser, a recorded purchaser who was foreclosed on, or the buyer at the foreclosure sale. In Texas, the recording statute is a pure notice statute, meaning a purchaser purchases in good faith and for value prevails over a previous conveyance if they do not have notice of that conveyance. This notice can be actual or constructive. A person is put on actual notice if the previous deed is recorded or if they are told about the previous conveyance. A person is put on constructive notice if there are facts to believe that someone else is claiming they own the land. Becky was probably not put on notice that Alice owned the land because she did not have actual or constructive notice that she owned it. The deed was not recorded and Alice probably did not do enough to the lot to put Becky on constructive notice. There was no fence around the property and no buildings or dwellings to evidence ownership. The only acts Alice did to the property were mow the lawn and plant some trees, both of which are not enough to put a person on constructive notice.

Once Becky defaulted on the note, the lot was sold to Denise. A purchaser from a foreclosure sale is not a bona fide purchaser and is not protected by the recording statute by themselves. However, when they purchase from a bona fide purchaser, they have all rights the bona fide purchaser had--this is known as the Shelter Rule. Thus, because of the Shelter Rule, even though Denise would have had notice of Alice's claim because Alice finally recorded the deed, the conveyance to Denise will prevail over Alice's claim.

(B) Lender is not obligated to reimburse Denise for the payment of the federal tax lien.

At issue is whether the foreclosing party must reimburse the buyer for superior liens on the property. A buyer at a foreclosure sale takes the property as it is. A foreclosure sale will extinguish the liens on the property that are inferior to the foreclosing interest, but not the superior ones. A federal tax lien takes superior status over a deed of trust on a property. Once the deed of trust was foreclosed, it did not extinguish the tax lien and Denise took the property subject to the lien.

(C) Nonjudicial Foreclosure Requirements are as follows:

(1) Notice of sale must be given to the applicable party or parties 21 days before the sale.

(2) The sale must be held on Tuesday.

(3) The sale must be hold between the hours of 10 am to 4 pm.

(4) The sale must be held at the courthouse in the county where the property is located or any other place the county has designated as proper.