



Florida's Recording Act & Competing Priorities (Deeds & Liens)

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NOTICE: GENERAL OVERVIEW



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THREE TYPES OF NOTICE:

Actual

- Party has actual knowledge of the facts in question.

Implied

- Party had a duty to make **inquiry** regarding facts in question and the means to do so.

Constructive

- Similar to implied notice, but arises by operation of law under recording statute.



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CONSTRUCTIVE NOTICE: Relevant Florida Statutes

§695.01, F.S.
Conveyances and liens to be recorded.

- *No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for valuable consideration and without notice, unless the same be recorded according to law; . . .*

§695.11, F.S. Instruments deemed to be recorded at time of filing.

- Determines when a document is deemed to be recorded, which is at the time the consecutive official register numbers required under §28.222 have been affixed.

§28.222, F.S. Clerk to be county recorder.

- The clerk of the circuit court shall be the recorder of all instruments that are required or authorized to be recorded, which shall be recorded in the "Official Records" as one general series.



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CONSTRUCTIVE NOTICE: Relevant Florida Caselaw

- *Van Eepoel Real Estate Co. v. Sarasota Milk Co.*, 129 So. 892 (Fla. 1930)
- *Sapp v. Warner*, 141 So. 124 (Fla. 1932)
- *Argent Mortgage Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796 (Fla. 5th DCA 2010)
- *Mayfield v. First City Bank*, 95 So.3d 398 (Fla. 1st DCA 2012)
- *Regions Bank v. Deluca*, 97 So. 3d 879 (Fla. 2^d DCA 2012)



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Van Eepoel Real Estate Co. v. Sarasota Milk Co., 129 So. 892 (Fla. 1930)

- **Brief Facts:**

- Lien priority dispute between mortgagee and mechanic's lien claimant.
- Landowner executed mortgage on 11/25/1925, recorded on 4/21/1926
- Mechanic's lienor, in privity with owner, commenced work on 4/12/1926, completed work on 4/16/1926 and recorded COL on 7/7/1926

- **Issue:** Whether a Purchase Money Mortgage ("PMM") recorded 5 months after its execution and delivery **and** after work commenced, was completed by a mechanic's lienor, but prior to a mechanic's lien recorded, without notice of the PMM has priority.

- **Holding:** Florida Supreme Court held in favor of mechanic's lienor based upon the established rule that *[s]ubsequent purchasers or creditors for value and without notice of a prior unrecorded deed or mortgage to a third person are not affected thereby.*



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Sapp v. Warner, 141 So. 124 (Fla. 1932)

- **Brief Facts:**

- In guardianship proceedings for minor, minor's duly appointed guardian sold & conveyed minor's real property to third party, with court order confirming the sale.
- Property was purchased for \$20,000 split into two unrecorded (lost or misplaced) PMMs.
- Land was subsequently subdivided into lots and blocks, which were sold to numerous (about 200) defendants whom challenged foreclosure of unrecorded mortgages.

- **Issue:** Whether a party is charged with constructive notice of an interest in land based upon matters appearing in the public records, where a deed stemming from guardianship proceedings created a duty of inquiry into those guardianship proceedings to determine whether it had been duly authorized, which would have also reflected the existence of the unrecorded mortgage(s).

- **Holding:** The Florida Supreme Court held that *implied actual notice was warranted by the fact that the persons having constructive notice of the record of the guardian's deed must in any event have looked to the proceedings which were necessary to support it, and accordingly must be charged with implied actual notice of what an inquiry suggested to a prudent man by those proceedings would have disclosed.*



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Argent Mortgage Co., LLC v. Wachovia Bank, N.A., 52 So.3d 796 (Fla. 5th DCA 2010)

- **Brief Facts:**

- On 8/31/2004, Borrowers executed mortgage in favor of Olympus Mortgage, recorded on **1/5/2005**, and subsequently assigned to Wachovia Bank;
- On 12/10/2004, Borrowers executed mortgage in favor of Argent Mortgage, recorded on **1/31/2005**;
- Both mortgages went into default and both lenders filed foreclosure action, which were consolidated and dispute over priority ensued.
- Trial court held in favor of Wachovia and declared Florida to be a race-notice jurisdiction.

- **Issue:** Whether amendment to §695.11, F.S. made Florida into a race-notice jurisdiction, or it remained a pure notice jurisdiction with regard to determining lien priority.

- **Holding:** 5th DCA held that Florida remains notice jurisdiction and therefore, Argent had priority over the Wachovia Bank mortgage because it was a subsequent mortgagee for value without notice of Wachovia's mortgage.



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Mayfield v. First City Bank, 95 So.3d 398 (Fla. 1st DCA 2012)

- **Brief Facts:**

- In October, 2009, the Mayfields obtained title to Lot 2 via WD, together with PMM (WD and PMM recored on 11/2/2009);
- In 2006, unbeknownst to the Mayfields, title to Lot 2 had been conveyed by their same grantor to another party ("W&A"), that also obtained PPM (hereinafter collectively referred to as the "First Deed & Mortgage");
- On July 6, 2006, the Clerk recorded the First Deed & Mortgage;
- Clerk realized an error made in the recording process and voided the First Deed & Mortgage from the official records about **73 minutes** after recoding it, intending to re-record, but failed to do so and mistakenly recorded similar instruments regarding another parcel of property.
- In 2010, W&A mortgagee filed a foreclosure action, naming the Mayfields and their lender as defendants;
- Mayfields filed a MSJ and claimed to be BFPs without notice.

- **Issue:** Whether the First Deed & Mortgage provided constructive notice, when it was only recorded and could only be found of record for 73 minutes on July 3, 2006.

- **Holding:** Unambiguous language of §695.11, F.S. controls such that constructive notice attached at time the First Deed & Mortgage were recorded on July 6, 2006. No requirement to remain recorded, rather, just need to be recorded according to law, which occurred.



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Regions Bank v. Deluca, 97 So.3d 879 (Fla. 2^d DCA 2012)

- **Brief Facts:**

- From June '03 – June '05, Owners A owned the "Olde Cypress Property."
- '03 Owners A gave 1st & 2nd mortgages, in favor of AmSouth, which later merged into Regions Bank;
- '05 Owners A obtained a new mortgage from Regions to purchase the "Bayfront Gardens Property" with the Olde Cypress Property included as collateral.
- Mortgage was recorded and indexed, but only included the legal description for the Bayfront Gardens Property. Page 2 of mortgage omitted the legal descriptions for either property and did not reference or incorporate Exhibit A by reference. Exhibit A was located at page 12 of the mortgage, just prior to the attached Riders. It included the legal descriptions for both parcels.
- On June 28, 2005, Owners A sold the Olde Cypress Property to the Delucas, whom obtained and recorded a PMM, in favor of JP Morgan.
- '09 Regions Bank filed a foreclosure action of both properties and named Delucas and JP Morgan as partial defendants, whom filed affirmative defense asserting that they were BFPs w/out notice.



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Types of Recording Act Jurisdictions

Pure Race

- Race to record.
- First in time, first in right.

Pure Notice

- Analysis hinges on notice, actual or constructive, not just timing of recording.
- Subsequent BFP for value without notice will prevail.

Race-Notice Hybrid

- Subsequent BFP without notice **AND** who records first will prevail.



BASIC FLORIDA LIEN PRIORITY IN PURE NOTICE ACT JURISDICTION



CONSTRUCTIVE NOTICE

Application in Condo Context

- **Condo Act, Ch. 718, F.S.**
- Recorded Condo Declaration - §718.104, F.S. & §695.01, F.S. – simply by its recordation, a condo unit owner is charged with constructive notice of the contents of the Condo Declaration, including, without limitation, use restrictions, assessments obligations, easements, amendment procedures, leasing limitations.
- **NOTE:** Constructive notice and lien priority are not always parallel. For example, NOC & COL



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SOME STATUTORY LIENS TO CONSIDER

RE: LIEN PRIORITY

Construction Claim of Lien

- Attach at time of recordation (§713.07, F.S.) **UNLESS** a Notice of Commencement (“NOC”) is recorded.

Condo Claim of Lien

- Relates back to recording of Condo Declaration with carve out for first mortgages of record. See §718.116(5)(a), F.S.

Super-Priority Lien

- **Examples:** Tax Liens have super-priority over other liens, including previously recorded mortgages. See §197.122, F.S.
- PACE Financing Liens §§ 163.08 – 163.087 F.S.



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EXAMPLE 1: How Florida's Pure Notice Recording Act Can Impact Priority

- Seller conveys real property to Buyer A on Monday, April 1, 2025;
- Buyer A does not record the deed;
- Seller fraudulently conveys the same real property to Buyer B on Wednesday, April 3, 2025;
- Buyer B immediately records the deed and had no knowledge of Buyer A.

Which Buyer has priority?



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EXAMPLE 1: How Florida's Pure Notice Recording Act Can Impact Priority

ANSWER: Buyer B has priority if they qualify as a BFP because Buyer B:

- Paid valuable consideration;
- Lacked notice (actual, implied and constructive);
- Recorded first.



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EXAMPLE 2: How Florida's Pure Notice Recording Act Can Impact Priority

- **4/1/2025** – Nick Jagger signs a \$100,000 mortgage to ABC Mortgage, Inc.
- **4/10/2025** – Nick Jagger signs a \$75,000 mortgage to XYZ Mortgage, Inc.
- **4/11/2025** – ABC Mortgage, Inc. records the \$100,000 mortgage, dated 4/1/2025
- **4/15/2025** – XYZ Mortgage, Inc., records the \$75,000 mortgage, dated 4/10/2025

Which recorded mortgage has priority?



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EXAMPLE 2: How Florida's Pure Notice Recording Act Can Impact Priority

- **4/1/2025** – Nick Jagger signs a \$100,000 mortgage to ABC Mortgage, Inc.
- **4/10/2025** – Nick Jagger signs a \$75,000 mortgage to XYZ Mortgage, Inc.
- **4/11/2025** – ABC Mortgage, Inc. records the \$100,000 mortgage, dated 4/1/2025
- **4/15/2025** – XYZ Mortgage, Inc., records the \$75,000 mortgage, dated 4/10/2025

ANSWER: XYZ Mortgage, Inc. has priority because Florida's recording act is a pure "Notice" jurisdiction.



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Q & A

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Thank You!
for attending

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