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Standards for Title Examination

Wyoming State Bar

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The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Rule 2. A judgment or final order in any case shall be deemed to be entered in contemplation of any provision of the statutes or rules relating to direct appeal to the Supreme Court or to a proceeding in error which refers to the entry of a judgment, whenever a form of such judgment, signed by the trial judge is filed in the office of the clerk of the district of the county in which such case is pending. If no such form of judgment or final order should happen to be signed by such trial judge in any case, then the actual entry of the judgment or final order on the journal of the proper court shall govern.

Rule 3. The foregoing rules shall take effect and be in force from and after the first day of January, A. D. 1950.

NOTE: The rule in regard to pre-trial procedure is one of the rules recommended for adoption in a report of the Rules Advisory Committee, appointed under Section 4 of Chapter 53, Session Laws of 1947, an act authorizing the Supreme Court from time to time to adopt rules of practice and procedure in all courts of the state. The full report of the committee was printed in 2 Wyoming Law Journal, 145 to 241, and, substantially as there printed, was transmitted to the court January 12, 1949. Other recommendations of the committee are being considered by the court, and additional rules may be adopted from time to time in the future.

The rule in regard to the time a judgment or order shall be deemed to have been entered for the purposes of appellate proceedings is not one of the rules proposed by the Advisory Committee. It is adopted to overcome a reported difficulty of counsel in ascertaining when, or under what date, a form of judgment, signed by the judge and filed with the clerk, will be actually entered on the journal.

STANDARDS FOR TITLE EXAMINATION

(Standards 1 through 8 adopted at 1946 Annual Meeting; Standards 9 through 23 adopted at 1949 Legislative Meeting)

STANDARD NUMBER 1.

Problem: When an attorney discovers a title situation which he believes should be corrected, what step should he take first if he has knowledge that the same title has been examined by another attorney who has not objected to the defect?

Answer: He should communicate with the previous examiner, explain to him his objection and afford opportunity for discussion.

STANDARD NUMBER 2. NAMES AND ABBREVIATIONS.

Problem: Should common abbreviations, derivatives and nicknames for Christian names, such of Geo. for George, Jno. for John, Chas. for Charles, be accepted where the chain of title contains such names spelled in full?

Answer: They should be accepted.

Comment: Absolute certainty with reference to the identity of parties appearing in a chain of title is impossible to attain. All that should be required is reasonable certainty.

STANDARD NUMBER 3. NAMES—CORPORATIONS.

Problem: Where a corporation appears in the chain of title, should the addition or omission of the word "The" before the name of the company and the use of "Co." for company or "Corp." for corporation make a difference in the title?

Answer: No.

STANDARD NUMBER 4. STRANGER TO TITLE—INSTRUMENT BY.

Problem: If a deed or encumbrance appears in the chain of title executed by one who has no record interest, is such deed or encumbrance to be considered a defect in the title?

Answer: No.

STANDARD NUMBER 5. ACTIONS—EFFECT OF DEFECTS.

Problem: What is the effect of defects not involving jurisdiction of the court in actions quieting or affecting title, or in 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 ground of demurrer or motion to dismiss (other than on jurisdictional grounds); (d) existence of ground for motion for change of venue, if no such motion was filed.

STANDARD NUMBER 6. 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 re-recording of the former. A release subsequently appears of record releasing one encumbrance, but not describing specifically the other. Is such release sufficient to release both?

Answer: Yes.

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

STANDARD NUMBER 7. 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.

STANDARD NUMBER 8. REVENUE STAMPS.

Problem: What is the effect of lack of revenue stamps on a deed?

Answer: The omission of revenue stamps on a deed does not affect the marketability of the title.

STANDARD NUMBER 9. AFFIDAVIT—INTERESTED PARTY.

Problem: Should the affidavit of an interested party be accepted as curative evidence when his credibility and knowledge of the facts involved seem

evident?

Answer: Yes.

Comment: In many instances, interested parties are the only ones capable of supplying the necessary information, and this evidence should not be rejected upon the sole ground of interest.

STANDARD NUMBER 10. 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: Not 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.

STANDARD NUMBER 11. CERTIFICATE OF ACKNOWLEDGMENT—FORM.

Problem: Is it required that a certificate of acknowledgment must be in the identical form prescribed in Section 66-211, Wyoming Compiled Statutes, 1945?

Answer: No.

Comment: Substantial compliance is sufficient, as held in *Boswell vs. First National Bank of Laramie*, 16 Wyo. 161, 92 Pac. 624, 93 Pac. 661. However, an essential departure will render the acknowledgment void. See *York vs. James*, . . . Wyo. . . ., 165 Pac. 2d, 109.

STANDARD NUMBER 12. CORPORATION DEED—EXECUTION.

Problem: An instrument reciting in the body that it is executed by "X Corporation" is signed "B. C., President" without the name of the corporation in the signature. The corporate seal is attached. The acknowledgment is "by B. C. as president of X Corporation". Otherwise the acknowledgment is in the form prescribed by statute. Should this instrument be regarded as properly executed by X Corporation?

Answer: Yes.

STANDARD NUMBER 13. CORPORATIONS—RECORD OF INCORPORATION UNNECESSARY.

Problem: Where a conveyance to a corporation appears in the chain of title and there is a later conveyance by such corporation to a third person, and it appears that the corporation grantor is the same entity as the corporation grantee, is it necessary that the abstract contain a record of the certificate or articles of incorporation of such corporation?

Answer: No.

STANDARD NUMBER 14. CURATIVE ACT OF 1947.

Problem: When an instrument affecting title to real estate has been recorded for a period of ten years in the office of the County Clerk of the county in which the real estate is situated, does any one of the following defects or irregularities affect the validity of the instrument?

- (1) Lack of witness, when witness was required prior to enactment of Chapter 79, Session Laws of Wyoming, 1941, or prior to enactment of Chapter 76, Session Laws of Wyoming, 1943;
- (2) Omission of corporation seal;
- (3) Omission of seal of the notary public, or other official taking the acknowledgment;
- (4) Failure of instrument to disclose date of expiration of notary's commission;

- (5) Date of expiration of notary's commission shown as prior to date of acknowledgment;
- (6) Lack of, or erroneous date in instrument or acknowledgment, or in both?

Answer: No.

STANDARD NUMBER 15. DEED TO ESTATE OF DECEDENT.

Problem: What is the effect of a deed conveying real estate to the "Estate of John Smith, Deceased"? After such a deed, how must a marketable title be conveyed?

Answer: There is no such entity as the "Estate of" a named person; therefore, a deed purporting to convey real estate, naming as the only grantee "Estate of John Smith, deceased," is inadequate, because it names no grantee capable of taking title. In such case, deed should be obtained from the grantor or his successors in title, and, in order to obtain possible equitable interests, deed also should be obtained from each person who might have obtained some interest in the real estate if the conveyance had been valid.

STANDARD NUMBER 16. DELIVERY OF DEEDS—PRESUMPTION.

Problem: Should the 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.

STANDARD NUMBER 17. DORMANT JUDGMENTS.

Problem: Is a general judgment upon which no execution has been issued for five years to be treated as a lien or defect of title?

Answer: No.

Comment: This standard applies only to general judgments, and has no application to judgments or decrees of foreclosure of specific liens, such as mortgage, assessment or tax liens.

STANDARD NUMBER 18. EXPIRATION OF TERM OF OFFICE—WHEN UNNECESSARY TO STATE.

Problem: Where an acknowledgment is taken by an official other than a notary public, justice of the peace, or Commissioner of Deeds for Wyoming, is it necessary that there shall be added to his certificate the date when his commission or term of office expires?

Answer: No.

Comment: Section 66-110, Wyoming Compiled Statutes, 1945, requires a showing as to expiration of commission or term of office only when the acknowledgment is before a notary public, justice of the peace, or Commissioner of Deeds for Wyoming.

STANDARD NUMBER 19. FORECLOSED MORTGAGE—LACK OF RELEASE.

Problem: Where a mortgage in the chain of title has been properly foreclosed, is the lack of a release of such mortgage a defect in the title?

Answer: No.

STANDARD NUMBER 20. MECHANICS', MINERS', OR OIL WELL DRILLERS' LIENS—NOT FORECLOSED.

Problem: Does an unreleased materialman's, mechanic's, miner's or oil well driller's lien, after expiration of the time within which suit may be brought to foreclosure the same, constitute an encumbrance or cloud on the title?

Answer: No.

STANDARD NUMBER 21. NAME—EVIDENCE OF CHANGE BY MARRIAGE.

Problem: Mary Jones, owning title in that name, marries John Smith. The marriage certificate is not recorded. How should her identity be shown in an instrument executed after marriage?

Answer: By the naming of such grantor in the body of the instrument and acknowledgment as Mary Smith, formerly Mary Jones.

STANDARD NUMBER 22. RELEASE BY ONE OF TWO OR MORE MORTGAGES.

Problem: Where a mortgage is given to two or more persons jointly, or to two or more named as members of a co-partnership, is a release given by any one of the persons named a sufficient release of the mortgage?

Answer: Yes.

STANDARD NUMBER 23. STREETS AND ALLEYS—VACATION.

Problem: The record reveals the vacation of a public highway, street or alley, or a portion thereof. Subsequently, an abutting owner conveys by warranty deed in the usual form, describing only the original tract, omitting description of the vacated strip. By such deed, does he convey the portion of the property which he acquired as a result of the vacation?

Answer: No.

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