

Common Research Mistakes Surveyors Make (Seniority of Title)

by
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I am often involved in litigation involving surveying services and research mistakes. (I must also admit that in excess of forty years of practice, I have made my share of mistakes performing record research.) The are five common mistakes often made by surveyors when researching the records. The first article will explain the common mistake made by surveyors when determining senior title.

Many surveyors are under the misunderstanding that once a person conveys property, they cannot subsequently convey good title in the same property to another person. This is never true. In fact, there is not a single state recording act that would place senior title with the first grantee unless the grantee took immediate steps to record the deed or take possession of the property.

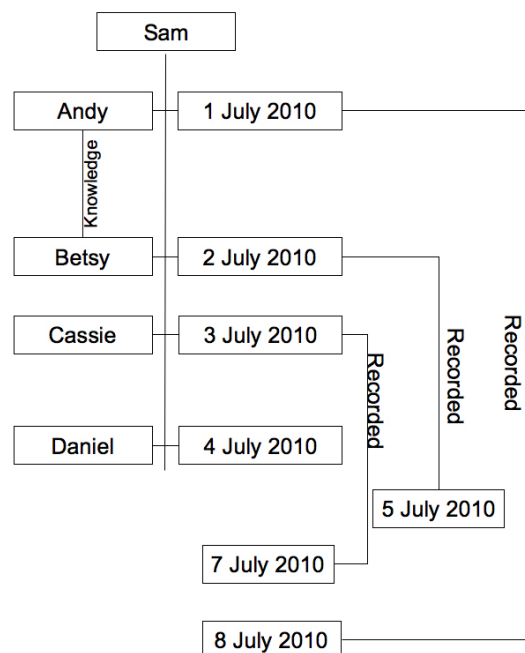
The recording acts in all states fall into one of three general categories of statute: 1) Race, 2) Notice, and 3) Race-Notice. The general definition of each category is the following:

Race — The first person to record their deed has senior title regardless of the sequence the conveyances were made or the knowledge a grantee had of an earlier conveyance.

Notice — The last conveyance made where the grantee did not have notice of an earlier conveyance has senior title

Race-Notice — The first person to record their deed who was conveyed the property without notice of an earlier conveyance has senior title.

Consider the following example: Sam conveys a lot to Andy on 1 July 2010. A short time later, Andy tells Betsy that he purchased the lot from Sam. Betsy goes to Sam and offers to buy the same lot that Sam sold to Andy. Even after Sam explains to Betsy that he has already conveyed the lot to Andy, Betsy insists of paying money to Sam in order to obtain a deed to the lot. Sam, with marginal ethics, goes for the money and conveys the same lot to Betsy on 2 July 2010 that was previously sold to Andy. Sam now realizes he can make a considerable profit if he keeps conveying the same lot to other individuals without knowledge of an earlier conveyance of the lot. Consequently, Sam conveys the same lot to Cassie on 3 July 2010. On 4 July, Sam conveys the same lot to Daniel.



On 5 July, Betsy records her deed. (Thereby providing “the world” constructive notice of a conveyance of the lot from Sam.) On 7 July, Cassie records her deed. On 8 July Andy records his deed. Daniel never records his deed.

Even though Andy was the first conveyance from Sam, he does NOT have senior title under any of the recording acts. Under the “race” category of recording act, Betsy has senior title. Betsy was the first to record a deed to the lot. Under the “notice” category of recording act, Daniel has senior title. Daniel was the last person to be conveyed the lot without notice of an earlier conveyance. In fact, Daniel will have senior title under a notice category of recording act even though Daniel never records his deed. Under a “race-notice” category of recording act, Cassie has senior title. Cassie was the first person to record a deed from Sam that was delivered to her without notice of an earlier conveyance.

As can be seen from this example, without knowledge of the category of a state’s recording statute, surveyors will often terminate their record research prematurely or will mistakenly determine senior title resides with the wrong person in a situation such as an overlap.

A surveyor should take the time and determine what category of recording statute is effective in their state. At least two states have more than one category of recording act in effect.

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