

# NOTICE

## (The New Texas Title Standards)

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### TS 4.40. Notice Recording System

- **STANDARD** – 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.
- Common Law Rule – First in time is first in right.
- Still the rule, except as changed by statute.



# Types of Recording Statutes

- RACE – First person to record wins, regardless of notice.
- RACE – NOTE: Subsequent purchaser must acquire without notice and record first.
- NOTICE: Subsequent purchaser who acquires without notice has priority, regardless of who records first, if ever.
- Texas has a notice recordation statute. Texas Property Code 13.001.

## Texas Property Code 13.001.

### Sec. 13.001. VALIDITY OF UNRECORDED INSTRUMENT.

- (a) A conveyance of real property or an interest in real property or a mortgage or deed of trust is void as to a creditor or to a subsequent purchaser for a valuable consideration without notice unless the instrument has been acknowledged, sworn to, or proved and filed for record as required by law.
- (b) The unrecorded instrument is binding on a party to the instrument, on the party's heirs, and on a subsequent purchaser who does not pay a valuable consideration or who has notice of the instrument.
- (c) This section does not apply to a financing statement, a security agreement filed as a financing statement, or a continuation statement filed for record under the Business & Commerce Code.

Acts 1983, 68th Leg., p. 3495, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1989, 71st Leg., ch. 162, Sec. 4, eff. Sept. 1, 1989.

## How a Notice Recordation Statute Operates

If the subsequent instrument is executed and delivered before the prior instrument is filed for record, and if the subsequent purchaser is a BFP (see 4.90), then the subsequent instrument prevails even if the prior instrument is filed for record before the subsequent instrument is filed.

## Filing and Recording

- An instrument must contain an original signature and an acknowledgment or jurat to be recorded. An unexecuted instrument can be attached to a recordable affidavit. A recordable instrument imparts constructive notice upon filing. Subsequent defects in indexing and recording do not impair constructive notice.
- Prior to 1987 the county clerks records were divided among many different books, for example Deed, Probate, Deed of Trust, Judgment Lien, etc., each with separate indices. After 1987 clerks have the option to consolidate records into the "Official Public Records (OPR)."
- County clerks are required to maintain alphabetical indices, direct- reverse or grantor-grantee for each type of instrument maintained. If an instrument is executed by a representative, then both the agent and the principal's name should be indexed.
- Caution: Since the instrument imparts constructive notice upon filing, the constructive notice begins prior to the time the instrument is indexed or recorded.

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