

THE LAW IS THE LAW

(In Texas)

Tangible
Negotiable Instrument

Personal Property

The following IS NOT LEGAL ADVICE. It IS NOT SUBSTITUTION FOR LEGAL COUNSEL NOR SHOULD ANY OF THIS BE CONSTRUED THAT WAY.

But it helps to understand.

Tangible
Security Instrument
(Deed of Trust)

Real Property

Read it, look for yourself. Maybe read its cites?

Sources: [THE RECORDING STATUTE IN TEXAS \(AND THE INNOCENT PURCHASER DOCTRINE\)](#)
[TEXAS LAW OF ACKNOWLEDGMENTS](#)

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While the negotiable notes themselves are personal property and may be transferred by unrecorded assignment,⁹⁷ the negotiable quality of the note does not govern the lien securing it.⁹⁸

97. South Texas Lumber Co. v. Nicoletti, 54 S.W.2d 893, 896 (Tex. Civ. App. - Beaumont 1932, writ dismissed).

98. McCarty v. Allen, 113 S.W.2d 974, 976 (Tex. Civ. App. - Austin 1938, no writ).

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The owner of a negotiable note secured by a lien on real estate must record his interest in the lien to protect himself against an innocent purchaser.¹⁰⁰

100. McCarty v. Allen, 113 S.W.2d 974, 977 (Tex. Civ. App. - Austin 1938, no writ).

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Recording refers to the process of enrolling or incorporating the instrument into the records of the county clerk.¹⁹⁴¹ An instrument must be recorded correctly and within a reasonable time after filing.¹⁹⁴² Instruments “relating to the same property are recorded in the order that instruments are filed.”¹⁹⁴³

1941. *Vidor v. Rawlins*, 93 Tex. 259, 261-62, 54 S.W. 1026, 1027 (1900).

1942. TEX. PROP. CODE ANN. § 11.004(a)(1) (Vernon 2004).

1943. TEX. PROP. CODE ANN. § 11.004(a)(3) (Vernon 2004). TEX. LOC. GOV'T CODE ANN. § 193.001(a) (Vernon 1999).

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Registration is intended to provide a comprehensive, convenient, and effective method of exhibiting publicly the condition of land titles.³²

The law favors recorded instruments to preserve the stability and certainty of real property titles.³³

32. *McNary v. Reeves*, 461 S.W.2d 127, 131 (Tex. Civ. App. - Texarkana 1970, writ ref'd n.r.e.).

33. *HECI Exploration Co. v. Neel*, 982 S.W.2d 881, 887 (Tex. 1998); *Saunders & Worley v. Hartwell & Chambers*, 61 Tex. 679, 685 (1884); *Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, pet. denied); *Salinas v. Gary Pools, Inc.*, 31 S.W.3d 333, 337 (Tex. App. - San Antonio 2000, no pet.); *Popplewell v. City of Mission*, 342 S.W.2d 52, 56 (Tex. Civ. App. - San Antonio 1960, writ ref'd n.r.e.).

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Public policy requires that matters affecting title of real property be placed upon the public records so that potential purchasers and mortgagees may safely judge the status of the title.³⁴ The Recording Statute is intended to expose the chain of title to inspection by examination of real property records³⁵ and by this means protect innocent junior purchasers and lenders from secret titles and the subsequent fraud attendant to such titles.³⁶

34. *Leonard v. Benford Lumber Co.*, 110 Tex. 83, 87, 216 S.W. 382, 383 (1919); *Moran v. Wheeler*, 87 Tex. 179, 184, 27 S.W. 54, 55 (1894); *Copelin v. Shuler*, 6 S.W. 668, 671 (Tex. 1887); *Hancock v. Tram Lumber Co.*, 65 Tex. 225, 232 (1885); *Henderson v. Pilgrim*, 22 Tex. 464, 476 (1858).

35. *Pondrum v. Gray*, 298 S.W. 409, 410 (Tex. Comm'n App. 1927, holding adopted); *Sanchez v. Telles*, 960 S.W.2d 762, 767 (Tex. App. - El Paso 1997, pet. denied); *Smith v. James*, 54 S.W. 41, 43 (Tex. Civ. App. - 1899, writ ref'd).

36. *Ojeda de Toca v. Wise*, 748 S.W.2d 449, 450 (Tex. 1988); *Moran v. Adler*, 570 S.W.2d 883, 886 (Tex. 1978); *Fleming v. Ashcroft*, 142 Tex. 41, 51, 175 S.W.2d 401, 407 (1943); *Kimball v. Houston Oil Co.*, 100 Tex. 336, 342, 99 S.W. 852, 855 (1907); *Edwards v. Brown*, 68 Tex. 329, 334, 5 S.W. 87, 88 (1887).

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The law exacts from a buyer a duty to place his title of record to entitle him to the full advantage of his purchase,³⁷ and failing to do so, the senior title must yield to a junior interest that the senior owner has assisted to mislead.³⁸ This rule fosters the security of land titles by allowing persons to rely on the apparent status of title as it may appear from the real property registry of the county where the land is located.³⁹ As against an innocent purchaser apparent title becomes title in fact.⁴⁰

37. *Bryan v. Crump*, 55 Tex. 1, 13 (1881); *McEvoy v. Ron Watkins, Inc.*, 105 B.R. 362, 365 (N.D. Tex. 1987).

38. *La Pice v. Key*, 88 Tex. 209, 212, 30 S.W. 867, 867 (1895); *King v. Elson*, 30 Tex. 246, 255 (1867); *McEvoy v. Ron Watkins, Inc.*, 105 B.R. 362, 365 (N.D. Tex. 1987).

39. *Pustejovsky v. K.J.Z.T.*, 124 Tex. 504, 504-05, 79 S.W2d. 1084, 1084 (1935); *Kempner v. Comer*, 73 Tex. 196, 199, 11 S.W. 194, 195 (1889); *Parker v. Coop*, 60 Tex. 111, 114 (1883); *Moran v. Adler*, 570 S.W.2d 883, 886 (Tex. 1978); *Donley v. Youngstown Sheet and Tube Co.*, 328 S.W.2d 192, 194 (Tex. Civ. App. - Eastland 1959, writ ref'd n.r.e.). The registration laws are predicated upon the possibility that a vendor may assign or sell a right or title consistent with his apparent right to sell but exceeding his actual title or right. *Pustejovsky v. K.J.Z.T.*, 124 Tex. 504, 508, 79 S.W2d. 1084, 1086 (1935).

40. *New England Safe-Deposit & Trust Co. v. Harrell*, 39 S.W. 142, 144 (Tex. Civ. App. 1896, writ ref'd).

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The general recording statute is found at TEX. PROP. CODE ANN. § 13.001(a). The Recording Statute provides:

- (1) A conveyance of real property or an interest in real property or a mortgage or deed of trust
- (2) is void
- (3) as to a [lien] creditor
- (4) or to a subsequent purchaser for valuable consideration
- (5) without notice
- (6) unless the instrument has been acknowledged, sworn to, or proved
- (7) and filed of record as required by law.⁴⁵

45. TEX. PROP.CODE ANN. § 13.002(a) (Vernon 2004). *See also Oneok v. Westex Transmission, L.P.*, 2007 WL 547768 (Tex. App. - Amarillo 2007).

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The recording statute has provided a means for notice of ownership in Texas land since the early proceedings of the Republic of Texas (1840).⁶⁰ Prior to the recording statute, our present system of registration was unknown to common law.⁶¹ At the time of the adoption of Recording Statute there existed the related common law “Innocent Purchaser Doctrine”. The Recording Statute supplements but does not replace the Innocent Purchaser Doctrine. The common law Innocent Purchaser Doctrine still has present vitality in many transactions which fall outside the express statutory terms of the Recording Statute.

60. *Alkas v. United Sav. Ass’n of Texas*, 672 S.W.2d 852, 859 (Tex. App. - Corpus Christi, 1984, writ ref’d n.r.e.).

61. *Ball v. Norton*, 238 S.W. 889, 890 (Tex. Comm’n App. 1922, jdgmt adopted).

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Because it is in derogation of common law and equitable principles, the Recording Statute is strictly construed.⁶²

62. *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no writ); *Texas American Bank/ Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *Davis v. Harman*, 29 S.W. 492, 293 (Tex. Civ. App. 1895, no writ).

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Mortgages, vendor's liens, and deeds of trust are subject to registration.⁸³

83. *TEX. PROP. CODE ANN. § 13.001(a)* (Vernon 2004). See also *Moran v. Wheeler*, 87 Tex. 179, 183, 27 S.W. 54, 55 (1894); *Brown v. Thompson*, 79 Tex. 58, 62 (1890); *Wood v. Sparks*, 59 S.W.2d 361, 363 (Tex. Comm'n App. 1933, jdgmt adopted); *Lubbock State Bank v. H.O. Wooten Grocery Co.*, 179 S.W. 1141, 1144 (Tex. Civ. App. - Fort Worth 1915), rev'd on other grounds, 215 S.W. 835 (Tex. Comm'n App. 1919, jdgmt adopted); *Drumm Comm'n Co. v. Core*, 105 S.W. 843, 844 (Tex. Civ. App. 1907, writ ref'd).

However, the better authority is that negotiable notes and the liens that secure them are severable.⁹⁶

96. *McCarty v. Allen*, 113 S.W.2d 974, 976 (Tex. Civ. App. - Austin 1938, no writ); *Hill v. Engel*, 89 S.W.2d 219, 221 (Tex. Civ. App. - Waco 1935, writ ref'd); *Ratliff v. Russek*, 59 S.W.2d 859, 862 (Tex. Civ. App. - El Paso 1933, writ ref'd). But see *Smith v. New Waverly State Bank*, 76 S.W.2d 201, 204 (Tex. Civ. App. - Beaumont 1934, writ dism'd).

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While county clerks are directed not to accept for recordation instruments which are inadequately proved, defects of proof can be subtle and difficult of determination. Instruments will get recorded which are later determined to be inadequately proven. The effect of recording an instrument not proven as required by law is illegal and a nullity.¹⁸⁷¹ The effect is the same as if the instrument had never been recorded. The instrument is not constructive notice of its contents.¹⁸⁷²

1871. Gulf Prod. Co. v. Continental Oil Co., 139 Tex. 183, 195, 164 S.W.2d 488, 494 (1942); Hill v. Taylor, 77 Tex. 295, 299, 14 S.W. 366, 367 (1890); Peters v. Clements, 46 Tex. 114, 122 (1876); Dyson Descendent Corp. v. Sonat Exp. Co., 861 S.W.2d 942, 948 (Tex. App. - Houston [1st Dist.] 1993, no writ); Tandy v. Dickison, 371 S.W.2d 81, 83 (Tex. Civ. App. - Amarillo 1963, no writ).

1872. Hill v. Taylor, 77 Tex. 295, 299, 14 S.W. 366, 367 (1890); Hayden v. Moffat, 74 Tex. 647, 650, 12 S.W. 820, 821 (1889); Taylor v. Harrison, 47 Tex. 454, 457 (1877); Peters v. Clements, 46 Tex. 114, 122 (1876); Boswell v. Farm & Home Sav. Ass'n, 894 S.W.2d 761, 766-67 (Tex. App. - Fort Worth 1994, writ denied).

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An exception to the general rule that only duly-proven instruments impart constructive notice exists when the unproven instrument is adopted by reference by a second instrument which contains sufficient proof.¹⁸⁷⁶ In such a case, the adopted instrument becomes part of the second instrument for all purposes irrespective of the failure of proof of the adopted instrument.¹⁸⁷⁷

1876. See *Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 572 (Tex. 1939).

1877. *Id.*

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Before an instrument may be spread upon the real estate records of a county, its execution must be proven by an acknowledgment.³⁹⁶ Under the recording statutes, county clerks may not accept for recordation any instrument not "acknowledged" (or otherwise proven).³⁹⁷

"Acknowledged", as used in the recording statutes, refers to an instrument

(1) for which a valid ceremony of acknowledgment has occurred and

(2) bearing all elements of a valid certificate of acknowledgment. A material defect in either destroys the eligibility of the instrument for recordation.

1876. See *Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 572 (Tex. 1939).

1877. *Id.*

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Duly Recorded Instrument Constitutes Constructive Notice of Its Contents. While an unrecorded instrument is notice to the immediate parties, their heirs, a subsequent purchaser who does not pay value, and a party with actual notice of the instrument,³⁹⁹ a duly acknowledged and recorded instrument imparts constructive notice of its contents.⁴⁰⁰ By constructive notice, all persons attempting to acquire rights in the affected property are deemed to have notice of the recorded instrument.⁴⁰¹

1876. See *Gulf Prod. Co. v. Continental Oil Co.*, 132 S.W.2d 553, 572 (Tex. 1939).

1877. *Id.*

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In order to invoke the Recording Statute against a senior title, the senior title must have arisen by virtue of a conveyance required or permitted to be recorded.⁷⁴ This is construed to mean any writing that affects title to land.⁷⁵ It will pertain to any character of assignable interest in real property.⁷⁶

74. TEX. PROP. CODE ANN. § 13.001(a) (Vernon 2004). See also *Paris Grocer Co. v. Burk*, 101 Tex. 106, 112, 105 S.W. 174, 176 (1907); *Gaona v. Gonzales*, 997 S.W.2d 784, 786 (Tex. App. - Austin 1999, no writ); *Thompson v. Corbin*, 137 S.W. 157, 160 (Tex. Civ. App. - Texarkana 1940, no writ); *Texas Consolidated Compress & Mfg. Ass'n v. Dublin Compress & Mfg. Co.*, 38 S.W. 404, 409 (Tex. Civ. App. - 1896, no writ); *Prewitt v. U.S.*, 792 F.2d 1353, 1356 (5th Cir. 1986).

75. *Wright v. Lancaster*, 48 Tex. 250, 257 (1877); *Park Central Bank v. JHJ Inv.*, 835 S.W.2d 813, 814 (Tex. App. - Fort Worth 1992, no writ); *Texas American Bank/Levelland v. Resendez*, 706 S.W.2d 343, 345 (Tex. App. - Amarillo 1986, no writ); *Jensen v. Bryson*, 614 S.W.2d 930, 933 (Tex. Civ. App. - Amarillo 1981, no writ); *Turrentine v. Lasane*, 329 S.W.2d 336, 337 (Tex. Civ. App. - Waco 1965, no writ).

76. *Humble Oil & Refining Co. v. Davis*, 282 S.W. 930, 934 (Tex. Civ. App. - Austin 1926), rev'd on other grounds, 296 S.W. 285 (Tex. Comm'n App. 1927, jdgmt adopted).

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The recordation of an instrument not authorized or required to be recorded is a nullity and imparts no constructive notice.⁷⁷

77. Wright v. Lancaster, 48 Tex. 250, 257 (1877); Crosby v. Huston, 1 Tex. 203, 237 (1846); Winchester v. Boggs, 112 S.W.2d 207, 208 (Tex. Civ. App. - Eastland 1937, no writ); Harvey Co. v. Braden, 260 S.W. 655, 660 (Tex. Civ. App. - Waco 1924, no writ).

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**Sources: THE RECORDING STATUTE IN TEXAS (AND THE INNOCENT PURCHASER DOCTRINE)
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