IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

UNITED STATES OF AMERICA,

Appellant

v.

SUSQUEHANNA BANK

Appellee

Case No.: 1:12-cv-3597-ELH

APPELLEE'S BRIEF

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I. Appellate jurisdiction.

The Appellee adopts the appellate jurisdiction statement of the Appellant.

II. Statement of issues and standard of review.

The Appellee adopts the statement of issues and the standard of review of the Appellant.

III. Statement of the case.

The Appellee adopts only the factual portion of the Appellant's statement of the case. The Appellee does not adopt the legal argument embedded within the Appellant's statement of the case, beginning on page 5 of its brief.

At issue in this case is whether the state recording of the federal tax lien on January 10, 2005 takes priority over the deed of trust of Susquehanna Bank, with an effective date of January 4, 2005. The Appellee does not accept the legal argument contained on pages 5-6, which presents the Appellant's singular interpretation of one federal statute.

IV. Argument.

A. Congress has granted priority to Susquehanna Bank's security interest over the tax lien.

1. The plain meaning of the federal statute will determine lien priority.

Statutory interpretation begins with express language, and whether it has a plain and unambiguous meaning when applied to the particular dispute in the case. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 117 S. Ct. 843, 846 (1997). The inquiry ends there if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." *Id.* (quoting *United States v. Ron Pair Enterprises, Inc.,*489 U.S. 235, 240, 109 S.Ct. 1026, 1030 (1989)). "Courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' " *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 461-62, 122 S. Ct. 941, 956, (2002) ((quoting *Connecticut Nat. Bank v. Germain,* 503 U.S. 249, 253–254, 112 S.Ct. 1146 (1992))(internal citations omitted). These principles of statutory construction have been the same for decades. Cf., *McBoyle v. United States*, 283 U.S. 25, 51 S. Ct. 340 (1931) (the plain language of the National Motor Vehicle Theft Act did not include aircraft within its definition of motor vehicles).

In this case, the Court must examine the plain language of sections 26 U.S.C. §§ 6321 and 6323 to determine the relative priority between liens represented by a deed of trust and a federal tax lien. It is the Appellee's contention that the Court's analysis need go no further than the express language of the statutes to conclude that Judge Gordon should be affirmed.

2. Congress has clearly incorporated Maryland recording rules governing lien priority.

The federal government's entitlement to impose a lien for unpaid taxes is a creation of federal statute. 26 U.S.C. § 6321.[1] A different federal statute directs how that federal lien becomes perfected. It becomes perfected and is given priority when it is recorded, pursuant to the applicable state law rules for recording and perfection. 26 U.S.C. § 6323 (f)(1) and (f)(4). In particular, Congress has required that the tax lien be recorded before it is afforded priority in race-notice states, such as Maryland. The relevant sections follow:

> **(1) Place for filing.**--The notice referred to in subsection (a) shall be filed--
>
> **(A) Under State laws.--**
>
> **(i) Real property.**--In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated;
>
> * * * *
>
> **(4) Indexing required with respect to certain real property.**--In the case of real property, if--
>
> **(A)** under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and
>
> **(B)** there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens, then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and

[1] 26 U.S.C. § 6321.- If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

> recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.

Here, Congress has directed that the I.R.S. follow state rules for perfecting its lien in "race-notice" states, such as Maryland. See, *In re Levitsky*, 401 B.R. 695, 720 (Bankr. D. Md. 2008) (describing Maryland as a race-notice state). The tax lien does not acquire any priority unless it is recorded, pursuant to Maryland state law. In this respect, the I.R.S. must follow the recording rules of all 50 states where it can acquire tax liens, if it seeks a lien position relative to other recorded interests.[2] This provision is part of a uniform set of rules created by Congress that incorporates and accommodates state lien and recording rules.

It is the federal government's compliance with Maryland recording rules that governs when, and if, the government lien has priority over a lender and other lien holders. Section § 6323(a) is simple in proscribing that absent compliance with Maryland's recording statute, the federal government will not obtain lien priority over four (4) classes of property interest:

> **(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.**--The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.
>
> 26 U.S.C. § 6323(a).

In very plain and unambiguous language, Congress has decreed no lien priority for the I.R.S. over the equitable rights of a purchaser,[3] a mechanic's lienor,[4] a judgment lien creditor[5] and the holder of a security interest unless and until it has complied with Maryland recording rules.

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[2] Many states have enacted a form of race-notice recording statutes, including California, Colorado, Georgia, Idaho, Indiana, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming. See, Ray E. Sweat, *Race, Race-Notice and Notice Statutes: The American Recording System,* Prob. & Prop., May/June 1989, at 27. In the majority of these states, a recorded deed is effective on its recording date. In other states, this is not the case. For example, in Washington the effective date of the deed is the "minute it is filed for record." Wash. Rev. Code Ann. §65.08.070.

[3] *Coe v. Hays*, 105 Md. App. 778, n. 1, 661 A.2d 220, n.1 (1995)(Under the doctrine of equitable conversion, a conversion occurs a contract of sale is formed and becomes specifically enforceable, vesting the seller with equitable rights to the purchase price and the buyer with equitable title to the property.).

[4] *Winkler Const. Co., Inc. v. Jerome*, 355 Md. 231, 239-40, 734 A.2d 212, 217 (1999)(Upon a showing of probable cause that the Plaintiff may be entitled to a mechanics lien the court may enter an interlocutory order establishing a mechanics lien and schedule a trial. At the conclusion of trial, a judgment must be entered either continuing the lien established by earlier interlocutory order or denying the lien.).

[5] *Chicago Title Ins. Co. v. Mary B.*, 190 Md. App. 305, 988 A.2d 1044 (2010), *reconsideration denied* (Mar. 11, 2010), *cert. granted*, 415 Md. 38 (2010*), dismissed,* December 6, 2010..

Congress has its definition of a "security interest" for purposes of this lien analysis. 26 U.S.C. § 6323(h)(1) reads:

> The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

26 U.S.C. § 6323 (h)(1).

Congress requires that two questions be answered before a bank lien will be defined, for federal lien priority purposes, as a "security interest." First, the real property subject to the lien must be "in existence." In this case, there has never been a question that the real property existed on January 4, 2005, when the loan was made. Second, the date when the bank's lien became protected against a money judgment lien must be fixed. And here is the rub point for the Appellant: Congress had decreed that fixing the date when a bank lien is protected against operation of a money judgment is to be determined "under local law." That means Maryland's law governing the effective date of a bank's security interest.

A lender's relative lien priority under Maryland law is governed by Md. Code Ann., Real Prop. § 3-201. It anticipates that a lien instrument is executed at the time a loan is made, and that it is then recorded in the Land Records for the county where the property is located. The statute anticipates that the execution date and recording date for a bank lien is not simultaneous, and so it unambiguously defines the "effective date" for purposes of lien priority, as follows:

> The effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed, whichever is later. Every deed, when recorded, takes effect from its effective date as against the grantor, his personal representatives, every purchaser with notice of the deed, and every creditor of the grantor with or without notice.

The recording statute is simple and clear- the effective date of a lender's lien instrument in Maryland is the later of the date it was executed, or the date stated in the document. Every lien instrument has but one "effective date," and it is never the date of recording.

In Maryland, the date of recording is relevant only to determine the lien instrument's priority relative to judgment creditors, and others. If an instrument is never recorded, it cannot exercise the "effective date" to gain priority. And when it is recorded, the "effective date" for lien priority against a judgment lien arising from an unsecured obligation is the later of the last acknowledgment or date stated in the instrument.

And this is where the Appellant mischaracterizes the question presented in this case. At page 5 of its brief, the Appellant makes reference to the "date of delivery" of the deed, and a legal fiction that a lien is "'deemed' to have been recorded earlier than it was actually recorded." Neither event determines the "effective date" of a bank lien instrument, in Maryland. Every instrument has but one recording date. Maryland simply does not determine lien priority by recording date. It is merely the trigger by which the "effective date" determines lien priority relative to other items filed in the land records and the tax lien indices.

In this case, the clear and unambiguous operation of the federal and state laws say that the effective date of the Susquehanna Bank lien is January 4, 2005. That is the date of acknowledgment, and that is the instruments priority date relative to a state judgment lien arising from an unsecured obligation. This is the date which Congress has fixed for the comparison of a Maryland lender's lien priority with the relative priority of a federal tax lien.

Congress has decreed that the federal tax lien must be recorded, in compliance with Maryland recording statutes, before it can have any relative lien priority. That relative priority is fixed when it is recorded in the courthouse lien index. In this case, the I.R.S. recorded on January 10, 2005, six days after the effective date attained by Susquehanna Bank's lien instrument.

It is by operation of the unambiguous federal law, as it incorporates Maryland law, that Susquehanna Bank has lien priority over the Appellant. The statutory scheme is not reasonably construed in any other manner. For this simple reason, Judge Gordon's grant of summary judgment should be affirmed.

3. The Appellant's reading of 26 U.S.C. § 6323 is grammatically incorrect.

The Appellant must inject ambiguity where there is none. To do this, the Appellant creates a strained interpretation of the statute which it labels "unambiguous." The Appellant argues that the bankruptcy court

misread the 26 U.S.C. § 6323 definition of "security interest." Specifically, the Appellant argues that Judge Gordon did not give the proper effect to the phrases "*at such time*" and "*has become protected*." Appellant's Brief at 7. The Appellant argues that "*at such time*" refers to the date and time that the Notice of Federal Tax Lien was filed. Further, the Appellant argues that "*has become protected*" refers to the date and time when the Susquehanna deed of trust was recorded. Appellant's Brief at 7. The argument is patently confusing because it is grammatically incorrect. A brief discussion of the sentence structure used by Congress will highlight this simple conclusion.

"*At such time*" does not refer to the date and time that the Notice of Federal Tax Lien was filed. It refers instead to the date and time that the bank's security interest comes into being, under Maryland law. Here is the entire provision:

> A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

The subject of the sentence is bank's security interest, and not the government's tax lien. The verb in this sentence is "*exists*." It is the bank's security interest that "*exists*."

The verb is followed by the prepositional phrase "*at any time*." A prepositional phrase can perform one of three functions. It can act as an adjective modifying a noun[6], as an adverb to modify a verb[7], or as a nominal when used in a conjunction with the verb form *to be*[8]. In this case the prepositional phrase is acting like an adverb modifying the verb. It is acting on the word "*exists*," and it is describing the span of time within which the security interest may come into being.

The prepositional phrase "*at any time"* is followed by the conjunction "*if*," which begins a conditional clause expressing the elements necessary for a security interest to come into being at a fixed moment within the broader span of time. Like the prepositional phrase "*at any time*," the phrase "*at such time*" is acting as an

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[6]Ex: Look at the car *with the bike rack*,
[7]Ex: The dog runs *after the cat*.
[8]Ex: My house is *next to the stadium*.

adverb modifying the verb "*exists*." They modify the same verb. The former declares that a security interest may come into being, while the latter describes the moment it becomes fixed in time.

Thus, the phrase "*at such time*" refers to the fixed moment in time when a security interest exists, upon satisfaction of the "*if*" conditions. It is upon satisfaction of the "*if*" conditions that the inchoate interest that can exist "*at any time*" becomes "*at such time*."

The Appellant also takes the phrase "*has become*" out of context. The Appellant contends that the phrase "*has become*" limits security interests to those in existence as a perfected lien before the Notice of Federal Tax Lien is filed. Appellant's Brief. at 8. The Appellant reads the phrase "*has become*" without giving the words that follow their grammatical meaning.

The phrase "*has become*" is part of a larger sentence fragment that reads, "…the interest *has become* protected under local law against a subsequent judgment lien arising out of an unsecured obligation…" In this fragment, the word "*interest,*" referring to Susquehanna's security interest, is the subject followed by the verb phrase "*has become*." The phrase "*has become*" is a present perfect verb phrase that designates action which began in the past, but which continues into the present, or the effect of which continues. The present perfect verb phrase is followed by adjective "*protected*." This adjective describes what the interest "*has become*." Read together, the phrase the "*interest has become protected*" informs that the bank's interest was protected in the past and continues to be protected to this day, as of a date certain. The sentence then fixes that date, with reference to Maryland law.

The prepositional phrase "*under local law*" directs the reader to Maryland law to determine when and how the bank's interest "*has become protected*." As is discussed in the preceding section, it is the date of last acknowledgement, January 4, 2005, that provides this benchmark.

Application of Maryland's recording statute to give a security interest priority over a judgment lien is illustrated in *Chicago Title Ins. Co. v. Mary B.*, 190 Md. App. 305, 988 A.2d 1044 (2010), *reconsideration denied* (Mar. 11, 2010), *cert. granted*, 415 Md. 38 (2010*), dismissed,* December 6, 2010. In that case a title insurance company and a bank, which held a deed of trust securing a loan on real property, sued for, among other things, a judgment declaring that it had a lien against the property superior to that of an intervening judgment

creditor. The operative facts of that case are that the plaintiff bank failed to record its deed of trust until approximately two years after it had been executed as part of a refinancing. During the intervening two years, the defendant, without knowledge of bank's deed of trust, obtained a judgment and writ of execution on the property. In holding that the bank had the superior lien the court stated:

> A deed that has been recorded, as the DOT was on October 9, 2007, is effective from its effective date-here, July 15, 2005-as against "every creditor of the grantor (…) with or without notice." RP § 3-201 (emphasis added). This language plainly means that a recorded deed of trust is effective against any creditor of the person who granted the deed of trust as of the date the deed of trust was delivered (not the date it was recorded) regardless of whether the creditor did or did not have notice of the deed of trust at any time.

Id. at 305, 988 A.2d at 1050.

Thus, under part A of 26 U.S.C. § 6323 (h)(1), a security interest comes into exist under Maryland law on the date of the last acknowledgement or the date stated in the deed, once the deed has been recorded. The date stated in the Susquehanna IDOT is January 4, 2005. Once recorded, as was done here on February 11, 2005, the Susquehanna IDOT is *protected* from January 4, 2005, "against the grantor, his personal representatives, every purchaser with notice of the deed, and every creditor of the grantor with or without notice." Md. Code Ann., Real Prop. § 3-201. The statute cannot be reasonably construed in any other manner, providing another basis for affirming Judge Gordon's grant of summary judgment in favor of the Appellee.

B. If the court does determine that 26 U.S.C. § 6323 is ambiguous, the statute still operates to give priority to Susquehanna Bank.

If a statute is ambiguous, the court must interpret the statute in a way "which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and the general purposes that Congress manifested." *Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 248 (4th Cir. 2004)(citing*United States ex rel Wilson v. Graham County,* 367 F.3d 245, 248 (4th Cir.2004)(quoting *Comm'r v. Engle,* 464 U.S. 206, 217, 104 S.Ct. 597 (1984))). The court will "look beyond the language of the statute to the legislative history for guidance." *Holland v. Big River Minerals Corp.*, 181 F.3d 597, 603 (4th Cir. 1999)(quoting *Stiltner v. Beretta U.S.A.* Corp., 74 F.3d 1473, 1482 (4th Cir.1996) (en banc)).

The court need only examine the House Report on the Federal Tax Lien Act of 1966. The House Report states, "[F]or purposes of subsection (h)(1) [of 26 U.S.C. 6323], a security interest becomes protected *against a subsequent judgment lien* on the date on which all actions required under local law to establish the priority of the security interest against *such a judgment lien have been taken*…" H. Rep. No. 1884, 89th Cong. 2d Sess. 48 (1966)(emphasis added). It further provides, "[t]he priority granted a security interest over a tax lien under any provision of section 6323 or section 6324 is never greater than the priority accorded such security interest, under local law, against a *subsequent judgment lien arising out of an unsecured obligation*." *Id.* (emphasis added).

Maryland case law goes a step further, and even provides that a previously executed but unrecorded deed of trust will prime a subsequent judgment lien. This is true because:

> [A] judgment creditor is not in the position of a *bona fide* purchaser, and his [or her] claim is subject to prior, undisclosed equities. 'He [or she] is neither in fact nor in law a *bona fide* purchaser, and must stand or fall by the real, and not the apparent rights of the defendant in the judgment.

Washington Mut. Bank v. Homan, 186 Md. App. 372, 394, 974 A.2d 376, 389 (2009)(quoting *Himmighoefer v. Medallion Indus., Inc.*, 302 Md. 270, 280, 487 A.2d 282, 287 (1985))(internal citations omitted). Failing to record a deed of trust pursuant to Md. Code Ann., Real Prop. § 3-101, deprives the deed of trust of its legal effect only to subsequent bona fide purchasers. *Stebbins-Anderson Co. v. Bolton*, 208 Md. 183, 117 A.2d 908 (1955). A judgment lien is not a subsequent bona fide purchaser. *Caltrider v. Caples*, 160 Md. 392, 153 A. 445 (1931)(Judgment creditor" is not "bona fide purchaser" of debtor's land.); *Knell v. Green St. Bldg. Ass'n*, 34 Md. 67, 68 (1871)("A judgment creditor is not a purchaser for value").

Operation of this principle of law is illustrated in *Stebbins-Anderson Co. v. Bolton*, 208 Md. 183, 117 A.2d 908 (1955). In that case, a couple named Weal purchased four lots on September 2, 1952 for the purpose of building a home. *Id.* at 186, 117 A.2d 909. A deed was executed on September 18, 1952 and recorded. *Id.* On September 30, 1952 the Weals entered into a contract of sale whereby the lots would be conveyed to a construction company who agreed to build the home. *Id.* On the same date a second, a second contract of sale was entered into whereby the construction company would convey the lots back to the Weals after the home construction was complete. *Id.* The contracts were not recorded. *Id.*

On January 26, 1953, the Weals executed a deed of the lots to the construction company. *Id.* The deed was recorded in land records. *Id.* Also on January 26, 1953, the Weals and the construction company jointly executed a mortgage. The mortgage was recorded and the proceeds were paid to the construction company for use in building the Weals' home. *Id.* at 187, 117 A.2d 910. On May 21, 1953, the Stebbins-Anderson Co. gave a mortgage to the construction company which was secured by other lots owned by the construction company. *Id.* In connection with this mortgage, the construction company also executed a confessed judgment note. *Id.* On August 6, 1953, Stebbins-Anderson Co. entered the confessed judgment note. *Id.* On September 4, 1953, the construction company abandoned work on the Weals home and conveyed the lots back to the Weals. The Weals did not have knowledge of the confessed judgment note until after the deed to them was recorded. *Id.*

The Weals ordered the materials and attempted to complete the unfinished house. *Id.* Mechanics' liens were subsequently filed for the materials used to construct the house. *Id.* On March 29, 1954, the holder of the mortgage on the Weals property instituted foreclosure proceedings.

The auditor's account of the foreclosure sale disallowed Stebbins-Anderson Co. judgment. The proceeds of the sale were apportioned to the mechanics' lien claimants. *Id.* at 186, 117 A.2d at 909. Stebbins-Anderson Co. filed exceptions to the auditor's account contending that it was entitled to the entire surplus resulting from the mortgage sale. *Id.* The Circuit Court overruled the exceptions and Stebbins-Anderson Co. appealed. *Id.*

The Court of Appeals held that the Stebbins-Anderson Co. judgment did not attach to the lots. The judgment attached only to the construction company's interest in the lots at the time the judgment was recorded. The Court of Appeals stated:

> A judgment creditor 'stands in the place of his debtor, and he can only take the proeprty [sic] of his debtor, subject to the equitable charges to which it was liable in the hands of the debtor, at the time of the rendition of the judgment." This has been the law at least since the decision in Hampson v. Edelen, 1807, 2 Har. & J. 64. Except where modified by statute it is the rule in other states. It is an application of the familiar doctrine of equitable conversion. The rule does not depend upon actual notice to the creditor, although it is argued that that was the factual situation in the Caltrider case, supra. '* * * *a judgment creditor is not in the position of a bona fide purchaser, and his claim is subject to prior, undisclosed equities*. "He is neither in fact nor in law a

> bona fide purchaser, and must stand or fall by the real, and not the apparent rights of the defendant in the judgment."

Id. at 187-88, 117 A.2d 908 (internal citations omitted)(emphasis added).

The same principles of law are applicable in this case, and provide an alternate basis for affirming Judge Gordon's grant of summary judgment. The IRS is the judgment lien creditor. It's lien position in the property is subject to all prior equities, recorded and unrecorded. The Federal Tax Lien was indexed on January 10, 2005. Thus, the Federal Tax lien is subordinate to all equities burdening the Restivo property before January 10, 2005. The Susquehanna Bank lien instrument was executed and delivered on January 4, 2005. Thus, the Susquehanna Bank deed of trust has priority over the I.R.S. lien.

C. The Appellant's reliance on attachment lien cases is misplaced.

The Appellant makes the over-broad declaration that federal courts reject any application of the "relation back" principle found in Maryland's recording statutes. The Appellant cites to *United States v. Security Trust & Sav. Bank of San Diego*, 340 U.S. 47, 71 S. Ct. 111 (1950). But the Appellant confuses the Court's discussion of inchoate attachment liens with fully choate bank liens evidenced by a deed of trust. An attachment lien, like a UCC recording, creates a conditional lien. An attachment lien is a placeholder, subject to becoming a fixed debt at some later date, and upon operation of future contingencies. It is an inchoate lien that should not prime a tax lien. Susquehanna Bank does not have an attachment lien.

In the *Security Trust* case, a federal tax lien was recorded subsequent to the date of an attachment lien, but prior to the date the attaching creditor obtained judgment. *Id.* at 48, 71 S. Ct. at 112. Under the pertinent California law at the time, the attaching creditor could not proceed against the property unless he fixed a judgment within three years of the attaching lien. *Id.* at 50, 71 S. Ct. at 113. Once obtained, the judgment related to the pre-judgment attachment date. The Supreme Court held that the federal tax lien had priority because the attaching creditor had only a mere "caveat of a more perfect lien to come" before the federal tax lien was recorded. *Id.* at 50, S. Ct. at 113 (quoting *People of State of New York v. Maclay*, 288 U.S. 290, 294, 53 S. Ct. 323, 324 (1933)).

Susquehanna Bank is not an attachment lien holder. The deed of trust with an effective date of January 4, 2005 was not a mere "caveat of a more perfect lien to come." As will be discussed below, it already

was a choate lien, as of January 4, 2005. The act of recording provided constructive notice to the world of the encumbrance it represents and established a relative lien position against subsequent lienors, mortgagors, etc. The Maryland Court of Appeals explained the purpose for recording mortgage liens, this way:

> It is helpful to understand one of the important purposes of recording and indexing in the first instance. Instruments of conveyance (including mortgages) were, under the common law, valid as between the grantor and grantee even if never recorded. Recordation systems, as they relate to real property, evolved in order to insure that owners of property were not able to convey or mortgage the same property to several people at the same time. A primary purpose of the recording and indexing statutes that came into being was to provide a way to give notice to purchasers, mortgagors, lien holders and the like, of the prior conveyances of, or encumbrances on, the property of a particular person. Recording and indexing was not necessary to determine title to property as between the seller and buyer but only to determine priorities as between subsequent claimants to title interests, i.e., third parties, such as the banks in the instant case.

Greenpoint Mortg. Funding, Inc. v. Schlossberg, 390 Md. 211, 230, 888 A.2d 297, 308-09 (2005).

The Susquehanna Bank deed of trust created a choate lien on January 4, 2005, once it was executed and acknowledged. To be deemed choate under Maryland and federal law, liens must "…be perfected in the sense that there is nothing more to be done to have a choate lien-when the identity of the lienor, the property subject to the lien and the amount of the lien are established." *Williams & Connolly v. Brown*, 84 Md. App. 640, 647, 581 A.2d 468, 471 (1990)(quoting *City of New Britain*, at 84, 74 S. Ct. at 370.).

The Appellant's comparison of the choateness of the Susquehanna Bank deed of trust to the inchoateness of an attachment lien is just wrong. In *United States v. Acri,* 348 U.S. 211, 75 S.Ct. 239 (1955), the Court held that an attachment lien was inchoate "because, at the time the attachment issued, the fact and the amount of the lien were contingent upon the outcome of the suit for damages." *Id.* at 214, 75 S.Ct. at 241. In this case, all elements of choateness were present on January 4, 2005: the lienor (Susquehanna Bank) was known; the properties (5296 Enterprise Street, Eldersburg, Maryland and Lot 39) subject to the lien were known; and the amount of the debt ($1,000,000.00) was known. There is no other way to apply the law to the facts of this case, providing another basis to affirm Judge Gordon's grant of summary judgment.

V. Conclusion.

For the foregoing reasons, the Appellee requests that Judge Gordon's grant of summary judgment in favor of Susquehanna Bank be affirmed.

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Certificate of Service

I HEREBY CERTIFY that on, February 19, 2013, a copy of the foregoing Appellee's Brief was filed electronically on the Court's PACER system, and was thus served via the Court's transmission facilities, to:

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Addendum

The following statutes were cited in the Appellee's Brief:

26 U.S.C.A. § 6321

§ 6321. Lien for taxes

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

26 U.S.C.A. § 6323

§ 6323. Validity and priority against certain persons

(a) Purchasers, holders of security interests, mechanic's lienors, and judgment lien creditors.--The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary.

(b) Protection for certain interests even though notice filed.--Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid--

(1) Securities.--With respect to a security (as defined in subsection (h)(4))--

(A) as against a purchaser of such security who at the time of purchase did not have actual notice or knowledge of the existence of such lien; and

(B) as against a holder of a security interest in such security who, at the time such interest came into existence, did not have actual notice or knowledge of the existence of such lien.

(2) Motor vehicles.--With respect to a motor vehicle (as defined in subsection (h)(3)), as against a purchaser of such motor vehicle, if--

(A) at the time of the purchase such purchaser did not have actual notice or knowledge of the existence of such lien, and

(B) before the purchaser obtains such notice or knowledge, he has acquired possession of such motor vehicle and has not thereafter relinquished possession of such motor vehicle to the seller or his agent.

(3) Personal property purchased at retail.--With respect to tangible personal property purchased at retail, as against a purchaser in the ordinary course of the seller's trade or business, unless at the time of

such purchase such purchaser intends such purchase to (or knows such purchase will) hinder, evade, or defeat the collection of any tax under this title.

(4) Personal property purchased in casual sale.--With respect to household goods, personal effects, or other tangible personal property described in section 6334(a) purchased (not for resale) in a casual sale for less than $1,000, as against the purchaser, but only if such purchaser does not have actual notice or knowledge (A) of the existence of such lien, or (B) that this sale is one of a series of sales.

(5) Personal property subject to possessory lien.--With respect to tangible personal property subject to a lien under local law securing the reasonable price of the repair or improvement of such property, as against a holder of such a lien, if such holder is, and has been, continuously in possession of such property from the time such lien arose.

(6) Real property tax and special assessment liens.--With respect to real property, as against a holder of a lien upon such property, if such lien is entitled under local law to priority over security interests in such property which are prior in time, and such lien secures payment of--

(A) a tax of general application levied by any taxing authority based upon the value of such property;

(B) a special assessment imposed directly upon such property by any taxing authority, if such assessment is imposed for the purpose of defraying the cost of any public improvement; or

(C) charges for utilities or public services furnished to such property by the United States, a State or political subdivision thereof, or an instrumentality of any one or more of the foregoing.

(7) Residential property subject to a mechanic's lien for certain repairs and improvements.--With respect to real property subject to a lien for repair or improvement of a personal residence (containing not more than four dwelling units) occupied by the owner of such residence, as against a mechanic's lienor, but only if the contract price on the contract with the owner is not more than $5,000.

(8) Attorneys' liens.--With respect to a judgment or other amount in settlement of a claim or of a cause of action, as against an attorney who, under local law, holds a lien upon or a contract enforceable against such judgment or amount, to the extent of his reasonable compensation for obtaining such judgment or procuring such settlement, except that this paragraph shall not apply to any judgment or amount in settlement of a claim or of a cause of action against the United States to the extent that the United States offsets such judgment or amount against any liability of the taxpayer to the United States.

(9) Certain insurance contracts.--With respect to a life insurance, endowment, or annuity contract, as against the organization which is the insurer under such contract, at any time--

(A) before such organization had actual notice or knowledge of the existence of such lien;

(B) after such organization had such notice or knowledge, with respect to advances required to be made

automatically to maintain such contract in force under an agreement entered into before such organization had such notice or knowledge; or

(C) after satisfaction of a levy pursuant to section 6332(b), unless and until the Secretary delivers to such organization a notice, executed after the date of such satisfaction, of the existence of such lien.

(10) Deposit-secured loans.--With respect to a savings deposit, share, or other account, with an institution described in section 581 or 591, to the extent of any loan made by such institution without actual notice or knowledge of the existence of such lien, as against such institution, if such loan is secured by such account.

(c) Protection for certain commercial transactions financing agreements, etc.--

(1) In general.--To the extent provided in this subsection, even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing but which--

(A) is in qualified property covered by the terms of a written agreement entered into before tax lien filing and constituting--

(i) a commercial transactions financing agreement,

(ii) a real property construction or improvement financing agreement, or

(iii) an obligatory disbursement agreement, and

(B) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(2) Commercial transactions financing agreement.--For purposes of this subsection--

(A) Definition.--The term "commercial transactions financing agreement" means an agreement (entered into by a person in the course of his trade or business)--

(i) to make loans to the taxpayer to be secured by commercial financing security acquired by the taxpayer in the ordinary course of his trade or business, or

(ii) to purchase commercial financing security (other than inventory) acquired by the taxpayer in the ordinary course of his trade or business;

but such an agreement shall be treated as coming within the term only to the extent that such loan

or purchase is made before the 46th day after the date of tax lien filing or (if earlier) before the lender or purchaser had actual notice or knowledge of such tax lien filing.

(B) Limitation on qualified property.--The term "qualified property", when used with respect to a commercial transactions financing agreement, includes only commercial financing security acquired by the taxpayer before the 46th day after the date of tax lien filing.

(C) Commercial financing security defined.--The term "commercial financing security" means (i) paper of a kind ordinarily arising in commercial transactions, (ii) accounts receivable, (iii) mortgages on real property, and (iv) inventory.

(D) Purchaser treated as acquiring security interest.--A person who satisfies subparagraph (A) by reason of clause (ii) thereof shall be treated as having acquired a security interest in commercial financing security.

(3) Real property construction or improvement financing agreement.--For purposes of this subsection--

(A) Definition.--The term "real property construction or improvement financing agreement" means an agreement to make cash disbursements to finance--

(i) the construction or improvement of real property,

(ii) a contract to construct or improve real property, or

(iii) the raising or harvesting of a farm crop or the raising of livestock or other animals.

For purposes of clause (iii), the furnishing of goods and services shall be treated as the disbursement of cash.

(B) Limitation on qualified property.--The term "qualified property", when used with respect to a real property construction or improvement financing agreement, includes only--

(i) in the case of subparagraph (A)(i), the real property with respect to which the construction or improvement has been or is to be made,

(ii) in the case of subparagraph (A)(ii), the proceeds of the contract described therein, and

(iii) in the case of subparagraph (A)(iii), property subject to the lien imposed by section 6321 at the time of tax lien filing and the crop or the livestock or other animals referred to in subparagraph (A)(iii).

(4) Obligatory disbursement agreement.--For purposes of this subsection--

(A) Definition.--The term "obligatory disbursement agreement" means an agreement (entered into by a person in the course of his trade or business) to make disbursements, but such an agreement shall be treated as coming within the term only to the extent of disbursements which are required to be made by reason of the intervention of the rights of a person other than the taxpayer.

(B) Limitation on qualified property.--The term "qualified property", when used with respect to an obligatory disbursement agreement, means property subject to the lien imposed by section 6321 at the time of tax lien filing and (to the extent that the acquisition is directly traceable to the disbursements referred to in subparagraph (A)) property acquired by the taxpayer after tax lien filing.

(C) Special rules for surety agreements.--Where the obligatory disbursement agreement is an agreement ensuring the performance of a contract between the taxpayer and another person--

(i) the term "qualified property" shall be treated as also including the proceeds of the contract the performance of which was ensured, and

(ii) if the contract the performance of which was ensured was a contract to construct or improve real property, to produce goods, or to furnish services, the term "qualified property" shall be treated as also including any tangible personal property used by the taxpayer in the performance of such ensured contract.

(d) 45-day period for making disbursements.--Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid with respect to a security interest which came into existence after tax lien filing by reason of disbursements made before the 46th day after the date of tax lien filing, or (if earlier) before the person making such disbursements had actual notice or knowledge of tax lien filing, but only if such security interest--

(1) is in property (A) subject, at the time of tax lien filing, to the lien imposed by section 6321, and (B) covered by the terms of a written agreement entered into before tax lien filing, and

(2) is protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

(e) Priority of interest and expenses.--If the lien imposed by section 6321 is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to--

(1) any interest or carrying charges upon the obligation secured,

(2) the reasonable charges and expenses of an indenture trustee or agent holding the security interest for the benefit of the holder of the security interest,

(3) the reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) the reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) the reasonable costs of insuring payment of the obligation secured, and

(6) amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by section 6321,

to the extent that, under local law, any such item has the same priority as the lien or security interest to which it relates.

(f) Place for filing notice; form.--

(1) Place for filing.--The notice referred to in subsection (a) shall be filed--

(A) Under State laws.--

(i) Real property.--In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) Personal property.--In the case of personal property, whether tangible or intangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State; or

(B) With clerk of district court.--In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder of Deeds of the District of Columbia.--In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) Situs of property subject to lien.--For purposes of paragraphs (1) and (4), property shall be deemed to be situated--

(A) Real property.--In the case of real property, at its physical location; or

(B) Personal property.--In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of paragraph (2)(B), the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) Form.--The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary. Such notice shall be valid notwithstanding any other provision of law regarding the form or content of a notice of lien.

(4) Indexing required with respect to certain real property.--In the case of real property, if--

(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and

(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.

(5) National filing systems.--The filing of a notice of lien shall be governed solely by this title and shall not be subject to any other Federal law establishing a place or places for the filing of liens or encumbrances under a national filing system.

(g) Refiling of notice.--For purposes of this section--

(1) General rule.--Unless notice of lien is refiled in the manner prescribed in paragraph (2) during the required refiling period, such notice of lien shall be treated as filed on the date on which it is filed (in accordance with subsection (f)) after the expiration of such refiling period.

(2) Place for filing.--A notice of lien refiled during the required refiling period shall be effective only--

(A) if--

(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and

(B) in any case in which, 90 days or more prior to the date of a refiling of notice of lien under subparagraph (A), the Secretary received written information (in the manner prescribed in regulations issued by the Secretary) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) Required refiling period.--In the case of any notice of lien, the term "required refiling period" means--

(A) the one-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 10 years after the close of the preceding required refiling period for such notice of lien.

(4) Transitional rule.--Notwithstanding paragraph (3), if the assessment of the tax was made before January 1, 1962, the first required refiling period shall be the calendar year 1967.

(h) Definitions.--For purposes of this section and section 6324--

(1) Security interest.--The term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time (A) if, at such time, the property is in existence and the interest has become protected under local law against a subsequent judgment lien arising out of an unsecured obligation, and (B) to the extent that, at such time, the holder has parted with money or money's worth.

(2) Mechanic's lienor.--The term "mechanic's lienor" means any person who under local law has a lien on real property (or on the proceeds of a contract relating to real property) for services, labor, or materials furnished in connection with the construction or improvement of such property. For purposes of the preceding sentence, a person has a lien on the earliest date such lien becomes valid under local law against subsequent purchasers without actual notice, but not before he begins to furnish the services, labor, or materials.

(3) Motor vehicle.--The term "motor vehicle" means a self-propelled vehicle which is registered for highway use under the laws of any State or foreign country.

(4) Security.--The term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(5) Tax lien filing.--The term "tax lien filing" means the filing of notice (referred to in subsection (a)) of the lien imposed by section 6321.

(6) Purchaser.--The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. In applying the preceding sentence for purposes of subsection (a) of this section, and for purposes of section 6324--

(A) a lease of property,

(B) a written executory contract to purchase or lease property,

(C) an option to purchase or lease property or any interest therein, or

(D) an option to renew or extend a lease of property,

which is not a lien or security interest shall be treated as an interest in property.

(i) Special rules.--

(1) Actual notice or knowledge.--For purposes of this subchapter, an organization shall be deemed for purposes of a particular transaction to have actual notice or knowledge of any fact from the time such fact is brought to the attention of the individual conducting such transaction, and in any event from the time such fact would have been brought to such individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routine. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(2) Subrogation.--Where, under local law, one person is subrogated to the rights of another with respect to a lien or interest, such person shall be subrogated to such rights for purposes of any lien imposed by section 6321 or 6324.

(3) Forfeitures.--For purposes of this subchapter, a forfeiture under local law of property seized by a law enforcement agency of a State, county, or other local governmental subdivision shall relate back to the time of seizure, except that this paragraph shall not apply to the extent that under local law the holder of an intervening claim or interest would have priority over the interest of the State, county, or other local governmental subdivision in the property.

(4) Cost-of-living adjustment.--In the case of notices of liens imposed by section 6321 which are filed in any calendar year after 1998, each of the dollar amounts under paragraph (4) or (7) of subsection (b) shall be increased by an amount equal to.--

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting "calendar year 1996" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

(j) Withdrawal of notice in certain circumstances.--

(1) In general.--The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that--

(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

Any such withdrawal shall be made by filing notice at the same office as the withdrawn notice. A copy of such notice of withdrawal shall be provided to the taxpayer.

(2) Notice to credit agencies, etc.--Upon written request by the taxpayer with respect to whom a notice of a lien was withdrawn under paragraph (1), the Secretary shall promptly make reasonable efforts to notify credit reporting agencies, and any financial institution or creditor whose name and address is specified in such request, of the withdrawal of such notice. Any such request shall be in such form as the Secretary may prescribe.

26 U.S.C.A. § 6324

§ 6324. Special liens for estate and gift taxes

(a) Liens for estate tax.--Except as otherwise provided in subsection (c)--

(1) Upon gross estate.--Unless the estate tax imposed by chapter 11 is sooner paid in full, or becomes unenforceable by reason of lapse of time, it shall be a lien upon the gross estate of the decedent for 10 years from the date of death, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

(2) Liability of transferees and others.--If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee (except the trustee of an employees' trust which meets the requirements of section 401(a)), surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. Any part of such property transferred by (or transferred by a transferee of) such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, to a purchaser or holder of a security interest shall be divested of the lien provided in paragraph (1) and a like lien shall then attach to all the property of such spouse, transferee, trustee, surviving tenant, person in possession, or beneficiary, or transferee of any such person, except any part transferred to a purchaser or a holder of a security interest.

(3) Continuance after discharge of fiduciary.--The provisions of section 2204 (relating to discharge of fiduciary from personal liability) shall not operate as a release of any part of the gross estate from the lien for any deficiency that may thereafter be determined to be due, unless such part of the gross estate (or any interest therein) has been transferred to a purchaser or a holder of a security interest, in which case such part (or such interest) shall not be subject to a lien or to any claim or demand for any such deficiency, but the lien shall attach to the consideration received from such purchaser or holder of a security interest, by the heirs, legatees, devisees, or distributees.

(b) Lien for gift tax.--Except as otherwise provided in subsection (c), unless the gift tax imposed by chapter 12 is sooner paid in full or becomes unenforceable by reason of lapse of time, such tax shall be a lien upon all gifts made during the period for which the return was filed, for 10 years from the date the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a purchaser or holder of a security interest shall be divested of the lien imposed by this subsection and such lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a purchaser or holder of a security interest.

(c) Exceptions.--

(1) The lien imposed by subsection (a) or (b) shall not be valid as against a mechanic's lienor and, subject to

the conditions provided by section 6323(b) (relating to protection for certain interests even though noticed filed), shall not be valid with respect to any lien or interest described in section 6323(b).

(2) If a lien imposed by subsection (a) or (b) is not valid as against a lien or security interest, the priority of such lien or security interest shall extend to any item described in section 6323(e) (relating to priority of interest and expenses) to the extent that, under local law, such item has the same priority as the lien or security interest to which it relates.

MD Code, Real Property, § 3-101

§ 3-101. Estates, deeds, leases, or options relating to property

In general
(a) Except as otherwise provided in this section, no estate of inheritance or freehold, declaration or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed and recorded.

Other effective methods of transfer
(b) Subsection (a) of this section does not limit any other method of transferring or creating an estate, declaration, or limitation which is permitted by the law of the State except to the extent required by law.

Leases for less than seven years
(c) The recording requirement of subsection (a) of this section does not apply to any lease for an initial term not exceeding seven years if each renewal term under the lease (i) is for seven years or less, and (ii) by the provisions of the lease, may be effected or prevented by a party to the lease or his assigns.

Unrecorded lease effective against third parties
(d) If a lease required to be executed and recorded under the provisions of subsection (a) of this section is executed but not recorded, the lease is valid and fully effective both at law and in equity (i) between the original parties to the lease and their personal representatives, (ii) against their creditors, and (iii) against and for the benefit of any other person who claims by, through, or under an original party and who acquires the interest claimed with actual notice of the lease or at a time when the tenant, or anyone claiming by, through, or under the tenant, is in such actual occupancy as to give reasonable notice to the person.

Memorandum of lease
(e) In lieu of recording a lease as prescribed above, a memorandum of the lease, executed by every person who is a party to the lease, may be recorded with like effect. A memorandum of lease thus entitled to be recorded shall contain at least the following information with respect to the lease: (1) the name of the lessor and the name of the lessee; (2) any addresses of the parties set forth in the lease; (3) a reference to the lease, with its date of execution; (4) a description of the leased premises in the form contained in the lease; (5) the term of the lease, with the date of commencement and the date of termination of the term; and (6) if there is a right of extension or renewal, the maximum period for which or date to which it may be renewed, and any date on which the right of extension or renewal is exercisable. If any date is unknown, then the memorandum of lease shall contain the formula from which the date is to be computed. When a memorandum of lease is presented for recording, the lease also shall be submitted to the recording office for the purpose of examination to determine whether or not the lease or the memorandum authorized by this section is subject to any transfer or other tax or requires any recording stamp. The clerk shall stamp the lease when submitted

so that it may be identified as the instrument presented to the clerk at the time of recording the memorandum, and the clerk shall collect any required tax.

Memorandum of option
(f)(1) In this subsection, "option" includes any agreement or contract creating:

(i) An option with respect to the purchase, lease, or grant of property; or

(ii) A right of first refusal, a right of first offer, or similar right, with respect to the purchase, lease, or grant of property.

(2) In lieu of recording an option as prescribed above, a memorandum of the option, executed by each person who is a party to the option, may be recorded with like effect.

(3) A memorandum of option thus entitled to be recorded shall contain at least the following information with respect to the option:

(i) The name of the parties to the option;

(ii) Any addresses of the parties set forth in the option;

(iii) A reference to the option, with its date of execution;

(iv) A description of the property affected by the option in the form contained in the option;

(v) The nature of the right or interest created;

(vi) If stated, the term of the option, with the date of commencement and the date of termination of the term; and

(vii) If there is a right of extension or renewal, the maximum period for which or date to which it may be renewed, and any date on which the right of extension or renewal is exercisable.

(4) If any date is unknown, then the memorandum of option shall contain the formula, if any, from which the date is to be computed.

MD Code, Real Property, § 3-201

§ 3-201. Effective date of deed

The effective date of a deed is the date of delivery, and the date of delivery is presumed to be the date of the last acknowledgment, if any, or the date stated on the deed, whichever is later. Every deed, when recorded, takes effect from its effective date as against the grantor, his personal representatives, every purchaser with notice of the deed, and every creditor of the grantor with or without notice.

West's RCWA 65.08.070

65.08.070. Real property conveyances to be recorded

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.