COLORADO
REAL ESTATE TITLE STANDARDS

Revisions through March 2023

THE TITLE STANDARDS COMMITTEE

The past and present members of the Title Standards Committee of the Real Estate Law Section of the Colorado Bar Association deserve recognition for their efforts and hard work in identifying, analyzing, and solving issues relating to real estate titles. In addition to proposing changes to the Title Standards, the committee assists in reviewing and recommending legislation. The current members of the committee are:

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COLORADO REAL ESTATE TITLE STANDARDS

INTRODUCTION TO THE REAL ESTATE TITLE STANDARDS

Beginning in 1938, the Bar Associations of various states have adopted title standards to set forth how the more experienced title examiners and conveyancers in those states consider the impact of certain specified title issues on the marketability of title. The impetus for the adopting of such standards in Colorado came from the Denver Bar Association which in 1942 appointed a committee to adopt and promulgate title standards. In 1946 the Colorado Bar Association adopted the then existing title standards of the Denver Bar Association for statewide application. Effective January 1, 1987, The Colorado Real Estate Title Standards were revised, updated and renumbered. This publication updates the 1987 version of The Title Standards as of *March 2023*.

The Title Standards Committee is a committee of the Real Estate Law Section of the Colorado Bar Association. Members of the Title Standards Committee are appointed by the Chairperson of the Section. The charge of the committee is to consider current title problems and draft and propose title standards or legislation for their solution. Monthly meetings are held by the committee, usually at the CBA offices in Denver, to consider such matters. Attorneys are encouraged to advise the committee of the existence of title problems that may be appropriate for consideration by the committee.

Individual Title Standards usually consider the effect of a precise state of facts on the marketability of title based upon statutory and case law. The Title Standards assume title is marketable except for the effect of the state of facts addressed in the particular Title Standard. Marketable title differs from "safe" title and "insurable" title that may be the standards of title required in some situations. Marketable title is the standard used for the Title Standards because it is the normal and customary measure that will meet the seller's contractual obligation in the vast majority of real estate contracts.

More recently adopted Title Standards have deviated from the traditional format of expressing a problem followed by a short answer. As an example, Title Standards 1.1.2 through 1.1.6 are instructional as to the duties of an examining attorney and the scope of a title search. The Committee deemed it desirable to address these issues through a narrative format in order to inform attorneys of the basics of a title examination rather than be limited by the narrower scope of the customary question and answer format.

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I. TITLE EXAMINATION; GENERALLY

1.1 Standards and Duties of Examining Attorney

1.1.1 Duty on Discovering Defect in Title Previously Examined by Another Attorney

Problem: When an attorney discovers a matter that is believed to render a title unmarketable, what steps should be taken, if the attorney has knowledge that the same title has been examined by another attorney who has not objected to the defect?

Answer: The Attorney should communicate with the previous examiner, and explain the title defect and afford opportunity for discussion.

Promulgated: 10/19/46; Amended: 7/9/94.

1.1.2 Examinations for Title Opinions

Title Standards 1.1.2 through 1.1.6 deal with the standards and duties of an examining attorney who is asked to render a written opinion as to the marketability of title to a particular parcel of property. The examining attorney determines title to such real property from a search of recorded documents affecting title to such real property from the date of the original source of title to the date of search and from a search of certain matters not of record which also affect title to such real property. The search for the recorded documents which affect title to such real property may be made either from a personal examination by the examining attorney of the real property records of the county in which such real property is located (*See* Title Standard 1.1.3) or from an examination of the abstract of title which purports to contain such recorded documents (*See* Title Standard 1.1.4). The examining attorney has no obligation to question the accuracy or completeness of the real property records of the county or the abstract of title unless circumstances come to the attention of the examining attorney to put him or her upon inquiry. In examining the recorded documents which affect title to such real property revealed by either a search of the real property records or an abstract of title, the examining attorney is entitled to rely upon certain presumptions with respect to such documents (*See* Title Standard 1.1.6) unless circumstances come to the attention of the examining attorney to put him or her upon inquiry. The search for matters not of record which affect title to such real property may be made by a personal investigation of these matters by the examining attorney, but more frequently, such matters are excepted from the scope of the examining attorney's title opinion (*See* Title Standard 1.1.5). After conducting the requisite searches, the examining attorney prepares a written opinion as to the marketability of title to such real property based upon such searches and subject to commentary by the examining attorney as to the matters revealed by such searches and the limitations (if any) of such searches.

Promulgated: 7/9/94; Amended 5/16/98.

1.1.3 Scope of Search of Real Property Records

The examining attorney's examination of title will include a search of the direct and inverted (grantor-grantee) indices of recorded documents maintained by the clerk and recorder of the county in which the property is located. The grantor-grantee indices must be searched, as to each person who has held or holds title to an interest in any portion of the subject property, for documents affecting such person's title recorded during the following periods:

(A) The period such person held title, which period shall be determined as follows:

(1) If such person's title is derived through a recorded conveyance, the period that begins on the earliest of the following dates:

(a) the date of such conveyance;

(b) the date of acknowledgment of such conveyance; or

(c) the date of recording of such conveyance;

and ends on the date of recording of the conveyance or other evidence of divestiture of such person's title; or

(2) If such person's title is derived other than through a conveyance (*See* comment one), the period that begins on the date title vested in such person and ends on the date of recording of the conveyance or other evidence of divestiture of such person's title; and

(B) Certain periods prior to such person's acquiring title in order to reveal the existence of statutorily created liens that attach against property subsequently acquired by such person, which periods shall begin on the date of the search and extend back to the date determined by the applicable statute (See comment two).

COMMENT ONE:

Examples are titles acquired from a decedent, or through a foreclosure, court decree, or a vacation ordinance or resolution.

COMMENT TWO:

For example of the periods to be searched for liens applicable as of December 1, 2001, *see* the following:

(1) Section 13-52-102 C.R.S. The search period for liens of judgments from state courts is six years except where the judgment was for child support, maintenance, arrears, or debt pertaining to child support in which case the search period governed by Section 14-10-122, C.R.S. and except where the judgment is an order for restitution pursuant to Section 16-18.5-104 (5) (a), C.R.S. in which case the search period is governed by Article 18.5 of Title 16, C.R.S.

(2) Section 13-52-104 C.R.S. The search period for liens of judgments from federal courts other than judgments in favor of the United States is the same as for liens of judgments from state courts set forth in (1) above.

(3) 28 USC 3201. The search period for liens of judgments from federal courts in favor of the United States is 20 years.

(4) 26 USC 6323 (g) (3). The search period for liens for federal tax assessments is 10 years plus 30 days.

Promulgated: 7/9/94.

1.1.4 Scope of Search of Abstract of Title

An examination of the abstract of title should include a determination that the abstract is certified to cover the property being examined for the entire period to be examined and contains all of the recorded documents that affect title to such property. Once the examining attorney makes such a determination he or she should examine the contents of the abstract of title in order to determine marketable title to such real property.

Promulgated: 7/9/94.

1.1.5 Scope of Search of Matters not of Record

Various matters may affect title to real property that are not likely to be disclosed by an examination of the recorded documents affecting title to that property. While it is possible to investigate these matters, it is not customarily done by the examining attorney. Instead, the examining attorney usually makes the title opinion subject to certain matters not of record that may affect title to the real property. Those matters outside of the real property records to which title opinions are commonly made subject include rights of parties in possession or occupancy of the real property; matters that may be disclosed by an accurate survey of the real property; statutory mechanics' liens; easements, or claims of easements, not shown by the public records; liens for the payment of taxes, assessments, rates, fees, tolls, charges, or penalties imposed by governmental or quasi-governmental entities; the effect of zoning, land use, environmental and other governmental laws and regulations; and applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws in effect from time to time.

Promulgated: 7/9/94.

1.1.6 Presumptions

In examining a recorded document affecting title to real property which is either acknowledged or deemed acknowledged pursuant to the provisions of Section 38-35-106(2), C.R.S., a title examiner is entitled to make the following presumptions:

(a) the document is genuine and was executed voluntarily;

(b) the person executing the document and the person on whose behalf it is executed are the persons they purport to be;

(c) if identical names are used in successive documents affecting title to real property, the persons are identical;

(d) the person executing the document was neither incompetent nor a minor at the time of execution, acknowledgement, or delivery of the document;

(e) delivery occurred notwithstanding any lapse of time between dates on the document and the date of recording;

(f) any necessary consideration was given;

(g) each party to the document acted in good faith at all relevant times; and

(h) if the document has been recorded at least 20 years and contains a recital that a person executed a document as an attorney in fact, representative of

an organization, or in a fiduciary or official capacity, it may be presumed that the person:

(i) held the position the person purported to hold and acted within the scope of the person's authority;

(ii) in the case of a representative of an organization, was authorized under all applicable laws to act on behalf of the organization; and

(iii) in the case of an attorney in fact, the agency was not revoked or terminated, and the attorney in fact acted for a principal who was neither incompetent nor a minor at any relevant time.

The presumptions stated above arise even though the document purports only to release a claim or to convey any right, title, or interest of the person executing it or the person on whose behalf it is executed.

Promulgated: 5/16/98.

1.2 Notice in Title Examinations

1.2.1 Types of Notice

There are three types of notice of concern to title examiners — actual notice, constructive notice and inquiry notice.

Promulgated: 12/10/01.

1.2.2 Actual Notice

Actual notice may be defined as knowledge of the contents of a document or of other facts which may affect title to an interest in real property. If a title examiner has actual notice of a recorded document, it is immaterial whether the document appears in the record chain of title. If a title examiner has actual notice of an unrecorded document, it is immaterial that the document is not recorded. A title examiner must consider the effect of any document of which he or she has actual notice in the preparation of his or her title opinion.

Promulgated: 12/10/01.

1.2.3 Constructive Notice

Constructive notice may be defined as being charged by law with notice of the effect on title to an interest in real property of the contents of a document or of other facts without knowledge of the document itself or the facts themselves. A document recorded in the real property records in the office of the county clerk and recorder is constructive notice of its existence and of its contents to all persons subsequently acquiring an interest in the real property affected by that document even if the document is not properly indexed or copied in the records by the clerk and recorder. While the recording of a document is constructive notice to the persons subsequently acquiring an interest in the real property affected by that document, a title examiner is only responsible for analyzing the effect on title of those recorded documents which would be revealed by a properly conducted search of the real property records by the title examiner (*See* Title Standard 1.1.3) or which are contained in the abstract of title examined by the title examiner (*See* Title Standard 1.1.4).

Promulgated: 12/10/01.

1.2.4 Inquiry Notice

Inquiry notice may be defined as being charged by law with notice of the effect on title of facts that would have been revealed by an inquiry if known facts would cause a reasonable person to inquire. If a person acquiring an interest in real property has knowledge of facts which, in the exercise of common reason and prudence, ought to put him or her upon particular inquiry as to the effect of such facts on the title to such real property, he or she will be presumed to have made the inquiry and will be charged with notice of every fact which would in all probability have been revealed had a reasonably diligent inquiry been undertaken. Whether the known facts are sufficient to charge such person with inquiry notice will depend upon the circumstances of each case. It should be noted that, because Section 38-35-108, C.R.S. provides that a reference to an unrecorded document in a recorded document is not notice to any person other than the parties to the recorded document, a person acquiring an interest in real property is not charged with notice of the effect of the unrecorded document on the title to such real property. If, in the course of a title examination, a title examiner discovers a document which is not in the record chain of title but which sets forth or refers to facts (other than the existence of an unrecorded document) that would cause a reasonable person to inquire about the effect of such facts on the title being examined, the title examiner should disclose such facts in his or her title opinion so that the person for the whom the title opinion is written may determine whether to undertake an inquiry.

Promulgated: 12/10/01.

1.3 Patent Provisions

1.3.1 Effect on Marketable Title

Problem: Title examination reveals a federal or state patent affecting title to property which contains one or more of the following provisions:

(1) a federal patent reserves (i) all minerals, or (ii) certain specified minerals (other than the minerals reserved in the federal patent provision described in Problem (3));

(2) a state patent reserves (i) all minerals, or (ii) certain specified minerals;

(3) a federal patent reserves uranium, thorium or any other fissionable material, together with the right to enter upon the land and prospect for, mine and remove the same;

(4) a federal patent is subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decisions of courts;

(5) a federal patent is subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises;

(6) a federal patent contains the following or similar language: that should any vein or lode of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper

or other valuable deposits, be claimed or known to exist within the above-described premises at said last named date, the same is expressly excepted and excluded from these presents;

(7) a federal patent contains the following or similar language: no title shall be hereby acquired to any mine of gold, silver, cinnabar or copper or to any valid mining claims or possession held under existing laws of Congress;

(8) a federal patent reserves ditches and canals constructed by the authority of the United States; or

(9) a federal patent issued to a railroad company contains the following or similar language: yet excluding and excepting from the transfer of these presents all mineral lands should any such be found to exist in the tract described in this patent, this exception, as required by statute, not extending to coal or iron lands.

Is title to the property unmarketable because of the foregoing patent provisions?

Answer: (1) Yes.

(2) Yes.

(3) No.

(4) No.

(5) No.

(6) No.

(7) No.

(8) No.

(9) No.

COMMENTS:

The federal and state patent provisions described in Problems (1) and (2) make title unmarketable. *See O'Hara Group Denver, Ltd. v. Marcor Housing Systems, Inc.*, 197 Colo. 530, 595 P.2d 679 (1979).

The federal patent reservation described in Problem (3) was released by 42 U.S.C. §2098.

The federal patent provisions described in Problems (4) through do not, by themselves, make title unmarketable. These provisions give notice of the possibility that one or more of the matters referred to may exist, which, as a result of federal statutes, may render title unmarketable.

The federal patent provision described in Problem (8) does not make title unmarketable because just compensation is required after January 1, 1961, by 43 U.S.C. §945a-945b. As a result, this patent provision is similar to any governmental right of eminent domain.

The federal patent provision described in Problem (9) does not make title unmarketable because courts have held that the issuance of the federal patent was in essence a determination that there were no mineral lands to be excluded from the patent. *See Burke v. Southern Pacific Railroad Co.*, 234 U.S. 669 (1914); *Knight v. Devonshire Co*., 736 P.2d 1223 (Colo. App. 1986).

Promulgated: 11/9/02.

1.4 Quitclaim Deed

1.4.1 Effect on Marketable Title

Problem: Examination of title reveals a conveyance necessary to the chain of title in the form of a quitclaim deed. If title to the property is otherwise marketable, does the use of the quitclaim make the title unmarketable?

Answer: No.

Promulgated: 10/13/20.

COMMENT:

"Colorado has rejected the now disfavored notion that a quitclaim deed is enough, in itself, to put a purchaser on notice of a defect in title." *Martinez v. Affordable Housing Network, Inc*., 123 P.3d 1201 (Colo. 2005); *Franklin Bank, N.A. v Bowling*, 74 P.3d 308 (Colo. 2003).

II. ACTIONS AND PROCEEDINGS

2.1 Quiet Title

2.1.1 Actions and Proceedings — Effect of Defects

Problem: What is the effect of defects not involving jurisdiction of the court in actions or proceedings affecting title, including Rule 120 proceedings and actions for the foreclosure of liens?

Answer: Such errors do not render title defective, and should be disregarded. Among commonly found errors of this kind are: (a) misjoinder of parties; (b) misjoinder of actions; (c) existence of a ground for a motion to dismiss (other than on jurisdictional grounds); (d) existence of ground for motion for change of venue, if no such motion was filed.

Promulgated: 10/19/46; Amended 1/1/87.

2.1.2 Decrees Affecting Real Estate

Problem: In an action concerning real estate brought under Rule 105, C.R.C.P., is it necessary that the written decree of court designate the names of all the parties to the proceeding?

Answer: Yes.

NOTE: The rules provide that the caption of the complaint shall include the names of all parties but that in other pleadings it is sufficient to state the name of the first party on each side. A decree of court is not a pleading.

Unless the recorded decree in a proceeding, affecting title to real property, designates all of the parties defendant, an examination of the abstract would not disclose whether or not all necessary parties were made defendants in the action. In other words, a complete record title would not be shown in the recorder's office.

Promulgated: 10/19/46.

2.1.3 Re Address or Last Known Address

Problem: In obtaining service by publication under Rule 4, C.R.C.P., is it necessary or proper to set forth in the verified motion merely a county and state as an address or last known address?

Answer: No.

Promulgated: 10/19/46.

2.1.4 Quiet Title Suit — No Known Address of Defendant

Problem: Marketability of title is dependent upon a quiet title suit. The recorded instruments affecting the title in the office of the clerk and recorder disclose no address of a defendant, and the motion for publication states that the address, and last known address of the defendant are unknown. The motion and other proceedings are on their face in all respects in compliance with the rules. Notwithstanding actual knowledge of the examining attorney of an address not shown in the office of the clerk and recorder, is title marketable?

Answer: Yes.

NOTE: The above Standard is not intended to prescribe the duties of the attorney bringing a quiet title suit.

Promulgated: 10/27/51; Amended 4/25/17.

2.1.5 Quiet Title — Conveyance Before a Decree

Problem: "A" commences quiet title proceedings, but thereafter and before final decree is entered, "A" conveys the property to "B" by warranty, quit claim or other deed. "B" is not substituted as a party to the quiet title proceedings. Final decree is entered finding that "plaintiff is the owner and in possession" of the real property. Is "B's" title marketable?

Answer: Yes.

Promulgated: 10/11/52.

2.1.6 Quiet Title — Deceased Defendant

Problem: A decree quieting title under Rule 105, C.R.C.P. is recorded in the real property records of the office of the clerk and recorder of the county where the property is situated. The decree, otherwise proper, names a defendant and all unknown persons who claim under or through the named defendant. The real property records indicate, or the passage of time suggests, that such named defendant was deceased at the time of the entry of the decree. Without further investigation, is title marketable?

Under the same facts if the recorded decree names only the deceased defendant and does not name all unknown persons who claim under or through such deceased defendant and marketability depends on the decree, is title marketable?

Answer: Yes, to the first problem.
No, to the second problem.

NOTE: Result may be affected by the application of C.R.S. § 38-41-111.

Promulgated: 5/10/14.

2.2 Rule 120

2.2.1 Proceedings Under Rule 120 — Jurisdiction of County Court

Problem: The proceeding under Rule 120, C.R.C.P., to secure an order authorizing foreclosure sale by the public trustee was brought in the county court. Is the principle laid down in *Wyman v. Felker*, 18 Colo. 382, 384-386, 33 P. 157 (1893), and in *Reichelt v. Town of Julesburg*, 90 Colo. 258, 266-267, 8 P.2d 708 (1932), and in the decisions therein cited to be applied to make the title derived through the foreclosure proceedings marketable, even though both the value of the property and the amount unpaid on the indebtedness were in excess of the jurisdictional limit of the county court?

Answer: Yes, but only as to any proceedings under Rule 120 prior to January 12, 1965. Since that date, proceedings under Rule 120 cannot be brought in county courts and must be brought in district court.

Promulgated: 10/11/52; Amended 1/1/87.

2.3 Lis Pendens

2.3.1 Effect of Notice

Problem: (A) Do persons acquiring an interest in real property after a Notice of Lis Pendens (Notice of Pendency of an Action) in proper form is recorded take such interest subject to any rights or interests which may subsequently be determined in the action identified in said Notice of Lis Pendens?

Answer: Yes.

Problem: (B) If a pleading is filed wherein affirmative relief is claimed affecting the title to real property, but no Notice of Lis Pendens is recorded, do persons acquiring an interest in the property thereafter take such interest subject to any rights or interests which may subsequently be determined in said action?

Answer: No, in the absence of other forms of constructive notice or actual notice of the action.

Promulgated: 7/21/90.

2.3.2 Nature of Claim

Problem: If a recorded Notice of Lis Pendens (Notice of Pendency of an Action), otherwise proper, misstates or does not contain the nature of the claims in said action, does such Notice constitute notice to persons subsequently acquiring any interest in or lien upon the property therein described?

Answer: Yes.

Promulgated: 7/21/90.

2.3.3 Legal Description

Problem: If a recorded Notice of Lis Pendens (Notice of Pendency of an Action), otherwise proper, does not contain a legal description sufficient to identify the property which is the subject of the action, does such Notice constitute notice to persons subsequently acquiring any interest in or lien upon such property?

Answer: No.

Promulgated: 7/21/90.

2.3.4 Identity of Court

Problem: If a recorded Notice of Lis Pendens (Notice of Pendency of an Action), otherwise proper, does not identify the Court wherein the action is pending, or improperly identifies such Court, does such Notice constitute notice to persons subsequently acquiring any interest in or lien upon the property therein described?

Answer: No.

Promulgated: 7/21/90.

2.3.5 Identity of Case

Problem: If a recorded Notice of Lis Pendens (Notice of Pendency of an Action), otherwise proper, does not contain the case number of the action, does such Notice constitute notice to persons subsequently acquiring any interest in or lien upon the property therein described?

Answer: Yes.

Promulgated: 7/21/90.

2.3.6 Corrective Notice

Problem: If a recorded Notice of Lis Pendens (Notice of Pendency of an Action) is so defective that it does not constitute notice, does the recording of a certified copy of a court order entered in that action, or any other instrument, amending the notice and correcting the defect, constitute notice of the pendency of the action?

Answer: Yes, but only from the time of the subsequent recording

Promulgated: 7/21/90.

2.3.7 Termination of Notice or Release of Property

Problem: May a litigant or the litigant's attorney in an action terminate a previously recorded Notice of Lis Pendens (Notice of Pendency of an Action) or release property from the effect thereof by recording a document executed by such litigant or attorney?

Answer: No.

Promulgated: 7/21/90.

2.3.8 Notice of Lis Pendens on Appeal

Problem: If an appeal is taken from a final judgment in an action where a Notice of Lis Pendens (Notice of Pendency of an Action) had been recorded with respect to the action, is it necessary to record a new Notice of Lis Pendens to extend the effect of the originally-recorded Notice of Lis Pendens?

Answer: No, if the final judgment was entered on or after June 1, 1981, and the Notice of Appeal was timely filed on or after July 1, 1981 [the effective date of an amendment to Rule 105(f) of C.R.C.P. which has since been superseded by the amendment of Section 38-35110(2)(c), C.R.S. effective March 20, 1992.]

Yes, if the final judgment was entered prior to June 1, 1981, or the Notice of Appeal was filed prior to July 1, 1981.

Promulgated: 7/21/90.

2.4 Judgments

2.4.1 Effect of Recording Certified Copy of Money Judgment

Problem: A certified copy of a judgment for any debt, damages, costs, or other sum of money is recorded by the judgment creditor in the real estate records in the office of the clerk and recorder of a county in this state. A judgment debtor identified in the judgment either owns real property in the county at the time the certified copy is recorded or acquires title to real property in the county subsequent to the time the certified copy was recorded but while the judgment is still in effect. In either case, has the judgment creditor obtained a lien encumbering the real property of the judgment debtor?

Answer: No. A judgment for any debt, damages, costs, or other sum of money, whether or not a certified copy is recorded, is not a lien upon real property unless and until a transcript of the judgment complying with Section 13-52-102(1), C.R.S., or Section 13-52104, C.R.S., is recorded in the county in which the real property is located.

Promulgated: 12/9/00.

III. CONVEYANCING

3.1 Execution

3.1.1 Conveyance — Execution by Mark

Problem: Should a conveyance in a chain of title be approved where the grantor signs the deed by his or her mark, and the deed carries an acknowledgment good on its face, but there are no witnesses to the mark included on the deed?

Answer: Yes.

Promulgated: 10/1/52.

3.2 Delivery

3.2.1 Delivery of Deeds — Presumption

Problem: Should the statutory presumption of delivery, resulting from the acknowledgment and recording of a deed, be relied upon despite the fact that it appears the deed was recorded after the death of the grantor, and regardless of the time which may have elapsed between the date of the deed and the recording thereof?

Answer: Yes

Promulgated: 10/19/46.

3.3 Recording

3.3.1 Stranger to Title — Instrument by

Problem: An instrument appears of record purporting to affect the title to real property which is executed by one who has no record interest in the real property on the date it is recorded. Do persons subsequently acquiring an interest in such real property have constructive notice of such instrument?

Answer: No. This is the classic illustration of a "wild deed" which is outside of the chain of title. *See* Title Standard 1.1.3 for the search necessary to establish a chain of title with respect to a particular interest in real property.

Promulgated: 10/19/46; Amended 7/9/94.

3.3.2 Recording in Wrong County

Problem: A deed or other instrument affecting title to land in A County is recorded in B County, and not recorded in A County. A certified copy thereof as recorded in B County is obtained and recorded in A County. Should the title be accepted as marketable?

Answer: Yes

Promulgated: 10/27/51.

3.3.3 Recording a Copy

Problem:

The record reveals an instrument in the chain of title containing on its face evidence that the instrument is a copy instead of an original instrument. If title to the property is otherwise marketable, does the existence of such instrument in the chain of title render title unmarketable?

Answer: No.

COMMENTS:

Under Colorado's recording statute, Section 38-35-109(1), there is no requirement that only original or certified copies of instruments be recorded in order to provide constructive notice of their contents, except that certified copies are required for orders, judgments and decrees of courts of record. Other laws may require recording of certified copies of certain instruments or documents affecting title.

Promulgated: 6/14/22.

3.4 Conveyance to an Entity

3.4.1 Conveyance Before Formation of an Entity

Problem: If at the time of the delivery of a deed describing the grantee as a corporation, nonprofit corporation, limited partnership, limited liability company, limited partnership association, cooperative or any other entity which is formed by delivering a document to the Colorado Secretary of State and the filing of that document by the Colorado Secretary of State, the document required to be delivered to and filed by the Colorado Secretary of State has not been delivered to and filed by the Colorado Secretary of State and thereafter such document is so delivered and filed, should the title to the property covered by such deed vest in the grantee as soon as such grantee is formed without the need for any other instrument of conveyance?

Answer: Yes.

NOTE: For a deed delivered on or after August 5, 2015, the answer to the problem is governed by Section 38-34-105 C.R.S., as amended by L. 15, p. 192, Ch. 72. Prior to amendment, the statute provided for such vesting of title only where the grantee is described as a corporation. Title Standard 3.4.1, originally promulgated in 1999, extended the rationale of the pre-amended statute to any other entity which also is formed by delivering a document to, and the filing of the document by, the Colorado Secretary of State. The 1999 adoption of this Standard was consistent with the public policy of liberally construing the laws concerning or affecting title to real property so as to render such titles absolute and free from technical defects as evidenced by Section 38-34-101, C.R.S. and *Birkby v. Wilson*, 92 Colo. 281, 19 P.2d 490 (1933).

Promulgated: 9/23/99; Note revised October 24, 2015.

3.5 Alteration and Correction of Documents

3.5.1 Alteration of Deed *Before Recording*

Problem: An acknowledged deed, as recorded, shows one or more alterations, such as those indicated in (a) through (d), below, by interlineation, strike-out, or otherwise. The alterations were made *before recording*, but when or by who is not evident from the face of the record.

(A) The name of a grantee has been added or deleted.

(B) The description has been modified by the deletion of some portion of the described property or by a material modification of the description of some portion of the described property.

(C) The description has been modified by the inclusion of additional property.

(D) The phrase "as joint tenants with the right of survivorship" has been added to or deleted from the habendum clause.

If title to the property purported to be conveyed by the altered deed would have been marketable if the alterations had been included in the deed when originally drafted, is title to the property as conveyed by the altered deed marketable?

Answer: Yes.

NOTES: 1. In examining a document affecting title to real property, which is acknowledged, a title examiner is entitled to make the presumption that the document is genuine. Title Standard 1.1.6(A). Included within this presumption is the presumption that any additions, deletions, or modifications appearing on the document as recorded were made before the document was executed, acknowledged, and delivered.

2. Similar considerations would apply to the alteration prior to recording of a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.2 Alteration of and Re-recording of Recorded Document

Problem: An acknowledged deed is recorded. Subsequently, the same deed is re-recorded. The re-recorded deed shows one or more alterations, such as those indicated in (A) through (C), below, by interlineation, strikeout, or otherwise. These alterations or additions do not appear on the deed as originally recorded. The deed is not re-executed or re-acknowledged before being re-recorded.

(A) The name of a grantee has been added or deleted.

(B) The description has been modified by the deletion or addition of some portion of the described property or by a modification of the description of the property.

(C) The phrase "as joint tenants with the right of survivorship" has been added to or deleted from the habendum clause.

Is title as purported to be conveyed by the re-recorded deed marketable?

Answer: No; (Except as otherwise provided in Title Standard 3.5.4).

NOTES: 1. It is evident from the face of the record that any alteration is not part of the document as originally executed, acknowledged, and recorded. Therefore, a title examiner is not entitled to make the presumption, mentioned in 3.5.1, above, that the document is genuine. Merely re-recording a document with an alteration, does not make any such alteration a part of the document or provide constructive notice of the document as altered. Whether an alteration is effective as between the parties to the document depends upon the circumstances.

2. If marketable title was conveyed by the original deed, the marketability of the title as originally conveyed is not affected by the altered and re-recorded deed.

3. Similar considerations would apply to alteration and rerecording of a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.3 Re-recording of a Document Previously Recorded to Add or Correct an Acknowledgment

Problem: An unacknowledged or defectively acknowledged deed is recorded. Subsequently, the same deed is re-recorded with a certificate of acknowledgment added, corrections made to an existing certificate of acknowledgment, or a correct certificate of acknowledgment substituted for the defective certificate. The deed is not re-executed before being re-recorded. If title to the property would have been marketable if the deed were properly acknowledged when originally recorded, is title to the property purported to be conveyed by the re-recorded deed marketable?

Answer: Yes.

NOTES: 1. An unacknowledged or defectively acknowledged deed, which is recorded in the real estate records, conveys title and constitutes notice. C.R.S. § 38-35-106(1). *See Am. National Bank v. Silverthorne*, 87 Colo. 345, 287 P. 641 (1930). The title conveyed by an unacknowledged deed is not marketable, however, until it has been of record for at least ten (10) years. C.R.S. § 38-35-106(2).

2. Similar considerations would apply to the addition or correction of an acknowledgment and re-recording of a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.4 Re-recording of a Misassembled Document

Problem: An acknowledged and recorded deed shows obvious omissions in the nature of (a) one or more missing pages, or (b) one or more missing exhibits. The obviousness of the omission stems from the fact that a numbered page is missing (or other indicia of the omission of a page are evident on the face of the deed) or an exhibit referred to in the deed is not attached to the deed. Subsequently, the same deed is re-recorded with the missing page or exhibit included. The deed is not re-executed or re-acknowledged before being re-recorded. If title to the property

as purported to have been conveyed by the deed initially recorded would have been marketable if the deed were properly assembled when originally recorded, in the absence of intervening rights, is title to the property as purported to be conveyed by the re-recorded deed marketable?

Answer: Yes, in the absence of some circumstance (other than the mere fact that a page or exhibit was omitted from the deed as originally recorded) which charges a subsequent purchaser or encumbrancer with a duty of inquiry regarding whether the omitted page or exhibit was in fact a part of the original deed as executed.

NOTES: 1. Current statutory authority suggests that a proper method of correcting the record when a document has been recorded with one or more omitted pages would be to execute and record an affidavit pursuant to C.R.S. § 38-35-109(5).

2. To the extent that a title searcher has actual notice of a misassembled document, or to the extent that a misassembled document is discoverable by a proper search (*See* Title Standard 1.1.3), the obvious omission charges the title searcher with a duty of inquiry which includes at least the duty to continue the search of the record to determine whether a properly assembled document was subsequently recorded.

3. Similar considerations would apply to a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.5 Correction Deeds — Generally

Problem: An acknowledged deed is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed originally recorded), properly executed and acknowledged by the grantor named in the original deed, is recorded. The correction deed differs from the deed originally recorded in that:

(A) The name of a grantee has been added or deleted.

(B) The description has been modified by the deletion of some portion of the described property or by a material modification of the description of some portion of the described property.

(C) The description has been modified by the inclusion of additional property.

(D) The phrase "as joint tenants with the right of survivorship" has been added to or deleted from the habendum clause.

If title to the property purported to be conveyed by the correction deed would have been marketable if the alterations contained in the correction deed had been included in the deed when originally recorded, is title to the property as conveyed by the correction deed marketable?

Answer: No, as to situations (A), (B), and (D), above. A grantor may not, by use of a correction deed affect the rights of the grantee in property previously conveyed, make a substantial change in the name of the grantee, or otherwise unilaterally alter the effect of an instrument. 3 Am. Law

of Property § 12.85 (1952). (For situations where the grantee joins in the correction deed, *See* Title Standards **3.5.6** through 3.5.9 below).

Yes, as to situation (C), above. A correction deed may be used to add property to a description. *Friend v. Stancato*, 140 Colo. 74, 342 P.2d 643 (1959).

NOTES: 1. The inclusion in the correction deed of recording information regarding the original deed is not required.

2. Similar considerations would apply to a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.6 Correction Deeds — Joinder by Grantee — Deletion of Property

Problem: An acknowledged deed is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed originally recorded), properly executed and acknowledged by both the grantor and grantee named in the original deed, is recorded. The correction deed differs from the deed originally recorded in that the description has been modified by the deletion of some portion of the described property. There are no words of grant purporting to transfer the property so deleted from the grantee to the grantor. Is title to the property so deleted marketable in the grantor?

Answer: No.

NOTES: 1. Although the correction deed may be binding as between the grantor and grantee, the recording of the original deed terminated the period during which a title searcher must search under the name of the grantor in the Grantor Index. *See* Title Standard 1.1.3(A). Therefore, the correction deed is not in the chain of title of a purchaser or encumbrancer from the grantor, nor does the recording of the correction deed provide constructive notice of its contents to such purchaser or encumbrancer.

2. Similar considerations would apply to a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.7 Correction Deeds — Joinder by Grantee — Addition or Deletion of Grantee

Problem: An acknowledged deed is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed originally recorded), properly executed and acknowledged by both the grantor and the grantee(s) named in the original deed, is recorded. The correction deed differs from the original deed in that:

(a) The name of one of several grantees named in the original deed has been deleted. There are no words of grant purporting to transfer an interest in the property from the grantee whose name has been deleted to the other original grantees.

(b) The name of a grantee, not named in the original deed, has been added. There are no words of grant purporting to transfer an interest in the property from the original grantee(s) to the grantee whose name has been added.

If title to the property would have been marketable in the grantee(s) named in the original deed, is title to the property marketable in the grantee(s) named in the correction deed?

Answer: (a) No, as to any interest granted by the original deed to a grantee whose name is deleted.

(b) No, as to a grantee whose name has been added.

NOTE: 1. Although the correction deed may be binding as among the grantor, the original grantee(s), and the subsequent grantee(s) the recording of the original deed terminates the period during which a title searcher must search under the name of the grantor in the Grantor Index. *See* Title Standard 1.1.3(A). Therefore, the correction deed is not in the chain of title of a purchaser or encumbrancer either from the original grantee whose name was deleted or from the grantee whose name was added in the correction deed, nor does the recording of the correction deed provide constructive notice of its contents to any such purchaser or encumbrancer.

2. Similar considerations would apply to a mortgage, deed of trust, easement, lease, covenant, or other document affecting title to real property.

Promulgated: 6/1/05.

3.5.8 Correction Deeds — Joinder by Grantee — Change of Nature of Tenancy (I)

Problem: An acknowledged deed naming A and B as grantees is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed originally recorded), properly executed and acknowledged by both the grantor and the grantees named in the original deed, is recorded. There are no words of grant purporting to transfer any interest in the property from one grantee to the other. The correction deed differs from the original deed in that the phrase "as joint tenants with the right of survivorship" has been added in the habendum clause. Thereafter, A dies. If title to the property would have been marketable in the grantees named in the original deed:

(A) Is title to the undivided whole of the property marketable in B?

(B) Is title to an undivided one-half of the property marketable in the estate of A?

Answer: (A) No, although title to an undivided one-half of the property marketable in B.

B) Yes.

NOTE: Although the correction deed may be effective as between the grantees, the recording of the original deed terminated the period during which a title searcher must search under the name of the grantor in the Grantor Index. *See* Title Standard 1.1.3(A). Therefore, the correction deed is not in the chain of title of a purchaser or encumbrancer from B, nor does the recording of the correction deed provide constructive notice of its contents.

Promulgated: 6/1/05.

3.5.9 Correction Deeds — Joinder by Grantee — Change of Nature of Tenancy (II)

Problem: An acknowledged deed naming A and B as grantees is recorded. Subsequently, another deed (which may or may not be designated a correction deed, and which may or may not refer to the recording information of the deed as originally recorded), properly executed and acknowledged by both the grantor and grantees in the original deed, is recorded. There are no words of grant purporting to transfer any interest in the property from one grantee to the other. The correction deed differs from the original deed in that the phrase "as joint tenants with the right of survivorship" has been deleted from the habendum clause. Thereafter, A dies. If title to the property would have been marketable in the grantees named in the original deed, is title to the undivided whole of the property marketable in B?

Answer: Yes.

NOTE: The recording of the original deed terminated the period during which a title searcher must search under the name of the original grantor in the Grantor Index. *See* Title Standard 1.1.3(A). Therefore the recording of the correction deed is not in the chain of title of B and does not provide constructive notice of its contents to a purchaser from B.

Promulgated: 6/1/05.

IV. CONVEYANCES FROM PUBLIC OFFICIALS

4.1 Public Trustee and Sheriff

4.1.1 Certificate of Purchase — Assignment

Problem: Where a public trustee's deed or sheriff's deed, made pursuant to certificate of purchase, recites that such certificate of purchase has been assigned to the grantee in the deed, is it necessary to require the assignment to be placed of record?

Answer: No.

Promulgated: 10/19/46.

4.1.2 Foreclosure — Public Trustee — Under Rule 120

Problem: Is a title derived through foreclosure sale by the public trustee rendered unmarketable by: (A) the fact that the proceedings in the office of the public trustee for the foreclosure by the public trustee were commenced before the proceedings under Rule 120, C.R.C.P., were commenced; (B) the fact that the proceedings under Rule 120 were commenced before the proceedings in the office of the public trustee for the foreclosure by the public trustee were commenced?

Answer: No, in each of the situations.

NOTE: *Kirchner v. Sanchez*, 661 P.2d 1161 (Colo. 1983) requires the foreclosure sale be scheduled not less than seven days after the Rule 120 hearing.

Promulgated: 10/24/53; Amended 1/1/87.

4.2 Treasurer (Tax Titles)

4.2.1 Marketability — Tax Deeds

Problem: After a treasurer's deed has been of record for nine years or more and is the source of title of the party in possession, is the title marketable without a supporting decree?

Answer: Yes.

NOTE: Unless the record shows affirmatively one of the exceptions contained in the statute, then under Sections 38-41-111 and 112, C.R.S., and the decision of our Supreme Court in *Federal Farm Mortgage Corporation v. Schmidt*, 109 Colo. 467, 126 P.2d 1036 (1942), the record discloses a marketable title.

In connection with this standard, you are referred to the Colorado cases of *Mitchell v. Espinosa*, 125 Colo. 267, 243 P.2d 412 (1952), and *Johnson v. McLaughlin*, 125 Colo. 298, 242 P.2d 812 (1952), both decided March 17, 1952. These cases concern a severance of mineral rights prior to a tax sale of land and prior to the issuance of a treasurer's deed thereon, and hold that such mineral rights do not pass by treasurer's deed unless separately assessed and sold.

In each case the treasurer's deed in question was the source of title of the person in possession of the land, and one of the deeds had remained of record for approximately nineteen years and the other deed approximately seventeen years. In each instance, the tax sale and the treasurer's deed based thereon did not except any mineral rights.

The court in its opinions made no reference to the limitation statute on which real estate Standard No. 4.2.1 is based (Sec. 146, Chap. 40, C.S.A. 1935 as amended by Session Laws of 1945, Chap. 101. *See* Section 38-41-111, C.R.S.).

Promulgated: 10/19/46; Amended 1/1/87.

4.2.2 Conveyance of Tax Title by City and County of Denver

Problem: A deed of record from the City and County of Denver, properly executed and acknowledged, conveyed title to property which was acquired by the city through a treasurer's deed. Is the acknowledgment to such a deed sufficient evidence of authority without a supporting resolution of the board of equalization?

Answer: Yes.

Promulgated: 10/20/56; Amended 1/1/87.

V. CAPACITY TO CONVEY

5.1 Agents and Representatives; Generally

5.1.1 Description of the Person as to Grantee

Problem: A conveyance described the grantee as trustee, agent, conservator, executor, administrator, attorney-in-fact or some other representative capacity but does not name the beneficiary or beneficiaries so represented and define the trust or other agreement under which the grantee

is acting or refer to an instrument, order, decrees or other writing of public record in the county in which the land conveyed is located in which such matters appear. Is marketable title conveyed by:

(A) a subsequent conveyance executed by such grantee without word or words indicating such representative capacity following his name?

(B) a subsequent conveyance executed by such grantee with word or words indicating such representative capacity following his name?

Answer: Yes, in each case

Promulgated: 10/24/53.

5.1.2 Description of the Person as to Grantor

Problem: A conveyance contains no language which described the grantee as trustee, agent, conservator, executor, administrator, attorney-in-fact or some other representative capacity; the abstract does not show an instrument (other than the subsequent conveyance hereinafter mentioned) which indicates that such grantee was acting in any of such representative capacities. Is marketable title conveyed by a subsequent conveyance executed by such grantee with word or words indicating one of such representative capacities, following his name but without identifying the trust, principal, ward, estate or beneficiary or beneficiaries represented by him?

Answer: Yes

Promulgated: 10/24/53.

5.2 Attorneys-in-Fact

5.2.1 Power of Attorney — Where no Record of Military Service

Problem: An instrument is executed by an attorney-in-fact under a power of attorney. There is no instrument of record indicating that the principal was in military service. Should an examiner require an affidavit by the attorney-in-fact under the provisions of Chapter 128A, Sections. 10 to 12, C.S.A. 1935 (1949 Replacement Volume) or Sections 107-4-1 to 107-4-4, C.R.S. 1963 (1967 Perm Supp.) (repealed with the adoption of the Colorado Probate Code) if the power of attorney is otherwise sufficient?

Answer: No.

COMMENT:

See Sections 15-14-501 and 502, C.R.S.

Promulgated: 10/14/50.

5.2.2 Power of Attorney — Authority

Problem: (A) A power of attorney authorizes the attorney-in-fact to perform any act whatsoever relating to certain real property. Does the lack of a specific authority to convey the real property in the power of attorney affect the validity of any conveyance executed pursuant thereto?

Answer: No.

Problem: (B) A power of attorney authorizes the attorney-in-fact to sell certain real property. Does the lack of a specific authority to convey the real property in a power of attorney affect the validity of any conveyance executed pursuant thereto?

Answer: Yes.

COMMENT:

(1) Caution should be exercised in reviewing powers of attorney because powers of attorney are strictly construed. If, therefore, instead of authorizing any act relating to real property the power of attorney contains a limited authority, the agent cannot act outside that authority. For instance, it has been held that a power of attorney which authorized the agent to "sell" real property permits only the negotiation by the agent of a purchase contract to be signed by the principal and does not allow the agent to execute a binding agreement to sell, much less to convey the property. *Nunnally v. Hilderman*, 150 Colo. 363, 373 P.2d 940 (1962); *Springer v. City Bank & Trust Co.*, 59 Colo. 376, 149 P. 253 (1915).

(2) Effective January 1, 2010, the use of a statutory form power of attorney is authorized. C.R.S. § 15-14-741. A document substantially in the form described grants broad general authority as outlined in the "Uniform Power of Attorney Act," part 7 of article 14 of title 15, C.R.S., unless such authority is specifically declared not to be included within that particular power of attorney. Under the Act, if real property is included in the agent's authority using the statutory form, the agent may exercise the acts enumerated in C.R.S. § 15-14-727, with respect to real property of the principal, including executing contracts and deeds. The Act supplements Colorado law existing prior to January 1, 2010, that required either an unlimited grant of authority (as in Problem A) or a specifically defined grant of authority (as in Problem B) to deal with real property. When reviewing a power of attorney affecting title to real property executed after January 1, 2010, and substantially in the form described in the Act, the review should include: (a) the scope of authority described in the Act, (b) statutory limitations on powers not expressly granted, and (c) any limitations stated in the power of attorney.

Promulgated: 4/9/88; Comment (2) added 12/3/2019.

5.2.3 Power of Attorney — Description of Property

Problem: A power of attorney authorizes the attorney-in-fact "to convey any real property now owned or hereafter acquired" by the principal. The power of attorney does not contain a specific legal description of real property. Does the lack of a specific legal description of real property in the power of attorney affect its validity or the validity of any conveyance executed pursuant thereto?

Answer: No.

COMMENT:

A power of attorney need not particularly describe each specific tract of land with which the agent may deal as long as it is clear that the tract in question was intended to be included within the power of attorney. 2A C.J.S. Agency §227. For instance, a power of attorney containing language such as "all or any lots of ground in Denver" has been upheld as valid. *Holladay v. Dailey*, 1 Colo. 460 (1872).

Promulgated: 4/9/88.

5.2.4 Power of Attorney — Form of Execution

Problem: A document affecting title to real property is executed by Richard Roe as attorney-in-fact for John Doe in one of the following forms:

(A) JOHN DOE [Need not be handwritten]
By: [Signature of Richard Roe]
Richard Roe, Attorney-in-Fact

(B) [Signature of Richard Roe]
John Doe by Richard Roe,
Attorney-in-Fact

(C) [Signature of Richard Roe]
Richard Roe, as Attorney-in-Fact for John Doe

Is each of the above forms a sufficient execution by John Doe?

Answer: Yes, however, other forms of execution may also be sufficient.

NOTE: *See* Standard No. 9.2.5 as to the form of an acknowledgment by at attorney-in-fact.

Promulgated: 4/9/88.

5.2.5 Power of Attorney — Affidavit Concerning Death or Disability of Principal

Problem: An instrument is executed by an attorney-in-fact under a power of attorney. Under the provisions of Sections 15-14-501 and 15-14502, C.R.S., an attorney-in-fact may execute an affidavit stating that the attorney-in-fact did not have actual knowledge of the death or disability of the principal and such affidavit is conclusive proof of the non-termination of the power of attorney because of the death or disability of the principal. Should an examiner require such an affidavit by the attorney-in-fact if the power of attorney is otherwise sufficient?

Answer: No. *See* Section 15-14-607, C.R.S. which permits any third party dealing with an attorney-in-fact to presume that a power of attorney has not been terminated.

Promulgated: 5/11/02.

5.3 Trade Name Affidavits

5.3.1 Trade Name Affidavit — Non-Human Entities as Members

Problem: A trade name affidavit has been recorded pursuant to Section 24-35-301(1.5), C.R.S., in the county where the real property is located. The affidavit names one or more non-human entities as one or more of the parties representing the person, general partnership or other business organization who or which recorded the affidavit. Section 24-35-301(1.5), C.R.S., requires the affidavit to set forth the full first names and surnames of all the parties representing the person, general partnership or other business organization who or which may record the affidavit. Is title to the real property, the marketability of which depends upon the recorded trade name affidavit, marketable even though the affidavit names one or more non-human entities as one or more of the parties representing the person, general partnership or other business organization who or which recorded the affidavit?

Answer: Yes.

Promulgated: 6/14/83; Amended 4/13/96.

5.3.2 Trade Name Affidavit — Title Held in Trade Name

Problem: A trade name affidavit which complies with either Article 71 of Title 7, C.R.S., or Section 24-35-301(1.5), C.R.S., has been recorded in the county where the real property is located. The affidavit indicates that an individual or a non-human entity capable of holding title is transacting business under a trade name different from the personal name of the individual or the official name of the non-human entity. Is title to real estate marketable if it is held in such trade name?

Answer: Yes

Promulgated: 4/13/96.

5.4 Miscellaneous

5.4.1 Conveyances or Encumbrances by Persons Eighteen Years of Age or Older

Problem: On or after June 25, 1973, is a person eighteen years of age or older of full age for the purpose of conveying or encumbering real estate?

Answer: Yes.

Promulgated: 10/9/74.

VI. ENTITIES

As used in this Article VI and elsewhere in these Title Standards, the term "entity" means a legal person other than a human being that is capable of holding title to real property in the State of Colorado. The term "entity" means the same thing as the term "non-human entity" which is used in Title Standards 5.3.1 and 5.3.2. The term "entity" includes, without limitation, any government or governmental subdivision or agency, corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited partnership association, joint venture, trust, nonprofit association and cooperative.

6.1 Evidence of Existence of Entity

6.1.1 Entity in Title

Problem: If title to real property is currently held in the name of an entity, is it necessary to record any documents in order to evidence the existence of the entity for the purpose of establishing marketable title in the entity?

Answer: No, except with respect to a joint venture which requires that an affidavit meeting the requirements of Section 38-30-166, C.R.S. be recorded either before or after the conveyance to the joint venture to enable the joint venture to hold title to real property. However, with respect to other entities, a title examiner must assure himself or herself that the entity is in existence by some means such as by contacting the Secretary of State for an entity that is formed by filing a document with the Secretary of State, by reviewing the formation documents for an entity that is not formed by filing a document with the Secretary of State or by examining any of the following recorded documents: (a) the conveyance into the entity if the conveyance recites that the entity is in existence and the conveyance has been of record for at least 20 years (*See* Section 3835-107, C.R.S.); (b) if the entity is a corporation, a certificate of incorporation (*See* Section 38-30-144, C.R.S.); (c) if the entity is a general partnership, a statement of partnership authority (*See* Section 7-64-303, C.R.S.); (d) a statement of authority for the entity meeting the requirements of Section 38-30-172, C.R.S.; and (e) any instrument that is permitted by law to be recorded, that names the entity, that gives the entity description of such entity, and that, by law, is prima facie evidence of the facts recited in such instrument insofar as such facts affect title to real property (*See* Section 38-30-172, C.R.S.) such as: (i) a certificate of trade name meeting the requirements of Section 7-71-101, C.R.S. if the entity is a corporation, limited partnership, limited liability company, limited liability partnership or limited liability limited partnership; (ii) an affidavit concerning a trade name meeting the requirements of Section 24-35-301, C.R.S. if the entity is a general partnership or other business organization; and (iii) a statement of authority meeting the requirements of Section 7-30-105 if the entity is a nonprofit association.

Promulgated: 10/15/49; Amended 5/11/02.

6.1.2 Entity No Longer in Title

Problem: If title to real property was held in the name of an entity which conveyed title to the real property by a recorded instrument which uses the same name and the same entity description as the instrument by which the entity purported to acquire title, is it necessary to record any documents in order to evidence the existence of the entity for the purpose of establishing marketable title in the grantee from the entity?

Answer: No (*See* Section 38-30-172, C.R.S.)

Promulgated: 10/11/52; Amended 5/11/02.

6.2 Evidence of Authorization of Conveyance by an Entity

6.2.1 Conveyance by Acknowledged Instrument

Problem: If a recorded conveyance by an entity is properly acknowledged, is it necessary to record any other document in order to evidence the authority of persons to act on behalf of such entity for the purpose of establishing marketable title in the grantee from the entity?

Answer: No, except with respect to a nonprofit association which requires that a statement of authority meeting the requirements of Section 7-30-105, C.R.S. be recorded before the conveyance by the nonprofit association. Section 38-35-101, C.R.S. provides that an instrument which is properly acknowledged is prima facie evidence of the authority of officers to act on behalf of a corporation, of directors, trustees or managers of a dissolved or expired corporation or their survivors to act on behalf of such a corporation and of partners to act on behalf of a partnership. Title Standard 9.2.7 provides that these presumptions of Section 38-35-101, C.R.S. apply to all other entities.

Promulgated: 10/19/46; Amended 5/11/02.

6.2.2 Conveyance by Unacknowledged or Improperly Acknowledged Instrument

Problem: If a recorded conveyance by an entity is unacknowledged or is improperly acknowledged, is it necessary to record any other document in order to evidence the authority of a person or persons to act on behalf of such entity for the purpose of establishing marketable title in the grantee from the entity?

Answer: Yes, in all but two circumstances. The first circumstance occurs if the conveyance has been recorded for at least 10 years, in which event such conveyance is deemed to be properly acknowledged (*See* Section 38-35-106, C.R.S.). The second circumstance occurs if the conveyance is by a corporation and the conveyance has the corporate seal affixed and has been signed by the president, vice president or other head officer of the corporation, in which event the conveyance is deemed to be executed with proper authority as to any bona fide purchaser, encumbrancer or other party relying upon such conveyance (*See* Section 38-30144, C.R.S.). In all other circumstances, a document must be recorded in addition to the recorded conveyance, which additional document must contain an authorization for a person or persons by name or position to act on behalf of such entity as of the time of the conveyance. The types of such documents may include, without limitation: (a) a statement of authority for the entity meeting the requirements of Section 38-30-172, C.R.S.; (b) an instrument that is required or permitted by law to be recorded in order to evidence the authority of one or more persons by name or position to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity (*See* Section 38-30-172, C.R.S.) such as (i) an affidavit meeting the requirements of Section 38-30166, C.R.S. if the entity is a joint venture and (ii) a statement of authority meeting the requirements of Section 7-30-105, C.R.S. if the entity is a nonprofit association; and (c) a certified copy of an instrument on file with any agency or department of any state, country or other governmental authority that evidences the authority of one or more persons by name or position to execute instruments conveying, encumbering or otherwise affecting title to real property on behalf of the entity (*See* Section 38-30-172, C.R.S.) such as (i) a certificate of trade name meeting the requirements of Section 7-71-101, C.R.S. if the entity is a corporation, limited partnership, limited liability company, limited liability partnership or limited liability limited partnership; (ii) an affidavit concerning a trade name meeting the requirements of Section 2435-301, C.R.S. if the entity is a general

partnership or other business organization; and (iii) a statement of partnership authority meeting the requirements of Section 7-64-303 if the entity is a general partnership.

Promulgated: 10/14/50; Amended 5/11/02.

6.2.3 Corporate Seal

Problem: A recorded instrument affecting title to real property is executed in the name of a private (non-governmental) corporation. It is executed by an individual identified as an officer of the corporation or individual authorized to convey, mortgage or lease real property on behalf of the corporation, and duly acknowledged in a form complying with Colorado statutes. There is no recital or other evidence that a corporate seal was affixed. Is title marketable in the absence of a corporate seal?

Answer: Yes.

NOTES: Although a number of Colorado statutes authorize adoption and use of a corporate seal by a private corporation, none requires its use to make an instrument binding upon the corporation. Section 38-30-144(1) C.R.S. provides that a private corporation may convey, mortgage or lease real estate in the manner authorized by articles 30 to 44 of Title 38 *or* by instrument under its common seal, subscribed by its president, vice-president, or other head officer. Section 38-30-144(2) C.R.S. provides that:

> Any corporate instrument affecting title to real property, executed by the president, vice-president, or other head officer of the corporation, in the form required or permitted by law, shall be deemed to have been executed with proper authority in the usual course of business, and shall be binding and conclusive upon the corporation as to any bona fide purchaser, encumbrancer, or other person relying on such instrument.

The signature of the designated president, vice president or other head officer, under the corporate seal, is one means of making the instrument binding and conclusive upon the corporation, but other means available in articles 30 to 44 of Title 38 may also make the instrument binding and conclusive, notwithstanding the absence of a corporate seal. For example, Section 38-35-101(3)(c) C.R.S. makes an acknowledgment prima facie evidence that the person acknowledging the instrument is executing it as the described corporate officer, with proper authority from the corporation, as the act of the corporation; and Section 38-30-118 C.R.S. eliminates the need for a seal of the grantor as a condition to the proper execution of any conveyance affecting real property.

Promulgated: 5/12/12.

6.3 Variances in Name

6.3.1 Entity — Word "The" in Name

Problem: What is the effect of the omission from or insertion in an instrument of record of the word "The" used as an article of speech and the initial word of the name of an entity?

Answer: The omission or insertion does not affect the marketability of the title.

Promulgated: 10/19/46; Amended 5/11/02.

6.3.2 Entity — Use of Abbreviated or Non-Abbreviated Terms

Problem: One of the words or phrases "Company", "Limited", "Incorporated", "Corporation", "Limited Liability Company", "Limited Liability Partnership", "Limited Liability Limited Partnership", "Registered Limited Liability Partnership", "Registered Limited Liability Limited Partnership", "Limited Partnership", "Limited Partnership Association", "Limited Cooperative Association", "Limited Cooperative" or "Professional Corporation" that is required by statute to be included in the name of an entity is used in the name of an entity in a document affecting title to real property of such entity. Technically, its name contains only an abbreviated form of the word so used, such as "Co.", "Ltd.", "Inc.", "Corp.", "L.L.C.", "L.L.P.", "L.L.L.P.", "R.L.L.P.", "R.L.L.L.P.", "L.P.", "L.P.A.", "L.C.A.", "Ltd. Co-op", "P.C." or any of the foregoing abbreviated forms without using periods.

(A) Does the use of the full word or phrase as to any of the listed entities or as to any identifying term now or hereafter required by statute as to any other entities that may be authorized under Colorado law instead of the abbreviated form affect the marketability of the title?

(B) If the reverse occurred, i.e., if the full word or phrase required by statute to be included in the name of an entity is used in the name of the entity, and an abbreviated form thereof is used in the document, would this affect the marketability of the title?

Answer: No, in each case.

Promulgated: 10/15/55; Amended 5/11/02, 5/11/13.

6.3.3 Entity — Name Variations — Type of Entity

Problem: (A) An examination of title discloses conveyance of Black Acre to "ABC Corp.", followed by a conveyance of Black Acre from "ABC LLC" to X. The examination of title does not disclose conversion of ABC Corp. into a limited liability company or merger of ABC Corp. into ABC LLC. Is title to Black Acre marketable in X?

(B) An examination of title discloses conveyance of Black Acre to "ABC Limited, a Colorado corporation," followed by a conveyance of Black Acre by "ABC Ltd., a Colorado limited liability company," to X (again, the examination of title does not disclose a conversion or merger). Is title to Black Acre marketable in X?

(C) An examination of title discloses conveyance of Black Acre to a grantee identified as "ABC Limited." A subsequent conveyance after July 1, 2004, discloses conveyance of Black Acre by "ABC Ltd." to X. Is title to Black Acre marketable in X?

Answer: No as to (A) and (B).
Yes as to (C).

NOTE: In 2000 Colorado enacted Section 7-90-601 C.R.S. concerning required and allowed entity names. In general, Section 7-90-601(2) C.R.S. requires that an entity name be "distinguishable on the records of the secretary of state from every" other entity name or reserved name appearing in those records. This is a less restrictive standard than the prior corporate name

statute that prohibited use of any name that was "deceptively similar to" the name of another entity registered with the Colorado secretary of state. See Colo. Sess. Laws. p.125, § 7(c) (1958), formerly codified at Section 7-3106(3)(a) C.R.S. (1973). Beginning July 1, 2004, the secretary of state's name availability standards changed considerably. As of Jan. 1, 2013, information posted on the Colorado Secretary of State website includes examples of name differences which will be viewed by the secretary of state as distinguishable. For example, the articles of speech such as "the" and "a" used at the beginning of a name make a name distinguishable. Also, terms and abbreviations such as "Inc.," "Corp." and "LLC" make a name distinguishable. Thus, separate registration of such names as ABC Corp., ABC Corporation, ABC Inc. and ABC LLC has been allowed since July 1, 2004.

Notwithstanding the change in the name availability standards of the secretary of state, the Committee believes that name variations of the type described in Title Standard 6.3.1 and 6.3.2 do not defeat marketability of title unless an examination of title discloses the existence of separate entities.

The Problems in Title Standard 6.3.3 (A) and (B) are examples where the Colorado secretary of state allows separate entities with similar names to be formed or registered, but where the presumption underlying Title Standard 6.3.2 does not apply. In each problem, both entities could exist under Section 7-90-601 C.R.S. and the entity name guidelines of the secretary of state.

In Problem (A) each entity's name includes a statutorily required designation of the type of entity, and this difference in entity designation demonstrates the existence of separate entities. Because of the difference, title is not marketable. Compare 7-90-601 C.R.S. Section (3)(a) with Section (3)(c), (d), (e) and (f).

In Problem (B) the registered names are identical in all material respects, but the description of the type of legal entity following each name demonstrates the existence of separate entities. Thus, title would not be marketable. The same result would follow for an entity organized in a state other than Colorado.

Problem (C) demonstrates difficulties created by the name availability standards of the secretary of state. "ABC Limited" and "ABC Ltd." could be registered separately. Under Section 7 90 601(3) C.R.S., the designation "Limited" or "Ltd." could be included in the name of a corporation, limited liability company, limited liability partnership, limited partnership, or limited liability limited partnership. Therefore, the inclusion of "Limited" or "Ltd." in the name, without more, does not identify the type of entity. Thus, no evidence appears of record that ABC Limited and ABC Ltd. are separate entities. The principles underlying Title Standard 6.3.2 would render title marketable, based upon a presumption of identity as to the grantee in the first conveyance and the grantor in the second. Therefore, title is marketable.

Promulgated: 5/11/13.

VII. COTENANCY

7.1 Cotenants

7.1.1 Cotenants — Proof of Death

Problem: (A) Following the death of a person holding a record interest as a joint tenant or life tenant in Colorado real property, (i) a certificate of death, verification of death, or other similar instrument issued by the public entity responsible for issuing such certification or verification of death in the jurisdiction in which the death occurred, is recorded in the real estate records in the county in which the property is located, together with (ii) a supplementary affidavit containing the information set forth in C.R.S. § 38-31-102. Assuming title is otherwise marketable, is title marketable in the surviving joint tenant or remainderman?

(B) The documents described in (A)(i) and (A)(ii) above are recorded, but the supplementary affidavit is recorded at some time subsequent to the recording of the document described in (A)(i). Assuming title is otherwise marketable, is title marketable in the surviving joint tenant or remainderman?

(C) Following the death of a person holding a record interest as a joint tenant or life tenant in Colorado real property, an affidavit containing the information set forth in C.R.S. § 38-31-103 is recorded. Assuming title is otherwise marketable, is title marketable in the surviving joint tenant or remainderman?

Answer: Yes, in each case.

NOTE: The same analysis would apply to establish the death of an "Owner" under a "Beneficiary Deed," as those terms are defined in C.R.S. § 15-15-401.

Promulgated: 10/19/46; Amended 5/13/06.

7.1.2 Joint Tenancy — Grantees

Problem: A conveyance of record on a deed that includes the statutory language required to create a joint tenancy describes the grantees as follows:

(a) John Smith or Mary Smith;

(b) John Smith and/or Mary Smith.

Is title marketable under the following situations:

(a) In the subsequent grantee, where both John Smith and Mary Smith joined in the subsequent conveyance?

(b) In the surviving grantee where the other grantee is now deceased and the instruments required by statute to perfect title in the surviving joint tenant have been recorded?

Answer: Yes, in each case

Promulgated: 10/16/48; Amended 6/13/17.

7.1.3 Joint Tenancies Prior to March 27, 1939

Problem: Does a conveyance made prior to March 27, 1939, create a joint tenancy if it is sufficient in form to create a joint tenancy pursuant to Section 38-31-101, C.R.S., and its predecessor statutes?

Answer: Yes

Promulgated: 10/15/49.

7.1.4 Joint Tenants — Conveyance

Problem: One of two joint tenants conveys to the other joint tenant an undivided one-half of the real estate concerned. Does the grantee by said deed become possessed of the entire property?

Answer: Yes

Promulgated: 10/11/52.

7.1.5 Unequal Joint Tenancies — Recalculation Upon Death of a Joint Tenant

Problem (A) A, B and C hold title to Blackacre as joint tenants as follows: A – 30%, B – 30% and C – 40%. Following the death of A, assuming satisfactory recorded evidence of proof of the death of A as contemplated by Title Standard 7.1.1, may the examiner recognize title in Blackacre as follows: B – 3/7ths and C – 4/7ths?

Answer: Yes.

Problem (B) A, B, C and D hold title to Blackacre as joint tenants as follows: A – 1/2, B – 1/4, C – 1/8 and D – 1/8. Following the death of A, assuming satisfactory recorded evidence of proof of the death of A as contemplated by Title Standard 7.1.1, may the examiner recognize title in Blackacre as follows: B – ½, C – ¼, and D – ¼?

Answer: Yes.

NOTES: C.R.S. § 38-31-101 (6) (c) states, "Upon the death of a joint tenant, the deceased joint tenant's interest is terminated. In the case of two or more surviving joint tenants, their interests shall continue in proportion to their respective interests at the time the joint tenancy was created." Each joint tenant owns an interest in the whole. The deceased joint tenant's interest is not transferred or inherited. The interests of the surviving joint tenants are recalculated in accordance with the statute. The recalculated interests should generally be stated as a fraction, irrespective of how the interests are described in the instrument creating the joint tenancy. The recalculated interests may be converted to percentages or decimals, provided the conversion can be done without rounding any interest. In certain circumstances, applicable law may affect the recalculation contemplated by C.R.S. § 38-31-101(6)(c). *See, e.g.*, C.R.S. § 15-11-803(3)(b) – *Effect of Homicide on Joint Assets*.

Formula: Calculate total interest of the surviving joint tenants before decedent's death, and then divide the individual interest of each surviving joint tenant before death by this total.

Problem A Prior to death of A: A – 30%, B – 30% and C – 40%. B+C = 70%. To determine B's interest following death of A, divide 30 by 70 = 3/7ths. To determine C's interest following the death of A, divide 40 by 70 = 4/7ths.

Problem B – Prior to the death of A: A – ½, B – ¼, C – ⅛ and D – ⅛. B+C+D = ½. To determine B's interest following the death of A, B holds ¼ ÷ ½ = ½. To determine C's and D's interests following the death of A, C and D each hold ⅛ ÷ ½, so C and D each hold ¼.

Promulgated: 10/29/11.

7.2 Tenants in Common

7.2.1 Cotenancy — Grantees

Problem: A conveyance of record on a form of deed creating a tenancy in common described the grantees as follows:

(a) John Smith or Mary Smith;

(b) John Smith and/or Mary Smith.

Is title marketable in a subsequent grantee under problem (a) or (b) where both John Smith and Mary Smith have joined in a subsequent conveyance?

Answer: Yes in both cases

Promulgated: 10/16/48; Amended 6/13/17.

VIII. LEGAL DESCRIPTIONS

8.1 Generally

8.1.1 Description of Property — Formerly in Arapahoe County, Now in the City and County of Denver

Problem: Prior to December 1, 1902, property is located in a platted addition in the County of Arapahoe. After December 1, 1902, on which date the City and County of Denver became a political entity including within its borders the said property, a deed is executed and recorded in the City and County of Denver describing said property as being in Arapahoe County. Is title marketable, provided no addition of similar name existed in Arapahoe County at the time of the execution and recording of the deed?

Answer: Yes.

Promulgated: 10/19/46; Amended 4/25/17.

8.1.2 Metes and Bounds Descriptions

Problem: (A) The legal description refers to a railroad or roadway or natural stream or other monument which physically is in existence, although nothing appears of record to establish the location of the existing monument. Is title marketable?

Problem: (B) The legal description refers to a railroad or roadway or natural stream or other monument. The monument is no longer in existence and no evidence appears of record to establish the location of the monument as it existed in the past. A plat or map, prepared and certified by the county surveyor prior to July 6, 1973, in accordance with Section 136-1-7, C.R.S. 1963, is then recorded in the recorder's office and the legal description of the property is amended to include the new description in accordance with the map or plat made by the county surveyor. Is title marketable?

Answer: Yes, in each case.

NOTE: Section 136-1-7, C.R.S. 1963 was amended by Chapter 407 Session Laws of 1973, limiting the authority of the county surveyor under the statute to the location of a section corner or a quarter section corner. *See* Section 30-10-906, C.R.S.

Promulgated: 6/21/60; Amended: 1/1/87.

8.1.3 Description of Property — Formerly in Adams, Boulder, Jefferson or Weld County, Now in The City and County of Broomfield

Problem: (A) Real estate is located in one of the areas of Adams, Boulder, Jefferson or Weld County which on November 15, 2001 became the political entity of The City and County of Broomfield. On or after that date, a deed is recorded in The City and County of Broomfield describing such real estate as being in the county in which such real estate was located before the formation of The City and County of Broomfield but does not describe such real estate as being in The City and County of Broomfield. Is title marketable?

(B) Real estate within a platted subdivision is located in one of the areas of Adams, Boulder, Jefferson or Weld County which on November 15, 2001, became the political entity of The City and County of Broomfield. On or after that date, a deed is recorded in The City and County of Broomfield describing such real estate by reference to the name of such platted subdivision and as being in The City and County of Broomfield. A review of the names of all of the platted subdivisions located in the areas of Adams, Boulder, Jefferson and Weld Counties which became The City and County of Broomfield indicates that there is only one platted subdivision by that name. Is title marketable?

Answer: Yes, in both cases.

Promulgated: 5/6/00.

8.2 Subdivisions

8.2.1 Conveyance by Deed Reference to Vacated Plat

Problem: A tract of ground platted as "X Subdivision" was vacated. No new subdivision of that name was platted thereafter. A conveyance executed by the owner, after the vacating of the plat, purported to convey "Lot 1, Block 2, X Subdivision". Does such conveyance pass title to the land within the exterior boundaries of what had been Lot 1, Block 2, X Subdivision, according to the plat before its vacation?

Answer: Yes.

Promulgated: 10/15/55.

8.2.2 Description Omitting Part of Name of Addition

Problem: (A) The records show that an addition was platted as "Title Standards Addition" containing eight blocks numbered from one to eight. Another addition was platted as "Title Standards Addition, Second Filing", containing eight blocks, numbered from nine to sixteen. Another addition was platted as "Title Standards Addition, Third Filing", containing eight blocks, numbered seventeen to twenty-four. A deed in the chain of title described the property conveyed as Lot 15, Block 18, Title Standards Addition. There being no other addition in the county which contains in its title the words "Title Standards", is this description of the property in the deed sufficient to convey Lot 15, Block 18, Title Standards Addition, Third Filing?

Problem: (B) Suppose that in the above problem "Title Standards Addition" contains eight blocks numbered from one to eight, each containing fourteen lots, numbered from one to fourteen. "Title Standards Addition, Third Filing", has eight blocks numbered from one to eight, each containing twenty-four lots, numbered from one to twenty-four. A deed in the chain of title conveys Lot 15, Block 8, Title Standards Addition. There being no other addition in the county which contains in its title the words, "Title Standards", is this description sufficient to convey Lot 15, Block 8, Title Standards Addition, Third Filing?

Answer: Yes, in each case

Promulgated: 10/19/57.

8.3 Vacated Roads, Streets, and Alleys

8.3.1 Streets and Alleys — Vacation

Problem: (A) The record reveals the vacation of all or part of a roadway, as defined in Section 43-2-301, C.R.S., which was not originally a portion of a lot or lots included in a platted subdivision. Subsequently, an abutting owner executes and delivers a deed describing only the abutting lot or lots, omitting description of the vacated strip. By the deed, does he convey any portion of the property which he acquired as a result of the vacation?

Answer: (1) No, as to conveyances effective prior to April 27, 2005.
(2) Yes, as to conveyances effective on or after April 27, 2005.

NOTE: (I) HB 05 1195 added Section 38-30-113(1)(d), C.R.S., effective April 27, 2005, to provide that any deed of property conveys the grantor's interest in a vacated street, alley or other right-of-way which adjoins the property, unless the interest is expressly excluded in the deed. SB 17-097 repealed Section 38-30-113(1)(d), C.R.S. and added Section 38-30-104.5 (effective August 9, 2017). The 2017 bill states that every conveyance or encumbrance of real property is deemed to include the Grantor's interest, if any, in any vacated street, alley, or other right-of-way that adjoins the real property unless the interest is expressly excluded by the terms of the conveyance or encumbrance.

(II) SB 07-090 added Section 43-2-302(1)(f), C. R. S., which authorizes a county to provide that title to a vacated roadway shall vest in the owner of the land abutting the vacated roadway, in other owners of land who use the vacated roadway as access to the owners' land or in a legal entity that represents any owners of land who use the vacated roadway as access to the

owners' land. Pursuant to this section, the vacation of a roadway does not necessarily cause the title to any portion of the vacated roadway to transfer to adjoining owners. The statutory amendment does not alter the result stated in Title Standard 8.3.1(A) because it only addresses the portion of the property acquired as a result of the vacation, if any. However, it should not be presumed that any property was acquired. In the case of vacation of a county roadway effective on or after September 1, 2007, it is necessary to consult the resolution of the board of county commissioners approving the vacation to determine the disposition of title to the vacated roadway. (Note II added May 17, 2008).

Problem: (B) The record reveals the vacation of all or part of a roadway, as defined in Section 43-2-301, C.R.S., which was originally a portion of a lot or lots included in a platted subdivision. Is a subsequent description of such lot or lots as designated in the recorded plat, without specifically describing the vacated roadway, sufficient to include the portion of the vacated roadway which was formerly a part of such lot or lots, and which was acquired by the owner of the lot or lots as a result of the vacation?

Answer: Yes. Such description embraces the lot or lots as shown in the recorded plat as the same existed prior to the grant or condemnation of the roadway. Neither Section 38-30-113(1)(d) (repealed effective August 9, 2017), nor Section 38-30-104.5 C.R.S. (effective August 9, 2017) alters this result.

NOTES: (I) A similar result, both before and after the effective date of Section 38-30-113(1)(d), C.R.S. (repealed effective August 9, 2017), would obtain in the case of a tract described by reference to the government survey (e.g., regular aliquot part or fractional lot of a section, tract or mineral survey parcel), and this result is not changed by Section 38-30-104.5 C.R.S. (effective August 9, 2017).

(II) SB 07-090 added Section 43-2-302(1)(f), C.R.S., which authorizes a county to provide that title to a vacated roadway shall vest in the owner of the land abutting the vacated roadway, in other owners of land who use the vacated roadway as access to the owners' land or in a legal entity that represents any owners of land who use the vacated roadway as access to the owners' land. Pursuant to this section, the vacation of a roadway does not necessarily cause the title to any portion of the vacated roadway to transfer to adjoining owners. The statutory amendment does not alter the result stated in Title Standard 8.3.1 (B) because it only addresses the portion of the property acquired as a result of the vacation, if any. However, it should not be presumed that any property was acquired. In the case of vacation of a county roadway effective on or after September 1, 2007, it is necessary to consult the resolution of the board of county commissioners approving the vacation to determine the disposition of title to the vacated roadway. (A clarifying revision to Title Standard 8.3.1(B) and this Note II to reflect the impact of SB 07-090 were added May 17, 2008).

Promulgated: 10/19/46; Amended: 1/1/87, 11/12/05, 5/17/08; 4/25/17.

8.3.2 Conveyance of Block after Vacation of Alley

Problem: The record reveals the vacation of an alley originally platted and running through a block, and that title to the block was held as a unit at the time of the alley vacation.

(A) Does conveyance of the block (i.e. "Block X" or "All of Block X"), without mention of the vacated alley, convey such vacated alley?

(B) Does conveyance of a fractional portion of the block, or a specific number of feet of the block, convey that portion of the vacated alley within the portion of the block so described?

Answer: Yes, in each case, provided (i) there were no conveyances of individual platted lots within the block prior to April 27, 2005, or (ii) all conveyances of individual platted lots within the block prior to such date expressly included the adjacent portion of the vacated alley.

Notes:

(1) The fractional portion of a block referred to in subparagraph (B) of the problem means a portion other than platted lots, for example, the North half of Block X, or the West 100 feet of Block X.

(2) A block means that portion of a subdivision surrounded by streets or other boundary lines and identified on the plat as a block. Upon vacation of an alley, the block containing the vacated alley is considered a unit, as if no alley had previously been dedicated.

(3) If conveyances of individual lots, or portions thereof, were made prior to April 27, 2005, without describing the lot owner's interest in the portion of the vacated alley adjacent to the lot or portion thereof conveyed, see Title Standard 8.3.1.

(4) The answer would be the same if the platted lots in the block were held in separate ownership at the time the alley was vacated, and then ownership of all lots comprising the block were assembled into a single ownership, provided all conveyances of individual lots prior to April 27, 2005 included the adjacent portion of the vacated alley.

(5) As described in Note 1 to Problem A of Title Standard 8.3.1, Section 38-30-113(1)(d) C.R.S. (effective April 27, 2005) changed the law regarding vacated streets and alleys.

Effective August 9, 2017, Section 38-30-113(1) (d) C.R.S. was repealed and replaced by 38-30-104.5 C.R.S. The answer is not altered by the 2017 change.

Promulgated: 10/2/56, amended 2005, 4/25/17, 10/2/18.

8.4 Fractional Mineral Interests

Problem:

The real estate records reflect that A owns marketable title in fee simple to Blackacre and there has been no severance of title to the oil, gas, and other minerals from Blackacre. The real estate records contain (1) a deed from A to B describing Blackacre and containing language in the granting clause reserving an undivided 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre; and (2) a deed from B to C describing Blackacre and containing language in the granting clause reserving an undivided 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre without any reference to the deed from A to B described in clause (1).

(A) After the deed from A to B, does A hold marketable title to an undivided 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre?

Answer: Yes.

(B) After the deed from A to B, does B hold marketable title to an undivided 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre?

Answer: Yes.

(C) After the deed from B to C, does B hold marketable title to an undivided 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre?

Answer: No. See CAUTION below.

(D) After the deed from B to C, does C hold marketable title to an undivided 1/2interest in all oil, gas, and other minerals on, in, and under Blackacre?

Answer: Yes. See CAUTION below.

CAUTION: Care should be taken in reviewing instruments reserving or conveying fractional interests in oil, gas, and other minerals on, in and under a parcel of real property. Questions may arise whether the owner of a fractional interest intends to reserve or convey the entirety, or only a portion, of its interest.

In the context of reservations, but for the holdings of the courts in the cases cited in the Note below, the reservation in the deed from B to C described in the Problem above could be construed to (i) reserve to B the entirety of the 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre acquired by B in the deed from A to B, or (ii) reserve to B 1/2 of the 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre acquired by B in the deed from A to B, in other words, reserving to B a 1/4 interest in the oil, gas, and other minerals on, in, and under Blackacre.

While not yet considered by Colorado courts, similar questions may arise in the context of conveyances of fractional interests in oil, gas, and other minerals on, in and under a parcel of real property: whether the owner of a fractional interest intended to convey its entire interest or a fraction of the fractional interest owned. For example, consider a situation where A owns fee simple title to Blackacre and there has been no prior severance of minerals from Blackacre. The real estate records contain (1) a deed from A to B granting to B a 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre; and (2) a deed from B to C granting to C a 1/2 interest in all oil, gas, and other minerals on, in, and under Blackacre without any reference to the deed from A to B described in clause (1). Questions may arise as to whether B intended, in the deed from B to C, to convey (i) the entirety of the 1/2 interest in all oil, gas, and minerals on, in, and under Blackacre that B acquired in the deed from A to B or (ii) 1/2 of the 1/2 interest in all oil, gas, and minerals on, in, and under Blackacre that B acquired in the deed from A to B, in other words, a 1/4 interest the oil, gas, and other minerals on, in, and under Blackacre.

NOTE: Under Colorado's recording statute, Section 38-35-109(1) C.R.S., proper recording of documents provides constructive notice of interests affecting title to those persons claiming under the same chain of title who are bound to search for it. See Collins v. Scott, 943 P.2d 20 (Colo. App. 1996). However, Colorado courts have not considered the effect of the foregoing on the interpretation of conveyances of fractional interests in mineral estates. Instead, Colorado courts have limited their analyses to the contents of the deed in question,

considering extrinsic evidence only if, based on that analysis, the court determines the deed is ambiguous. See Moeller v. Ferrari Energy, LLC, 471 P.3d 1258 (Colo. App. 2020); O'Brien v. Village Land Co., 794 P.2d 246 (Colo. 1990); and Brown v. Kirk, 257 P.2d 1045 (Colo. 1953). Furthermore, even where both the grantor and grantee have actual knowledge of the severance of a fractional interest in oil, gas and other minerals from the real property contained in a prior deed in the chain of title to a parcel, absent a finding of ambiguity in the deed between such grantor and grantee, Colorado courts have not considered the prior severance in interpreting the proportion of the mineral interests in, on, and under the property reserved and conveyed in the deed between such grantor and grantee. See O'Brien.

Moreover, in conducting such analysis of the contents of the deed in question, Colorado courts have disregarded any distinction made in the deed between an exception for and a reservation of a fractional interest in mineral rights, finding that the two words are often used interchangeably. See Moeller and Brown. Additionally, a statement in the deed to the effect that the reservation is made "to the grantors" or similar language has been construed by Colorado courts as both ambiguous and as unambiguous but, in either case, has been held to be insufficient to reserve to the grantor an interest in the minerals. See Moeller and Brown. The court in Moeller determined the deed was ambiguous and, therefore, defaulted to the rule than an ambiguous deed is interpreted against the grantor. The court in Brown, on the other hand, determined that language in the deed describing the reservation and stating "which the parties of the first part reserve" was surplusage.

Promulgated: 12/14/21

IX. VARIANCES, INCONSISTENCIES, AND OMISSIONS

9.1 Name or Description of Individual

9.1.1 Names — Variances in

Problem: Are names in birth certificates, death certificates, and marriage certificates within the effect of Section 38-35-116, C.R.S.?

Answer: Yes

Promulgated: 10/19/46.

9.1.2 Evidence of Change of Name

Problem: A natural person holding title to real property changes, by marriage, dissolution of marriage or otherwise, his or her name from the name in which such title was acquired. How may such person's identity under the new name be shown of record to be the same as the name under which such person holds title in order to make title to such real property marketable?

Answer:

(A) In an instrument executed by such person after such name change and recorded in the county in which such real property is located, stating that the two names refer to the same person (such as "Mary Smith, formerly Mary Jones") in the identification of the

grantor in the body of the instrument and in either (1) the signature or (2) the acknowledgment.

(B) Pursuant to Section 38-35-107, C.R.S., by a recital showing that the two names refer to the same person, which recital appears in an instrument which has been of record for at least twenty years in the county in which such real property is located.

(C) By a certified copy of a government issued document evidencing the name change (such as a court order) recorded in the county in which such real property is located.

(D) By an affidavit disclosing the name change, and containing the other information set forth in C.R.S. 38-35-109(5)(b)(I), executed and recorded in accordance with C.R.S. 38-35-109(5).

NOTES: Such person, at his or her election, may continue to deal with the real property in the name in which title was acquired, notwithstanding such change of name. For the purpose of this Title Standard, the term "grantor" includes the person holding an interest in the real property affected by the instrument, including a lessor or mortgagor.

COMMENT:

Instruments referred to in Answers (B), (C), and (D) above may be outside of the scope of the search described in Title Standard 1.1.3, but, if found, will have the effect described above.

Promulgated: 10/19/46; Amended 1/1/87, 7/13/96, 4/25/17.

9.1.3 Deed to Grantee by Given Name

Problem: Should a title be passed where:

(A) John Doe and Mary Doe convey their title, which was acquired as "John and Mary Doe"?

(B) John T. Doe and Mary Doe convey their title which was acquired as "John T. and Mary Doe"?

Answer: Yes, in each case.

NOTE: If a full middle name is used instead of the initial, for example: John Townsend Doe and Mary Doe convey their title which was acquired as "John Townsend and Mary Doe", the title is not marketable.

Promulgated: 10/16/48; Amended: 1/1/87.

9.1.4 Variance with Respect to Gender

Problem: An instrument by which title was acquired contains one or more personal pronouns indicating a person acquiring title is of a certain sex; a subsequent instrument transferring or encumbering title contains one or more personal pronouns indicating that such person is of a different sex; both instruments have been of record more than eighteen years in the county in which the real estate affected is situated and neither of said instruments has been attacked. Does such variance render the title unmarketable?

Answer: No.

Promulgated: 10/15/49; Amended: 1/1/87.

9.2 Acknowledgments

9.2.1 Acknowledgments — Statement of Date of Expiration of Commission

Problem: Is an acknowledgment defective which was made before a notary public outside of Colorado, if the date of expiration of commission does not appear?

Answer: The acknowledgment should be accepted as sufficient unless the law of the place where the acknowledgment was taken requires a statement of the expiration date of the commission.

Promulgated: 10/19/46.

9.2.2 Date of Acknowledgment

Problem: Are the validity and effect of an acknowledgment impaired by the fact that the date of the acknowledgment, as stated therein, is one that is earlier than the date of the instrument itself or is one that is subsequent to the date when the instrument was recorded, or by the fact that the acknowledgment omits some part or all of the date of the acknowledgment?

Answer: No.

Promulgated: 10/19/46.

9.2.3 Defective Notarial Acknowledgment

A. Problem: Mistake in Stating Expiration of Commission:
An instrument of record concerns real estate. The notary public, who acts during the period of the notary's commission to affix a certificate of acknowledgment to such instrument, either fails to state thereon the expiration date of the notary's commission or erroneously states thereon a commission expiration date which is prior to the date of acknowledgment. May such a mistake be corrected by any means other than a correction of the original instrument or the procuring of a new instrument?

Answer: Yes. *See* Section 12-55-109, C.R.S. This answer is effective for any mistake in stating the date of the expiration of commission in a notarial certificate executed prior to July 1, 2018. Due to the repeal of Section 12-55-109, C.R.S., *see* Sections 12-55-123, -124, C.R.S., this answer does not apply to any mistake in stating the date of the expiration of commission in a notarial certificate executed on or after July 1, 2018. In such a case, refer to Problem B.

B. Problem: Mistake in the Acknowledgment/Defective Acknowledgment:
An instrument of record concerns real estate. The notary public, who acts during the period of the notary's commission to affix a certificate of acknowledgment to such instrument, makes a mistake in the certificate, such as (1) omitting to sign or date the certificate, (2) omitting the name of the person signing the instrument, (3) inserting the name of the notary public instead of the name of the person signing the instrument, or (4) omitting the notarial stamp. If title to the property would have been marketable had the certificate been correct when the instrument was originally recorded, is title to the property marketable if the mistake is corrected by (x) re-recording a corrected

instrument in compliance with Title Standard 3.5.3, or (y) recording an affidavit in compliance with C.R.S. 38-30-136, or (z) recording an affidavit in compliance with C.R.S. 38-35-109(5) (a) (IV)?

Answer: Yes.

Promulgated: 10/19/46; Amended 2/13/18.

9.2.4 Notarial Certificate

Problem: A recorded instrument concerning real estate contains a certificate of acknowledgment by a Colorado notary public and the certificate does not contain the name of the county where the acknowledgment was taken. Is title marketable?

Answer: Yes.

NOTE: Since at least April 8, 1947, Colorado notaries public have had authority to authenticate acknowledgments and perform other notarial acts anywhere within the state. Ch. 240, sec. 1, 1947 Colo. Sess. Laws 678. Section 24-21-515(1)(c), C.R.S., effective July 1, 2018, states that any certificate of a notarial act must identify the county in which the notarial act (including taking an acknowledgment) is performed. However, the failure of a notarial officer to meet a requirement specified in Part 5 of Article 21 of Title 24, C.R.S., does not invalidate the notarial act. Section 24-21-526, C.R.S. The Committee has not ascertained any reason the identification of the county in which an acknowledgment is taken in Colorado affects the validity of the instrument or the certificate of acknowledgment. Good practice suggests including the county where the notarial act took place in the certificate to comply with the form of acknowledgment contained in Section 24-21-516 and to facilitate acceptance in other jurisdictions where notary authority may be limited to a particular county.

Promulgated: 10/18/47; Amended 4/3/2018.

9.2.5 Acknowledgment by Attorney-in-Fact

Problem: A conveyance of real estate by B as attorney-in-fact for A is acknowledged as follows: "The foregoing instrument was acknowledged before me this (date inserted) by A by B his attorney-in-fact", or by "A by B attorney-in-fact". Should such an acknowledgment be accepted as substantial compliance with Section 38-35-101, C.R.S., which provides that the acknowledgment shall be by the attorney-in-fact as such?

Answer: Yes.

NOTE: While the Committee believes the above constitutes a substantial compliance with Section 38-35-101, C.R.S., and would be liberally construed pursuant to 38-35-101, C.R.S., we suggest that it would be better practice to use the words "by B as attorney-in-fact for A".

Promulgated: 10/19/57.

9.2.6 Acknowledgments — Address of Notary

Problem: An instrument was placed of record on or after July 1, 1981. The Colorado notary public whose notarial act appears on such instrument stated thereon neither his nor her business address nor his nor her residence address. Does the absence of the notary's address render unmarketable the title conveyed, encumbered, or affected by the instrument?

Answer: No.

Promulgated: 9/23/81.

9.2.7 Scope of Acknowledgment Statute

Problem: The form of acknowledgment contained in Section 38-35-101, C.R.S., refers only to natural persons, persons acting in a representative or official capacity or as an attorney-in-fact and to officers of a corporation as the persons who may be the subject of an acknowledgment. A recorded deed or other instrument relating to or affecting title to real property is acknowledged substantially in accordance with the form of acknowledgment specified in Section 38-35-101, C.R.S., by a person acting on behalf of an entity not specified in such Section (for example, "by [Name of Person] as Manager of ABC LLC, a Colorado limited liability company"). For the purpose of determining marketable title, should such instrument be accepted as prima facie evidence of the matters set forth in subsections (2), (3)(a), (3)(b) and (4) of Section 38-35101, C.R.S.?

Answer: Yes.

NOTE: *See* Section 38-34-101, C.R.S., and *Birkby v. Wilson*, 92 Colo. 281, 19 P.2d 490 (1933).

Promulgated: 5/1/97.

9.3 Form of Ownership

9.3.1 Joint Tenancy Form of Conveyance to Single Individual

Problem: A deed to a single grantee is prepared on a joint tenancy form of deed. Is title marketable?

Answer: Yes

Promulgated: 10/19/46.

9.3.2 Granting and Habendum Clauses Inconsistent with Joint Tenancy

Problem: Declaration of joint tenancy in instrument of conveyance. The granting clause of an instrument of conveyance contains words substantially similar to the following:

> . . . Convey unto the parties of the second part, their heirs and assigns forever "not in tenancy in common but in joint tenancy", or "in joint tenancy".
>
> The habendum clause of such instrument contains words substantially similar to the following:
>
> . . . To have and to hold the said premises unto the parties of the second part, their heirs and assigns. And the parties of the first part covenant and agree with the parties of the second part, their heirs and assigns, that they are well seized of the premises…and the above bargained premises in the quiet and peaceable possession of the parties of the second part, their heirs and assigns, against all and every person or persons lawfully claiming or to claim the whole or any

part thereof, the said parties of the first part shall and will WARRANT and FOREVER DEFEND.

Has an interest in joint tenancy been created in and to the real estate described in such instrument?

Answer: Yes.

Promulgated: 10/19/57.

9.4 Releases

9.4.1 Release of Lien — Re-recorded Encumbrance

Problem: An encumbrance appears of record followed by a similar instrument, in which it is stated that the latter is given to correct some defect in the former, or which appears from the record to be a rerecording of the former. A release subsequently appears of record releasing one encumbrance, but not describing specifically the other. Is such a release sufficient to release both?

Answer: Yes.

NOTE: It is considered better practice that the release describe and expressly release both encumbrances.

Promulgated: 10/19/46.

9.4.2 Release of Lien — Errors in Recitals

Problem: If a release of an encumbrance contains errors in its recitals as to date of record, or book or page of record, or date or parties to such encumbrance, is such release sufficient?

Answer: If there is sufficient correct data given in such release to identify reasonably the encumbrance intended to be released, it should be approved.

Promulgated: 10/19/46.

9.5 Revenue Stamps and Documentary Fee

9.5.1 Revenue Stamps and Documentary Fee Notation

Problem: What is the effect of lack of revenue stamps or the state documentary fee notation on a deed?

Answer: The omission of revenue stamps or the state documentary fee notation on a deed does not affect the marketability of the title.

COMMENT:

See, however, Sections 15-11-202(1)(a)(I) and 15-12-714(2), C.R.S.

Promulgated: 10/19/46; Amended: 1/1/87.

9.6 Name or Description of Entity

9.6.1 Partnership Registered as a Limited Liability Partnership or as a Limited Liability Limited Partnership

Problem: A general partnership or limited partnership holding title to real property in its partnership name has subsequently registered, pursuant to Section 7-60-144, C.R.S., as a registered limited liability partnership or as a registered limited liability limited partnership. How may such a partnership's identity as a registered limited liability partnership or as a registered limited liability limited partnership be shown of record to be the same as the name under which such partnership holds title to make title to such real property marketable?

Answer: (A) In an instrument executed by the partnership in its registered name and recorded in the county in which such real property is located, by a recital showing that the two names refer to the same entity (such as "ABC LLP, formerly ABC Partnership") in either (i) the acknowledgment or (ii) both the body and the signature of the instrument.

(B) Pursuant to Section 38-35-107, C.R.S., by a recital showing that the two names refer to the same entity, which recital appears in either the body or the signature of an instrument which has been of record for at least twenty years in the county in which such real property is located.

(C) By one of the following documents which has been recorded in the county in which such real property is located: (i) the registration statement filed with the Secretary of State pursuant to Section 7-60-144, C.R.S., or (ii) a document issued by the Secretary of State evidencing such registration.

COMMENT:

The instruments referred to above may be outside the scope of the search described in the Title Standard 1.1.3, but, if found, will have the effect described above.

Promulgated: 7/13/96.

9.6.2 Conversion or Merger of Entities

Problem: Several Colorado statutes provide that certain types of entities may convert to a different type of entity or merge with the same or a different type of entity. If, pursuant to any Colorado statute which provides for such conversion or merger and for filing evidence of such conversion or merger with the Colorado Secretary of State, an entity holding title to real property converts from the type of entity in which such title was acquired to another type of entity or merges with the same or another type of entity, what document or documents should be recorded to evidence such conversion or merger?

Answer: One of the following should be recorded in the county in which such real property is located: (i) the document filed with the Secretary of State evidencing such conversion or merger and containing evidence of such filing, or (ii) any document issued by the Secretary of State evidencing such conversion or merger.

Promulgated: 7/13/96.

X. RELEASES

10.1 Inheritance Tax

10.1.1 Inheritance Tax Release — Joint Tenancy

Problem: A and B held title to Whiteacre in joint tenancy. Upon A's death, an inheritance tax release described an undivided one-half interest in Whiteacre. Was such description sufficient to release the lien for inheritance tax on A's interest?

Answer: No. The release should have recited the correct interest of A, as for example, "Whiteacre held in joint tenancy with B." (*See* Standard No. 10.1.2).

Promulgated: 10/16/48.

10.1.2 Death of Owner — Release of Colorado Inheritance or Estate Tax Liens

Problem: The chain of title reveals the death of an owner of an interest in real property. Under what circumstances must a release from the Colorado Department of Revenue be recorded in order to free the property from the lien of Colorado inheritance or estate taxes?

Answer: (A) If death occurred on or before December 31, 1979, a release of the inheritance tax lien must be recorded if fewer than 15 years have elapsed since the date of death.

(B) If death occurred on or after January 1, 1980, but before July 1, 1980, a release of the Colorado estate tax lien must be recorded if fewer than 10 years have elapsed since the date of death.

(C) If death occurred on or after July 1, 1980, no Colorado inheritance or estate tax lien is created; no release is required.

Promulgated: 10/19/46; Amended: 1/1/87.

10.2 Mortgages and Deeds of Trust

10.2.1 Assignment of Rents — Release

Problem: When there has been a release of an encumbrance securing a debt for which an assignment of rents has been given as additional security, is it necessary to procure a separate release of the assignment of rents?

Answer: No, when the assignment provides that any release of the encumbrance shall operate as a release of the assignment, or where it appears from either instrument that the rental assignment is given as additional security for the debt secured by the encumbrance.

NOTE: In preparing a rental assignment, it is good practice to insert a provision substantially to the effect that a release of the encumbrance securing the debt for which the assignment is additional security shall operate as a release of the rental assignment.

Promulgated: 10/19/46.

10.2.2 Releases

Problem: A release of an encumbrance recites that the indebtedness secured thereby has been paid and that the encumbrance is fully released. The release contains sufficient correct data to identify reasonably the encumbrance intended to be released, and purports to release all right, title and interest in the property described in the encumbrance. Is the encumbrance fully released if:

(A) The legal description of the property in the release omits some portion of the property described in the encumbrance?

(B) The legal description in the release is so defective that it would be inadequate in a conveyance?

(C) If a space in the release intended for a legal description is left blank?

Answer: Yes, in each case

Promulgated: 10/16/54.

10.2.3 Releases of Deeds of Trust — Execution by Deputy Public Trustee

Problem: A release of a deed of trust to a public trustee was executed by the deputy public trustee who signed and acknowledged the release in his own name as a deputy public trustee and not in the name of the public trustee by him as deputy. The release recited that the person executing it remised, released and quit claimed all the right, title and interest which he had in and to the real estate. It also recited that the trust deed was to be considered as fully and absolutely released, canceled and forever discharged. Is such release to be accepted as releasing the deed of trust in the same way that it would if executed by the public trustee himself?

Answer: Yes.

Promulgated: 10/2/56.

10.3 Miscellaneous

10.3.1 Attachments and Levies — Release

Problem: Does an unreleased attachment or levy on execution which has been of record for more than six years, the abstract showing no proceedings for sale thereunder, constitute a cloud on title?

Answer: No.

Promulgated: 10/19/46.

10.3.2 Sidewalk Certificates

Problem: An unreleased sidewalk certificate has remained of record for more than 15 years subsequent to the due date thereof. Should an attorney render an opinion showing the title free and clear of such sidewalk certificate?

Answer: Yes.

NOTE: The above problem does not refer to tax sales certificates based on special assessments for sidewalk improvement taxes, but refers only to those certificates issued under Sec. 54 of the Denver Charter.

Promulgated: 10/14/50.

XI. DECEDENTS' ESTATES

11.1 Transfers of Decedents' Property, Generally

11.1.1 Release of Deed of Trust — Request for in Decedent's Estate

Problem: If the request to execute a release of a trust deed is signed by the legal representative of a deceased beneficiary or deceased assignee of the beneficiary, should letters testamentary or of administration issued to such representative be required to be placed of record?

Answer: No

Promulgated: 10/19/46.

11.1.2 Decedent's Estates — Transfer of Title; Release of Mortgage, Deed of Trust, or Other Lien

Problem: (A) A deed conveying title to real estate to the "Estate of John Smith, Deceased" is recorded. Is title marketable in the "Estate of John Smith, Deceased"?

(B) A mortgage, deed of trust, or other lien, in each case for the benefit of the "Estate of John Smith, Deceased", is recorded. How can such a mortgage, deed of trust, or other lien, be released?

Answer: (A) No, the deed is not effective to convey title to real estate because the "Estate of John Smith, Deceased" is not an entity capable of holding title.

(B) The same strictness does not apply to a recorded mortgage, deed of trust, or other lien, in each case encumbering real estate to secure an indebtedness owed to an estate. A release of such lien is sufficient if signed by the personal representative of the Estate. C.R.S. § 15-1-804(2)(r) and (w).

Promulgated: 10/19/46; Amended 3/9/2023.

11.1.3 Decedents' Estates — Acquisition of Title through Foreclosure

Problem: The personal representative acquires title by foreclosure of an encumbrance owned by the decedent at the time of death, or by deed in lieu of foreclosure.

Can the personal representative convey good title without obtaining a court order?

Will the same rule apply if the encumbrance is made directly to the personal representative after the death of the decedent?

Answer: Yes, in each case

Promulgated: 10/19/46.

11.1.4 Statutory Sale of Real Estate — Necessity of Recording Letters

Problem: Where, under the law in effect prior to the adoption of the Colorado Probate Code, real estate was sold or mortgaged in a statutory proceeding by a personal representative of an estate appointed by a Colorado court and the certified copy on record of order of the court directing, approving or confirming the sale or mortgage, names the personal representative and the capacity in which he acts, need a certified copy of his letters of appointment be filed for record?

Answer: No.

Promulgated: 10/19/46; Amended: 1/1/87.

11.1.5 Informal or Formal Appointment of Local Personal Representative

Problem: Does a local personal representative appointed under informal proceedings have the same powers to convey title to Colorado real estate as one appointed under formal proceedings?

Answer: Yes.

CAUTION:

The powers of any personal representative may be limited in the letters of appointment.

Promulgated: 4/23/77.

11.1.6 Documents for Distribution by Personal Representative

Problem: What documents should be recorded to confirm title to Colorado real estate from either a local or foreign personal representative in distribution to the heirs in an intestate estate or to the devisees under a will?

Answer: (A) Copy of local or foreign letters of appointment certified by a Colorado court.

CAUTION:

The powers of any personal representative may be limited in the letters of appointment.

(B) Deed of distribution from personal representative, which is not in conflict with restrictions, if any, on his powers, as recited in recorded court order, if any, or in the letters.

(C) Release of Colorado Estate or Inheritance Tax Lien, if applicable.

Promulgated: 4/23/77.

11.1.7 Order Necessary to Vest Marketable Title in Distributees (Under Colorado Probate Code)

Problem: (A) To vest title in a distributee, free from the rights of all persons interested in the estate to recover the property in case of an improper distribution, is it necessary to record a certified copy of a court order supporting the deed of distribution?

Answer: Yes.

Problem: (B) Is such order required to vest marketable title in a purchaser for value from or a lender to such distributee?

Answer: No.

Problem: (C) Is such order required to vest marketable title in a purchaser for value from or a lender to a transferee from such distributee?

Answer: No.

NOTE: (A) The statutory definition of a distributee (Section 15-10201(15), C.R.S.) includes persons taking a spousal election (Title 15, Article 11, Part 2, C.R.S.), exempt property (Section 15-11-403, C.R.S.) and a family allowance (Section 15-11-404, C.R.S.).

(B) There is ample authority in the Probate Code — such as Sections 15-10-302, 15-12-105, and 15-12-107, C.R.S. — for orders in informal proceedings to authorize, or to confirm, conveyance.

COMMENT:

The different answers are required because Section 15-12-910, C.R.S. gives a distributee limited power to transfer title free from the possibility of attack by persons interested in the estate, to two classes of persons only: a purchaser for value, or a lender.

A transferee from a distributee has the same power with respect to a purchaser for value or a lender.

To put it another way: a purchaser for value or a lender is protected. Section 15-12-910, C.R.S., does not extend such protected status to any other class of persons. Unprotected persons would include not only the distributee but also the distributee's (i) heirs, (ii) devisees, (iii) donees, (iv) donee joint tenants, and (v) beneficiaries of trusts established by the distributees, and perhaps others. Unprotected persons achieve a protected status without a court order and establish marketable title by the running of the statute of limitations: one year after the date of the personal representative's deed to the distributee, or three years after date of the decedent's death, whichever is later (Section 15-12-1006, C.R.S.).

Promulgated: 8/26/78.

11.1.8 Documents for Conveyance from Local Personal Representative to Purchaser

Problem: What documents should be recorded to convey title from a personal representative to a purchaser from the estate?

Answer: (A) Certified copy of letters of appointment.

CAUTION:

The powers of any personal representative may be limited in the letters of appointment.

(B) Conveyance from personal representative, which is not in conflict with restrictions, if any, on his powers, as recited in recorded court order, if any, or in the letters. The conveyance should note the state documentary fee to establish that the transaction was made for value, under Section 1512-714(2), C.R.S.

(C) Release of Colorado Estate or Inheritance Tax Lien, if applicable.

Promulgated: 8/23/77.

11.1.9 Documents for Conveyance from Foreign Personal Representative to Purchaser

Problem: (A) The record reveals a deed executed by a domiciliary foreign personal representative on or after January 11, 2007 conveying Colorado real property held in the name of a nonresident decedent, and the following documents: (1) A copy of Form JDF 930 (Certificate of Ancillary Filing — Decedent's Estate), or predecessor or replacement form approved by the Colorado Supreme Court, issued and certified by a Colorado court which reflects that a certified, exemplified, or authenticated copy of the order appointing the domiciliary foreign personal representative and letters of appointment, each as issued by the foreign court, have been filed with the Colorado court; and (2) a copy of either the foreign letters of appointment or the order of the foreign court appointing the domiciliary foreign personal representative, in each case certified, exemplified, or authenticated by the applicable foreign court. If the conveyance does not violate any limitation stated in the recorded order or letters of appointment issued by the foreign court, and title to the property described in the deed is otherwise marketable, is title marketable?

Answer: Yes.

NOTES: The authority of a domiciliary foreign personal representative to convey Colorado real property is granted under C.R.S. §§ 15-13204 and 205. Effective January 11, 2007, the Colorado Supreme Court adopted Rule 18 of the Colorado Rules of Probate Procedure and approved forms CPC 60 and 61 (which were renumbered as JDF 929 and 930 effective November 1, 2007). These forms provide a method for foreign court orders and letters of appointment, certified, exemplified, or authenticated by the applicable foreign court, to be filed with a Colorado court.

Beginning in April 2009 and thereafter, there have been revisions of JDF 930 to provide for the attachment of copies of the appointment documents received by the court. If such a revised form is used and includes a certified, exemplified, or authenticated copy of the foreign letters of appointment, the order of the foreign court appointing the domiciliary foreign personal representative, or both, if reflected on the recorded JDF 930 as having been received by the issuing Colorado court, the recordation of the JDF 930 with the letters and/or order attached satisfies the requirement for recordation of foreign letters or order noted in (2) above.

Problem: (B) The record reveals a deed executed by a domiciliary foreign personal representative before January 11, 2007 conveying Colorado real property held in the name of a non-resident decedent and a copy of foreign letters of appointment for the domiciliary foreign personal representative, as filed with and certified by a Colorado Court. If the conveyance does not

violate any limitation stated in the recorded certified copy of the foreign letters of appointment, and title to the property described in the deed is otherwise marketable, is title marketable?

Answer: Yes.

NOTES: This analysis is based on Title Standard 11.1.9 as written prior to amendment effective on November 7, 2009.

Promulgated: 8/26/78; Amended: 11/7/09.

11.2 Transfers Pursuant to Powers in Wills

11.2.1 Sale of Real Estate Under Power in Will — Order of Confirmation

Problem: Decedent's testate estate was administered under the law in effect prior to the adoption of the Colorado Probate Code. The will contained a proper power of sale of real estate. Was an order confirming the sale of real estate required?

Answer: No.

NOTE: *See* Standards 11.1.5, 11.1.8, and 11.1.9

Promulgated: 10/19/46; Amended: 1/1/87.

11.2.2 Deed by Administrator with Will Annexed under Power Contained in Will which is not a Foreign Will

Problem: Is a title marketable when based on a deed executed, without statutory sale proceedings, by an administrator with the will annexed, pursuant to the power conferred upon the original executor named in a will which is not a foreign will?

Answer: Yes.

Promulgated: 10/15/49.

11.2.3 Deed by Administrator with Will Annexed under Power Contained in a Foreign Will

Problem: Is a title marketable when based on a deed executed by an administrator with the will annexed appointed by a Colorado court, where there were no statutory sale proceedings and where the deed was executed pursuant to the power conferred upon the original executor named in a foreign will, if such deed or letters of appointment of the administrator with the will annexed were recorded prior to the recording of a conveyance, encumbrance or contract executed by a personal representative or trustee appointed by a foreign court, as provided by Section 153-6-4, C.R.S. 1963 (repealed with the adoption of the Colorado Probate Code).

Answer: Yes.

Promulgated: 10/15/49.

11.2.4 Wills — Contingent Beneficiary

Problem: A will names "A" beneficiary, but provides that if "A" is not alive at time of testator's death, then "B" is the beneficiary. The proceedings in probate show that "B" is not named as beneficiary in the petition for probate of the will or in the citation to attend probate. The proceedings show on their face that "A" is still living. Should title be passed?

Answer: Yes.

Promulgated: 10/11/52.

11.2.5 Wills — Requiring Sale of Real Estate

Problem: A will directs that the testator's real estate be sold. It does not provide by whom the sale shall be made, nor who shall execute the conveyance. The executor executes and delivers a deed conveying the property to a purchaser without first obtaining any order of court authorizing him to sell or convey. Is the title so conveyed defective because the executor did not proceed under and comply with the provisions required for a statutory sale?

Answer: No

Promulgated: 10/19/57.

11.3 Augmented Estates — Effect on Transfers

11.3.1 Augmented Estate — Conveyances — Recitals as to Marital Status

Problem: Should there be a recital in conveyance as to the marital status of each grantor in the acknowledgment of the conveyance:

(A) Where the conveyance is acknowledged prior to July 1, 1974?

Answer: No.

(B) Where the conveyance is acknowledged between July 1, 1974, and July 15, 1975 (both dates inclusive)?

Answer: Yes.

(C) Where the conveyance notes payment of a state documentary fee and is acknowledged after July 15, 1975?

Answer: No.

NOTE: Standard No. 14.1.2 is limited to homesteads.

Promulgated: 10/9/74; Amended: 4/23/77, 1/1/87.

11.3.2 Augmented Estate — Conveyances — Married Grantor

Problem: Should the spouse of each grantor join in, or consent in writing to, a conveyance of the property, or execute a separate conveyance thereof:

(A) Where the conveyance is acknowledged prior to July 1, 1974?

Answer: No.

(B) Where the conveyance is acknowledged between July 1, 1974, and July 15, 1975 (both dates inclusive)?

Answer: Yes.

(C) Where the conveyance notes payment of a state documentary fee and is acknowledged after July 15, 1975?

Answer: No.

COMMENTS REGARDING JOINDER:

(A) In Same Conveyance: If the non-owner spouse joins in the conveyance, there should be recitals in the acknowledgment as to the marital status and — in case of multiple grantors — who is married to whom.

Example. "John Jones and Mary Jones, as husband and wife, and Richard Roe and Sally Roe, as husband and wife."

(B) By Separate Conveyance: If the non-owner spouse executes a separate conveyance, it should contain the same property description and grantee, and should recite, in the acknowledgment, the marital relationship of the grantor to the owner-spouse, to link the two conveyances.

COMMENTS REGARDING CONSENT:

(A) In the Instrument Itself: If the non-owner spouse consents on the conveyance, such consent should be expressly set forth. A signature alone is not sufficient. The consent should be separately acknowledged in an acknowledgment reciting the marital relationship of such spouse to the grantor. Such consent and acknowledgment may appear at any convenient place on the instrument.

(B) By Separate Instrument: If the non-owner spouse consents by separate instrument, it should contain sufficient information — as to property description, grantee, and marital relationship to the corresponding grantor-spouse — to link the consent to the conveyance.

CAUTION:

Joinder may be required under applicable homestead statutes.

Promulgated: 10/9/74; Amended: 4/23/77, 1/1/87.

11.3.3 Augmented Estate — Separate Consent — Acknowledgment and Recording

Problem: A non-owner spouse consents to a conveyance by separate written instrument. Should such separate instrument be acknowledged and recorded?

Answer: Yes.

Promulgated: 10/9/74.

11.3.4 Augmented Estate — Recitals in Conveyance and Consent

Problem: If title is vested in one spouse only, and the other spouse joins in the conveyance, or consents thereto, is it necessary that such conveyance or consent contain a recital that the non-owner spouse acknowledges disclosure of all circumstances surrounding the transaction and the adequacy of the consideration?

Answer: No.

Promulgated: 10/9/74; Amended: 4/23/77, 1/1/87.

11.3.5 Augmented Estate — Partnership Property

Problem: Where the record discloses that title is vested as partnership property (whether in the partnership name or in the names of partners), is the joinder or consent of the spouse of any partner required in the case of a conveyance?

Answer: No.

Promulgated: 10/9/74.

11.3.6 Augmented Estate — Assumed Name

Problem: Where the record does not disclose that title is vested as partnership property, title being held in the names of persons who may be partners, or in the names of persons doing business under an assumed name, should each of the spouses of such persons join in, or consent in writing to, a conveyance of the property, or execute a separate conveyance thereof:

(A) Where the conveyance is acknowledged prior to July 1, 1974?

Answer: No.

(B) Where the conveyance is acknowledged between July 1, 1974, and July 15, 1975 (both dates inclusive).

Answer: Yes.

(C) Where the conveyance notes payment of a state documentary fee and is acknowledged after July 15, 1975?

Answer: No.

CAUTION:

Joinder may be required under applicable homestead statutes.

Promulgated: 10/9/74; Amended 4/23/77, 1/1/87

11.3.7 Augmented Estate — Powers of Attorney

Problem: Can joinder of a non-owner spouse in a conveyance of title owned by the other spouse, or a non-owner spouse's consent to such conveyance, be made by an attorney-in-fact with specific authority?

Answer: Yes.

Promulgated: 10/9/74.

11.3.8 Augmented Estate — Encumbrances or Subdivision Plat

Problem: Is it necessary that a non-owner spouse join in or consent to an encumbrance creating a lien or subdivision plat by the owner-spouse?

Answer: No.

Promulgated: 10/9/74.

11.4 Intestate Estates; Heirship Proceedings

11.4.1 Determination of Descent of Same Property of Two or More Persons in One Proceeding

Problem: Could the descent of the same property, or any interest therein, from two or more decedents, have been determined in a single proceeding brought for the determination of interests in property under Section 153-4-1 *et seq.*, C.R.S. 1963 (repealed with the adoption of the Colorado Probate Code)?

Answer: Yes

Promulgated: 10/19/46.

11.4.2 Real Estate Sold Under Order of Court — Necessity of Determination of Heirship

Problem: In an intestate estate administered under the law in effect prior to the adoption of the Colorado Probate Code, real estate was sold under order of court. Was a determination of heirship necessary to make the buyer's title marketable?

Answer: No.

Promulgated: 10/19/46; Amended: 1/1/87.

11.4.3 Small Estates (Real Estate)

Problem: (A) Could the law in effect prior to the adoption of the Colorado Probate Code with reference to small estates have been used to evidence the transfer of title to real estate?

Answer: No.

Problem: (B) Can Sections 15-12-1201 to 1202, C.R.S., with reference to using an affidavit to collect a decedent's property in small estates without the appointment of a personal representative be used to evidence the transfer of title to real estate?

Answer: No.

Promulgated: 10/19/46; Amended: 1/1/87.

11.4.4 Determination of Interests — Petition — Heirs of Heirs

Problem: A died leaving B and C as his heirs; thereafter B died leaving D and E as his heirs; in a proceeding under Section 153-4-1 *et seq.*, C.R.S. 1963 (repealed with the adoption of the Colorado Probate Code) for the determination of interests in property of A, was it necessary that the petition name D and E?

Answer: No.

Promulgated: 10/19/46; Amended: 1/1/87.

11.4.5 Presumption of Intestacy

Problem: Record title was in A. B. There has been of record for more than twenty years a deed in which it is recited that the grantors are all of the heirs of A. B.; such deed does not expressly recite that A. B. is dead or that he died intestate. Is the title derived through such deed marketable?

Answer: Yes

Promulgated: 10/16/48.

11.5 Service in Probate Proceedings

11.5.1 Service by Publication Under the Colorado Probate Code — Number of Publications

Problem: Section 15-10-401, C.R.S., pertaining to notice of hearings under the Colorado Probate Code requires publication "once a week for three consecutive weeks," defined as "once during each week of three consecutive calendar weeks with at least 12 days elapsing between the first and last publications." Is the statute complied with when three weekly publications are made (for example, in the issues of the 1st, 8th and 15th) despite the provisions of Section 24-70-106, C.R.S.?

Answer: Yes. "Once a week for three consecutive weeks" is not the same as "three weeks." Although Rule 4(g)(2), C.R.C.P., requires publication for four weeks (meaning five publications under Section 24-70-106, C.R.S.) the publication requirements of Section 1510-401, C.R.S., are sufficiently specific to control. Note, however, that the last publication must occur at least ten days before the time set for hearing.

Promulgated: 10/19/46.

11.5.2 Service by Mail on Minors under Section 153-1-11, C.R.S. 1963

Problem: Under Section 153-1-11, C.R.S. 1963 (repealed with the adoption of the Colorado Probate Code) is it sufficient compliance with the statute if the citation or notice is mailed registered mail by the Clerk and the return receipt is signed by the *addressee* regardless of the age of the *addressee*?

Answer: Yes.

NOTE: Under Section 153-1-11, C.R.S. 1963, the prerequisite is that the person cannot be found in the State of Colorado, and the provision is that the person shall be served by personal service or by mail. The provision for service by mail is Rule 4(g)(1), C.R.C.P.

It is also to be noted that service by mail is not personal service but is substituted service and takes the place of service by publication. The signature of the addressee is neither a consent nor waiver, but merely completes the Clerk's certificate for proof of service.

See Sections 15-10-401 and 403, C.R.S

Promulgated: 10/19/46.

11.5.3 Estates — Citation to Attend Probate

Problem: A will establishes a trust. The citation issued in full compliance with Section 153-5-22, C.R.S. 1963 (repealed with the adoption of the Colorado Probate Code), does not name any beneficiaries of the trust who are not heirs of the decedent, nor is service made upon them. Is title to real estate derived pursuant to said probate proceeding marketable?

Answer: Yes

Promulgated: 6/12/63.

XII. CONSERVATORSHIP PROCEEDINGS

12.1 Notice

12.1.1 Estate of a Mental Incompetent — Sale of Real Estate

Problem: In a statutory sale proceeding by the conservator of the estate of a mental incompetent under the law in effect prior to the adoption of the Colorado Probate Code, was it necessary to make personal service of the notice or citation on the mental incompetent?

Answer: No.

Promulgated: 10/18/47; Amended: 1/1/87.

12.1.2 Notice on Application for Letters of Conservatorship

Problem: After a legal adjudication of mental incompetency, is it necessary to give notice to the incompetent of an application for the appointment of a conservator?

Answer: No

Promulgated: 10/15/49.

XIII. TRUSTS AND TRUSTEES

13.1 General

13.1.1 Trust — Necessity of Conveyance by Trustee

Problem: (A) An instrument of record creating a trust provides that upon the happening of an event, the title to the trust property shall vest in certain beneficiaries. The occurrence of the event is established of record. Is a conveyance from the trustee necessary in order to vest title in the beneficiaries?

Answer: No.

Problem: (B) An instrument of record creating a trust provides that, upon happening of an event, the trustee shall convey the trust property to certain beneficiaries. The occurrence of the event is established of record. Is a conveyance from the trustee necessary in order to vest title in the beneficiaries?

Answer: No.

Problem: (C) An instrument of record creating a trust provides that, upon the happening of an event, the trustee shall perform some act (other than conveyance) or exercise some discretion and then convey to the beneficiaries. The occurrence of the event is established of record. Is a conveyance from the trustee necessary in order to vest title in the beneficiaries?

Answer: Yes.

Problem: (D) In each of the previous three problems, if the trust instrument further provides that, upon the happening of the event the trust shall terminate, would the answers be different?

Answer: No.

Promulgated: 10/19/57.

XIV. HOMESTEADS

NOTE: In accordance with C.R.S. § 14-15-107, references in this Standard to "spouse" include parties to a civil union.

Note added 6/4/19.

14.1 General

14.1.1 Homesteads — Failure to Convey

Problem: The record discloses the recording of a Declaration of Homestead (or, prior to July 1, 1973, a marginal homestead entry) and the owner of such property conveys by deed duly recorded but the spouse of such owner does not convey. If the subsequent record of the title shows facts which fall within the provisions of Section 38-41-103, C.R.S., is the failure of such spouse to convey cured after the lapse of 18 years from such recording?

Answer: Yes

Promulgated: 10/19/46.

14.1.2 Homestead — Identity of Surname — Separate Conveyance

Problem: If the owner of homesteaded property and a person of the opposite sex, both bearing the same surname, execute separate conveyances or encumbrances thereof, is the identity of surnames *prima facie* evidence that such parties are husband and wife, so that the homesteaded property has been properly conveyed or encumbered?

Answer: Yes.

COMMENT:

The Standard exists to clarify that separate conveyances or encumbrances, as well as jointly executed conveyances or encumbrances, receive the statutory presumption of Section 38-35118(1), C.R.S.

Promulgated: 10/24/53; Amended: 1/1/87.

14.1.3 Homestead — Conveyance — One Spouse to the Other

Problem: Does a conveyance from one spouse to the other operate to waive or release their homestead?

Answer: No.

COMMENT:

Before revision, this Standard also applied to conveyances between persons of the opposite sex bearing the same surname; however, the statutory presumption of Section 38-35-118(1), C.R.S., applies only to persons who join as grantors in conveyances or encumbrances and not to persons who are grantor and grantee.

Promulgated: 10/24/53; Amended: 1/1/87.

14.1.4 Homestead — Death of or Divorce from Spouse

Problem: The record discloses (1) the recording of a Declaration of Homestead (or, prior to July 1, 1973, a marginal homestead entry) and (2) evidence of the death of, or the divorce from, a spouse benefited by such recorded homestead. If the record owner spouse subsequently conveys without recitation that the grantor is unmarried, is the title marketable?

Answer: No.

COMMENT:

Standard No. 14.1.4 (formerly Standard No. 84) as promulgated in 1953 reflected the prevalent custom and practice at that time that women who married (or remarried) adopted their husband's surname. That presumption, while perhaps true in 1953, is no longer valid.

Promulgated: 10/24/53; Amended: 1/1/87.

14.1.5 Homestead — Conveyance — Spousal Joinder

Problem: Where the record does not disclose the recording of a Declaration of Homestead (or, prior to July 1, 1973, a marginal homestead entry), is joinder by the non-owner spouse required in any conveyance or encumbrance (with sufficient evidence or recital of their marital relationship); or, in lieu thereof, is a recital required in the conveyance or encumbrance that the owner is a single person or that the property is not occupied as a home by the owner or his family:

(A) Where the conveyance or encumbrance is acknowledged prior to July 14, 1975?

Answer: No.

(B) Where the conveyance or encumbrance is acknowledged between July 14, 1975 and May 27, 1977 (both dates inclusive)?

Answer: Yes, unless a waiver, release or, in the case of an encumbrance, a subordination by the non-owner spouse is of record.

(C) Where the conveyance or encumbrance is acknowledged after May 27, 1977, regardless of whether the property was acquired by the owner before, on or after May 27, 1977?

Answer: No.

CAUTION:

Joinder may be required under applicable Augmented Estate Standards 11.3.1 to 11.3.8.

NOTE: As to recitals in a conveyance of homesteaded property, *see* Section 38-35-118(1), C.R.S.

Promulgated: 1/1/87.

XV. SERVICEMEMBERS CIVIL RELIEF ACT

(50 U.S.C. App. §501 *et seq*., *see particularly* §§521, 522, 526, 533 and 591; formerly cited as §§520, 522, 526, 532, and 590).

15.1 Actions and Foreclosure Proceedings

No current Standard. The prior Standards: 15.1.1, 15.1.2, and 15.1.3 (adopted in 1946), and 15.1.4 (adopted in 1950), are currently under review for possible revision and reenactment.

15.2 Liens and Encumbrances

No current Standard. The prior Standards: 15.2.1 (adopted in 1947) and 15.2.2 (adopted in 1960), are currently under review for possible revision and reenactment.

15.3 Appointment of Attorney

15.3.1 Attorney for Unknown Parties

Problem: The record reveals a quiet title decree indicating that "unknown parties" were named as defendants, served by publication pursuant to court order, and default judgment was entered

against them. However, the decree does not indicate that an attorney was appointed to represent the interests of any unknown parties who may have been in the military service. If the quiet title decree is otherwise proper and title to the property is otherwise marketable, is title marketable?

Answer: Yes.

NOTES: The Servicemembers Civil Relief Act adopted in 2003, 50 USC §501, *et seq.* is a recodification of the Soldiers' and Sailors' Civil Relief Act, initially adopted in 1940. The recodification did not effect a substantive change, but substituted "Servicemembers" for "Soldiers and Sailors". The result stated in this Title Standard would be the same under the Act as currently formulated and as initially enacted in 1940.

See C.R.C.P. Rule 121§1-14(3) regarding the appointment of an attorney for a party against whom a default judgment is sought when such appointment is required under 50 USC §520 (now cited as §521).

Promulgated: 5/8/10.

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