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## Marketable Title Legislation: Tax Deeds in Wyoming

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## MARKETABLE TITLE LEGISLATION: TAX DEEDS IN WYOMING

A review of tax title litigation in Wyoming reveals a host of problems and uncertainties for those persons who have claimed land under tax deeds. The purchaser of real estate at a county sale for delinquent taxes has received nothing more than a claim for reimbursement from the owner for the purchaser's expenses in paying taxes and making improvements. Even though the purchaser waited for the expiration of the period allowed for redemption by the owner and for the special statute of limitations to run, his title often became no more valuable. The holder of a tax title would have marketable title only after the general statute of limitations for actions of ejectment had run and he had proven his title by adverse possession in a quiet title action.

It was in light of this hostility shown by the judiciary to tax deeds that the Wyoming Legislature, in 1975, enacted a law intended to increase the marketability of property acquired through tax sales.<sup>1</sup> By shortening the applicable statute of limitations, providing a procedure for the purchaser to show his possession and claim by affidavit, and indicating an intent to protect the purchaser regardless of irregularities in administrative procedures, the legislature has provided the basis for an entirely new attitude toward tax deeds.

The purpose of this Comment is to analyze the failure of the prior law, as applied by the courts, and to examine the improvements made in 1975.

### HISTORY OF WYOMING TAX DEEDS

Past Wyoming Supreme Court decisions have, as illustrated in the subsequent material, placed an unduly heavy burden on the tax-sale purchaser to show compliance with every element of the taxation and sale procedures. The sys-

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1. WYO. STAT. §§ 34-62.1 to .5 (Supp. 1975).

tem of property taxation and sale for delinquent taxes is filled with minor technical requirements to which the county officials must adhere.<sup>2</sup> Any mistake made by the county commissioners, assessor, collector, or treasurer has, in most cases, operated as a fatal blow to the tax deed.

The Wyoming purchaser receives his tax deed four years after the date of the sale.<sup>3</sup> Under the formerly applicable statute of limitations, the former owner had six years after the date of sale to recover the property.<sup>4</sup> The procedure was apparently intended to give the purchaser saleable title no more than six years after the tax sale. But the courts, striving to protect the rights of the original owner, have found, in nearly every case, some irregularity in the process on which to void the tax title and toll the running of the statute of limitations.

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2. The property taxation and sale procedure under the Wyoming statutes is essentially as follows: The county acts as the basic taxing unit, collecting taxes for cities and towns (WYO. STAT. § 39-68 (1957)) and school districts (§ 39-70). After taxes are properly levied by the taxing unit (§ 39-1) on the proper day (§ 39-89), it is the duty of the county assessor to compute the taxes on the taxable real estate within the county (§ 39-89). A tax list must be delivered by the assessor to the county treasurer, setting forth the assessment roll (§ 39-89). To the tax list and assessment roll the assessor must attach a certificate and warrant requiring the collector to collect the taxes (§ 39-90). It is the duty of the taxpayer, without notice, to pay taxes semiannually to the collector (§ 39-110). When taxes remain unpaid, the treasurer must give notice 30 days prior to the time of delinquency (§ 39-111). The collector must declare delinquent taxes and the delinquent tax list must be certified by the treasurer (§ 39-115). The collector is given one year after the first payment is due to collect delinquent taxes (§ 31-114). When taxes remain unpaid on the demand of the collector, he is given the authority to sell the property (§ 39-116). The treasurer must advertise (§ 39-123) and give notice (§ 39-125) of the sale in a county newspaper. Any person can purchase the land upon which the taxes are delinquent by paying those delinquent taxes plus costs (§ 39-128). Should no bid of this amount be received, the county may purchase the property (§ 39-142). The county treasurer issues to the buyer a certificate of purchase (§ 39-129). Within four years thereafter the owner is entitled to redeem the sale by paying the sales price plus interest and penalty to the treasurer to hold in trust for the purchaser (§ 39-131). Upon expiration of the four-year period, the treasurer issues a tax deed to the purchaser, provided that the purchaser has served notice of purchase and intent to apply for a tax deed on all persons in possession of the land and the person in whose name the property was assessed (§§ 39-134, -135).
  3. WYO. STAT. § 39-134 (1957).
  4. WYO. STAT. § 39-141 (1957); "*Limitation on actions to recover property.*—No action for the recovery of real property, sold for non-payment of taxes, shall be maintained unless the same be brought within six years after the date of sale for taxes aforesaid." This statute remains applicable today in cases where the recordation and possession requirements of the 1976 Act are not met.

*Fatal Defects in Procedures*

In 1881, the Supreme Court of the Territory of Wyoming decided, in *Hecht v. Boughton*,<sup>5</sup> that everything essential to the validity of tax proceedings must be affirmatively shown by the party who claims under them.<sup>6</sup> Since the taxes were levied on a day other than that required by statute,<sup>7</sup> and since the taxes were assessed to Martin Boughton when the record owner was Mary Boughton, the tax sale was void.

In subsequent decisions, the Wyoming Supreme Court found similar flaws which were held to render tax deeds worthless. An assessment, sale, and deed were held void because the taxes were assessed in the name "Madden Bros." when the record owner was Michael S. Madden, even though for the six years prior the taxes had been paid by a check of Madden Bros.<sup>8</sup>

Because a treasurer's deed was acknowledged before a notary public rather than the clerk of court as required by statute,<sup>9</sup> the deed was void on its face.<sup>10</sup> The purchaser, though he had been in actual, open, and notorious possession for more than six years following the date of sale, had no claim of title because the six-year statute of limitations did not run as to a deed void on its face.<sup>11</sup>

Similarly, the assessor's failure to attach to the tax list and assessment roll his oath that the list was complete and proper invalidated a tax sale.<sup>12</sup> Also, a deed was held void when the purchaser gave notice of his intent to apply for a tax deed to the former owner's son rather than to the former owner, himself, so the statutory requirement of personal service<sup>13</sup> was not met.<sup>14</sup>

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5. 2 Wyo. 385 (1881), *writ of error dismissed*, 105 U.S. 235 (1881).

6. *Id.* at 399.

7. WYO. STAT. § 39-89 (1957).

8. *McCarthy v. Union Pac. Ry. Co.*, 58 Wyo. 308, 131 P.2d 326 (1942).

9. WYO. STAT. § 39-137 (1957).

10. *Matthews v. Blake*, 16 Wyo. 116, 92 P. 242 (1907).

11. *Id.* at 243-44; *accord*, *Denny v. Stevens*, 52 Wyo. 253, 73 P.2d 303 (1937).

12. *Brewer v. Kulien*, 42 Wyo. 314, 294 P. 777 (1930); *cf.* *Huber v. Delong*, 54 Wyo. 240, 91 P.2d 53 (1939).

13. WYO. STAT. § 39-135 (1957).

14. *Clinton v. Elder*, 40 Wyo. 350, 277 P. 968 (1929).

A purchaser had no valid tax deed where he failed to show (1) that the treasurer's notice of sale for delinquent taxes listed the years for which taxes were delinquent, (2) that notice was posted on the courthouse door, and (3) that the possessor's wife, who had a homestead interest in the land, was served with notice.<sup>15</sup>

A deed was held void, in another case, when it was delivered to the purchaser before the period of redemption had expired.<sup>16</sup> Even where a purchaser was issued the deed on the proper day, the owner could redeem later the same day.<sup>17</sup>

Not every case has been so unfavorable to the tax purchaser. It has been held that neither irregularities in the treasurer's advertisement of the tax sale nor failure of the treasurer to execute and deliver a tax deed to the county affected the legality of a title taken through the county.<sup>18</sup> And failure of the assessor to attach to the tax list and assessment roll a warrant authorizing the treasurer to collect the taxes did not invalidate the assessment or void the deed.<sup>19</sup>

### *Extending the Period of Risk*

Even in cases where tax deeds have not been held void, the statutory periods for redemption and for bringing an action for the recovery of property have been judicially lengthened. The Wyoming court held in *Burns v. State ex rel Allen*<sup>20</sup> that the former owner's right to redeem does not cease at the end of the statutory four-year period; rather, since the purchaser is required to give notice of the date on which he will apply for the tax deed,<sup>21</sup> the redemption period expires on the date given in that notice.

The court later expanded the consequences of the *Burns* decision. The notice of application for the deed is required,

15. *Davis v. Minnesota Baptist Convention*, 45 Wyo. 148, 16 P.2d 48 (1932).

16. *Barrett v. Barrett*, 46 Wyo. 84, 23 P.2d 857 (1933).

17. *Hackett v. Lynch*, 57 Wyo. 289, 116 P.2d 868 (1941).

18. *McCague Inv. Co. v. Mallin*, 25 Wyo. 373, 170 P. 763 (1918).

19. *Nowells v. Jones*, 37 Wyo. 405, 263 P. 698 (1928). The delinquent tax list, certified and filed with the county treasurer, was sufficient authorization to collect the taxes.

20. 25 Wyo. 491, 173 P. 55 (1918).

21. Wyo. STAT. § 39-135 (1957).

by statute, to state when the "time of redemption" will expire.<sup>22</sup> Since *Burns* held that the right to redeem ends on the date of application rather than at the expiration of the statutory period, the notice is invalid if it states when the statutory redemption period will expire, thereby implying that the time of redemption ends when the statutory period expires.<sup>23</sup>

The period of uncertainty for the purchaser was further extended by the court when it decided that the statute of limitations, allowing the owner six years after the sale in which to bring an action,<sup>24</sup> did not start running until the purchaser acquired the deed or was entitled to one.<sup>25</sup> In addition, the purchaser was required to be in possession to start the running of the statute of limitations.<sup>26</sup>

#### *Lack of Protection for the Purchaser*

Generally, the purchaser is protected to some extent from loss when the property is returned to the former owner. Within the redemption period, the former owner can recover the property only by paying to the county treasurer, to hold in trust for the purchaser, the amount for which the land was sold at the tax sale, plus interest and a penalty.<sup>27</sup> The purchaser has a lien on the property for the amount of taxes, penalty, interest, and costs paid by him,<sup>28</sup> even though the deed held by the purchaser is invalid.<sup>29</sup> If the former owner brings an action in court to cancel the tax deed or to quiet title, he must tender reimbursement to the purchaser for all taxes paid by the purchaser before and after the deed was issued, plus interest and costs.<sup>30</sup>

However, if the purchaser is forced to bring an action to eject the former owner from possession and the former

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22. WYO. STAT. § 39-135 (1957).

23. *State ex rel. Bishop v. Bramlette*, 43 Wyo. 470, 5 P.2d 279 (1931).

24. WYO. STAT. § 39-141 (1957).

25. *Electrolytic Copper Co. v. Rambler Consol. Mines Corp.*, 34 Wyo. 304, 243 P. 126 (1926).

26. *Id.*

27. WYO. STAT. § 39-131 (1957).

28. WYO. STAT. § 39-151 (1957).

29. WYO. STAT. § 39-155 (1957); *see also* *Huber v. Delong*, *supra* note 12, at 57.

30. WYO. STAT. § 39-156 (1957); *see also* *Clinton v. Elder*, *supra* note 14.

owner asks for no affirmative relief, the plaintiff purchaser will not be granted reimbursement even though he loses the action and the former owner, in effect, recovers the property free.<sup>31</sup> If the former owner delays a number of years before bringing a quiet title action, the purchaser, if he has never secured a deed, is prevented by laches from claiming reimbursement as a condition precedent to the court's granting of quiet title to the former owner.<sup>32</sup> The court has also held that if the rental value during the time the purchaser was in possession exceeds the amount of taxes he had paid, he has no right to reimbursement.<sup>33</sup>

The purchaser has some statutory protection, in the form of reimbursement from the county, against loss resulting from a tax sale being deemed void because of some irregularity in the taxation-sale procedure.<sup>34</sup> But, if the land is first purchased by the county at the tax sale and then resold to the purchaser, he loses this right of reimbursement.<sup>35</sup>

The purchaser may have a claim against the former owner for improvements the purchaser has made,<sup>36</sup> except that if the purchaser fails to make that claim in the ejectment action brought by the former owner, the purchaser will be barred from making the claim in a later action.<sup>37</sup>

As these cases demonstrate, the tax title holder has run into hazards in every direction he has turned. This is compounded by the fact that he has been held liable in trespass for occupying land under a void tax deed<sup>38</sup> and, in another case, liable as a converter to account for the value of the property to the former owner and bondholders who had liens on that property.<sup>39</sup>

31. *Brewer v. Kulien*, *supra* note 12.

32. *Harnden v. Fitch*, 54 Wyo. 356, 92 P.2d 546 (1939).

33. *Hackett v. Linch*, *supra* note 17.

34. WYO. STAT. § 39-139 (1957).

35. *Board of County Comm'rs of Big Horn County v. Brewer*, 50 Wyo. 419, 62 P.2d 685 (1936).

36. WYO. STAT. § 39-151 (1957).

37. *Brewer v. Folsom Bros. Co.*, 43 Wyo. 433, 5 P.2d 283 (1931).

38. *Barrett v. Barrett*, *supra* note 16.

39. *Clarke v. Hot Springs Elec. Light & Power Co.*, 55 F.2d 612 (10th Cir. *cert. denied*, 287 U.S. 619 (1932)).

*Title by Adverse Possession*

The remedy for a purchaser, if he could escape all of the pitfalls in the early years of holding a tax title,<sup>40</sup> has been to bring a quiet title action based on adverse possession. In cases where the requirements of the new statute are not met, the modern purchaser may still have reason to resort to this type of action. In order to obtain marketable title in his manner, the purchaser is required to remain in a state of uncertainty which persists after the tax sale for a minimum of ten years, the statutory limitation period for the recovery of title or possession of lands.<sup>41</sup>

Since Wyoming makes no requirement of color of title to support adverse possession,<sup>42</sup> the statute of limitations may begin running before the purchaser acquires the tax deed. The deed is, however, evidence that possession is adverse or under claim of right.<sup>43</sup> Consequently, unless the purchaser can establish by other evidence that he possessed under claim of right, he will be unable to prove title by adverse possession until he has held the deed for ten years.

A further point to be made is that the absence of color of title such as a tax deed limits the right acquired by the adverse possessor to the land actually occupied. Only if the purchaser has held the deed describing a tract for ten years can he claim constructive possession of the entire tract on the basis of actual adverse possession of a portion.<sup>44</sup>

Thus, though color of title is not an absolute necessity, the purchaser will be able to take advantage of the benefits which it can give in a quiet title proceeding only if he has waited 14 years after the tax sale: four years to get his deed, another ten for the general statute of limitations to run.

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40. See Comment, *Defects in Assessment and Levy as Affecting Validity of Tax Titles*, 4 WYO. L.J. 262 (1950), for a discussion of many of the irregularities in the taxation process which have been held to invalidate tax sales in other jurisdictions.

41. WYO. STAT. § 1-13 (1957).

42. *Bryant v. Cadle*, 18 Wyo. 64, 104 P. 23, 27 (1909), *modified*, 18 Wyo. 64, 106 P. 687 (1910).

43. *Bruch v. Benedict*, 62 Wyo. 213, 165 P.2d 561, 567 (1946).

44. *Bryant v. Cadle*, *supra* note 42.



Since the first Wyoming case invalidating a tax deed in 1881,<sup>45</sup> three holders of tax deeds have been able, through Wyoming Supreme Court decisions, to quiet title in this manner. In actions brought 19 years,<sup>46</sup> 20 years,<sup>47</sup> and 26 years<sup>48</sup> subsequent to the tax sales, the court has allowed title to be established on proof of open, continuous, hostile, notorious, and adverse possession under claim of right or color of title. Despite evidence of irregularities in the assessment procedure<sup>49</sup> or the fact that the deed was void on its face,<sup>50</sup> the holders of the deeds had sufficient claim of right to support title by adverse possession. In a similar Wyoming action brought 30 years after the tax sale, the purchaser's knowledge of defects in the notice of application for a tax deed was held not to destroy the adverse nature of possession.<sup>51</sup>

The above cases indicate that the tedious irregularities which have operated so often to invalidate tax titles were overlooked only in those quiet title actions in which the purchaser's claim was based on adverse possession for a substantial number of years after the tax sale.

### *The Need for a Change*

This review of the history of tax deeds in Wyoming evidences the need for the 1975 statute and a corresponding change of attitude in the Wyoming courts. The fact that so few tax sale purchasers have acquired marketable title and that the period of uncertainty has persisted for so long explains the reluctance to invest in the purchase and development of land sold for delinquent taxes.

Without willing buyers, the tax sale loses much of its effectiveness as a tool for enforcement of property tax laws. Though the taxing authority has a somewhat effective remedy in taking possession of the property and ejecting the delinquent taxpayer, the ultimate aim of the taxing body is not to

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45. *Hecht v. Boughton*, *supra* note 5.

46. *Hudson v. Erickson*, 67 Wyo. 167, 216 P.2d 379 (1950).

47. *Bruch v. Benedict*, *supra* note 43.

48. *Riedesel v. Towne*, 66 Wyo. 160, 206 P.2d 747 (1949).

49. *Hudson v. Erickson*, *supra* note 46, at 385.

50. *Bruch v. Benedict*, *supra* note 43, at 566.

51. *Amerada Petroleum Corp. v. Rio Oil Co.*, 225 F. Supp. 907 (D. Wyo. 1964).

possess realty or to deprive persons of property, but to collect the taxes due. The sale of the property to a person willing to pay the back taxes as consideration for his title and to assume the obligation to pay future taxes is the most reasonable means to reach that end.

If purchasers are to be found and the tax titles they receive are to be given some stability, the courts cannot seek reasons for invalidating all tax deeds by following the inflexible requirement that every technical procedural condition of every statute be strictly complied with in a tax sale. The Legislature recognized in 1941 that it is unrealistic to expect the purchaser to uphold, as previously required,<sup>52</sup> the burden of proving the strict compliance and adherence to formal procedures by the county officers.<sup>53</sup> Only after a long line of cases rejecting tax titles has the Wyoming Supreme Court realized that "even a requirement of strict compliance with a statute in tax matters, should not be carried to the point of absurdity."<sup>54</sup>

### WYOMING'S 1975 TAX TITLE STATUTE

The tax deed legislation adopted in Wyoming in 1975<sup>55</sup> is expressly designed to avoid the past absurdity of depriving the purchaser of his title because of the most minute mistakes in the courthouse. The purpose of the Act is to provide a

52. *Davis v. Minnesota Baptist Convention*, *supra* note 15, at 50.

53. WYO. STAT. § 39-138 (Supp. 1975) (originally enacted as ch. 23, § 1, [1941] Wyo. Sess. Laws 22) places the burden of proof on the party seeking to invalidate a tax deed.

54. *Barlow v. Lonabaugh*, 61 Wyo. 118, 156 P.2d 289, 294 (1945).

55. The key provisions of the statute are as follows:

§ 34-62.2 *Same; two year limitation.*—(a) No action, suit or other proceeding shall be commenced by the former owner to set aside, declare invalid or redeem from a tax deed or the sale, forfeiture, foreclosure or other proceeding upon which it is based or to recover possession, quiet title or otherwise litigate or contest the title of the grantee, if:

(i) Two (2) years or more have elapsed after the date of recording the deed in the office of the county clerk and ex officio register of deeds for the county in which the real estate described in the deed is situated; and

(ii) The grantee has been in possession of the real estate continuously for a period of at least six (6) months, at any time after one (1) year and six (6) months have elapsed since the date of recording of the tax deed.

(b) The limitation in subsection (a) applies regardless of whether the tax deed or any of the proceedings upon which it is based are void or voidable for any reason, jurisdictional or other-

means of correcting procedural and jurisdictional defects and to render tax titles marketable.<sup>56</sup>

The wording of the Act is nearly identical to the Model Tax Title Limitation Act.<sup>57</sup> Wyoming, in adopting the Act, has taken the initiative of reducing the limitation on actions to invalidate tax deeds from five years in the Model Act to two years.<sup>58</sup>

The purchaser need only tend to a few simple matters, in addition to taking actual possession of the premises, and he can obtain complete, marketable title six years after the date of sale.

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wise. If the deed is executed substantially in the form prescribed for the execution of tax deeds, the limitation shall apply regardless of whether the deed is deemed void upon its face. The period shall not be extended by reason of the minority, insanity, imprisonment, nonresidence, or death of any person, or by reason of any other fact, or circumstance.

§ 34-62.3. *Same; possession and affidavits of possession.*—(a) Possession by the grantee for a period of not less than six (6) months at any continuous time after one (1) year and six (6) months have elapsed since the date of recording the tax deed extinguishes forever all the claims, right, title and interest, including the right to possession, of the former owner, and vests in the grantee any title conveyed or purportedly conveyed by the tax deed. Proof of possession by the grantee and the record of the tax deed constitutes conclusive evidence of the legality and effectiveness of the deed and any proceedings upon which the deed is based, and of the title of the grantee. As a means of proving possession and preserving evidence of possession under a tax deed, the then owner or holder of the title conveyed or purportedly conveyed by the tax deed may, at any time after two (2) years from the date of recording of the tax deed, file for record in the office of the county clerk and ex officio register of deeds in which the real estate is located an affidavit substantially in the following form:

[Form of AFFIDAVIT OF POSSESSION AND CLAIM UNDER TAX DEED, giving date of recording of deed, and facts of possession.]

(b) In any action, suit, or proceeding in which the tax deed, any proceedings upon which it is based, or the title of the grantee is contested or drawn in question, a certified copy of the record of any affidavit of possession and claim under tax deed which has been of record for not less than sixty (60) days constitutes *prima facie* evidence of the facts recited therein and of the application of this act. . . .

§ 34-62.4. *Same; liberal construction; legislative purposes.*—This act [ §§ 34-62.1 to 34-62.5 ] shall be liberally construed to effectuate the legislative purpose of giving stability and effect to record titles, of confirming and clarifying the titles of persons in possession, of providing a means of correcting procedural and jurisdictional defects without necessity of resort to further proceedings, and of rendering tax titles marketable and protecting purchasers thereof against remote claims.

56. WYO. STAT. § 34-62.4 (Supp. 1975).

57. SIMES & TAYLOR, *THE IMPROVEMENT OF CONVEYANCING BY LEGISLATION* 183 (1960).

58. WYO. STAT. § 34-62.2(a) (i) (Supp. 1975).

The four-year redemption period necessary before a deed is issued remains unchanged.<sup>59</sup> Neither is there a change in the requirement that the purchaser, to perfect his right to have the deed issued to him, must give notice of his application for the tax deed to the former owner and all possessors.<sup>60</sup>

### *Recording and Possession*

Once the deed is received *and recorded*, the new two-year statute of limitations begins to run.<sup>61</sup> It is most important to recognize that this Act has relevance only to recorded tax deeds.

The other vital point for the purchaser to understand is that this is an adverse possession statute since it is *possession*, not the issuance of the deed, which vests title in the purchaser.<sup>62</sup> The right of the former owner to bring an action expires only after the purchaser has been in continuous possession for a period of six months, this period commencing no sooner than 18 months after the recording of the deed.<sup>63</sup>

Thus, if the purchaser intends to have marketable title at the end of the six-year period after the sale, he must take three steps:

- (1) give timely notice entitling him to receive the deed immediately upon expiration of the four-year redemption period,
- (2) record the deed the day he receives it, and
- (3) take actual possession of the property, at least during the last six months of the six-year period.

Taking possession at a later time, like recording at a later time, will not make the Act inapplicable. Yet, it is only after the deed has been recorded for two years and the pur-

59. WYO. STAT. § 39-131 (1957).

60. WYO. STAT. § 39-135 (1957).

61. WYO. STAT. § 34-62.2(a) (i) (Supp. 1975).

62. WYO. STAT. § 34-62.3(a) (Supp. 1975).

63. WYO. STAT. § 34-62.2(a) (ii) (Supp. 1975).

chaser has been in possession for a six-month period (which must be subsequent to the 18-month period after the recording date) that he can take advantage of the Act.

Provided the purchaser meets the recording and possession requirements, the Act operates to extinguish the former owner's right to bring an action even though the tax deed is "void or voidable for any reason, jurisdictional or otherwise."<sup>64</sup> If the deed is substantially in the statutory form,<sup>65</sup> it matters not that it may be deemed void on its face.<sup>66</sup> This provision should cause the Wyoming Supreme Court no problem since it has already decided that a deed, void on its face, is sufficient to establish a claim of right for purposes of an adverse possession statute.<sup>67</sup>

#### *Legal Disabilities of Former Owners*

One question which seems never to have been settled in the Wyoming Supreme Court is the meaning of the special redemption provision for minors and lunatics.<sup>68</sup> Although, the regular redemption period is four years,<sup>69</sup> the special provision of Section 39-132 gives minors and lunatics one year after the removal of the disability in which to redeem. However, the statutes provide that the deed shall be issued, not at the end of the redemption period, but four years after the sale.<sup>70</sup> Thus, if the statutes are to be construed to give meaning to every section, the special provision must mean that redemption, without the need for a challenge to the invalidity of the tax deed, can occasionally be accomplished after the deed has issued.

The new Act expressly provides that the limitation period shall not be extended for reasons of minority, insanity, or any other circumstance.<sup>71</sup> This appears to partially supersede Section 39-132. The former owner with a disability has

64. WYO. STAT. § 34-62.2(b) (Supp. 1975).

65. WYO. STAT. § 39-137 (1957).

66. WYO. STAT. § 34-62.2(b) (Supp. 1975).

67. *Bruch v. Benedict*, *supra* note 43, at 566.

68. WYO. STAT. § 39-132 (1957).

69. WYO. STAT. § 39-131 (1957).

70. WYO. STAT. § 39-134 (1957).

71. WYO. STAT. § 34-62.2(b) (Supp. 1975).

one year after the removal of the disability to redeem, but the purchaser has the ability to cut off this right six years after the sale or whenever he meets the requirements of the Act.

### *Affidavit of Possession and Claim*

Another matter which the new Act has attempted to deal with is the problem of proving tax title. Wyoming has had, since 1941, a statute declaring that a tax deed is prima facie evidence of title and placing the burden of proof on the party seeking to invalidate the tax title.<sup>72</sup> The previously-discussed survey of tax deed cases in Wyoming reveals no change in the courts' treatment of tax deeds subsequent to 1941, *i.e.*, the shift of the burden of proof in 1941 had little significance.

The solution of the 1975 Act is an affidavit procedure for proving possession and claim.<sup>73</sup> The Act sets out an affidavit form in which the purchaser swears that the deed was issued and recorded and that he has met the six-month possession requirement. The affidavit may be filed at any time after the deed has been on record for two years.<sup>74</sup> When recorded for 60 days, it is prima facie evidence of the issuance and recording of the deed and the purchaser's possession.<sup>75</sup> Of course, if it is shown that the purchaser was not in actual possession as required at the time of filing the affidavit, the affidavit has no significance.<sup>76</sup> Proof of possession and recording is conclusive evidence of the legality of the tax deed.<sup>77</sup>

### *Constitutionality*

As pointed out earlier, the claim of the former owner is extinguished and the title vested in the purchaser by the

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72. WYO. STAT. § 39-138 (Supp. 1975).

73. WYO. STAT. § 34-62.3 (Supp. 1975).

74. WYO. STAT. § 34-62.3(a) (Supp. 1975).

75. WYO. STAT. § 34-62.3(b) (Supp. 1975).

76. *Modern Heat & Power Co. v. Bishop Steamotor Corp.*, 239 Iowa 1267, 34 N.W.2d 581 (1948).

77. WYO. STAT. § 34-62.3(a) (Supp. 1975).

fact of the purchaser's possession.<sup>78</sup> This adverse possession theory is the key to the constitutionality of the Model Act.<sup>79</sup> The tax deed statute is not a curative statute intended to make legal a deed which may be void because of jurisdictional defects. Such an enactment would not be within the power of the legislature.<sup>80</sup> The United States Supreme Court has phrased the rule as follows:

That it is competent for the legislature to provide by curative statutes that irregularities in the sales of lands shall not prejudice the purchaser after a certain time has elapsed, and a deed has been given, is entirely clear, although . . . such defective proceedings cannot be cured where there is a lack of jurisdiction to take them.<sup>81</sup>

The legislature does, however, have the power to shorten the period of limitation within which an action to recover the property sold at a tax sale may be commenced.<sup>82</sup> This is what the Wyoming Legislature has done. Provided that the statute grants the owner a reasonable time to act, due process is not violated.<sup>83</sup>

A New York statute provides, after two years from the date of the recording of the tax deed, there is a conclusive presumption that the sale and all prior proceedings and notices were proper.<sup>84</sup> Finding that this statute operates as a statute of limitations, the United States Supreme Court has sustained its constitutionality.<sup>85</sup> The Wyoming statute is clearly a short statute of limitations which is very similar to the New York statute as it has been interpreted. Thus, the constitutionality of the Wyoming law should not raise any great questions.

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78. WYO. STAT. § 34-62.3(a) (Supp. 1975).

79. SIMES & TAYLOR, *supra* note 57, at 186.

80. Swanson v. Pontralo, 238 Iowa 693, 27 N.W.2d 21, 25 (1947).

81. Turpin v. Lemon, 187 U.S. 51, 57 (1902).

82. Saranac Land & Timber Co. v. Comptroller of New York, 177 U.S. 318, 323-24 (1900).

83. Swanson v. Pontralo, *supra* note 80, at 24.

84. N.Y. REAL PROP. TAX LAW § 1020(3) (McKinney 1972).

85. Turner v. New York, 168 U.S. 90 (1897).

*Effective Date and Title Standards*

The new Act became effective 90 days after the March 1, 1975, adjournment of the 1975 Legislative Session.<sup>86</sup> Therefore, if a tax title holder has a deed recorded on or before the effective date and meets the possession requirement, he can have marketable title by the end of May, 1977.

With the effectiveness of the new Act, there is a need for concomitant title standards. The Wyoming Title Standards, which do not yet cover the matter of tax titles, should be amended to establish guidelines for the handling of tax deeds under the new statute. The Standards might be amended so that Chapter 18 reads:

**TAX TITLES:** If (a) two years have elapsed after the recording of a tax deed, and (b) an affidavit of possession in the form required by law has been filed by the grantee, showing that such grantee was continuously in possession for a period of at least six months subsequent to the expiration of one year and six months after the recording of such tax deed, then a title based upon the tax deed should be approved in the absence of knowledge of facts indicating that the affidavit of possession is untrue.<sup>87</sup>

## CONCLUSION

The 1975 Wyoming tax deed legislation is a necessary and welcome remedy for many of the dangers and drawbacks of the formerly unmarketable tax titles. The history of Wyoming tax deeds illustrates the instability in titles caused by the courts' overly protective attitude toward the former owners. The 1975 Act is a form of recognition of the purchaser's precarious position and the need to support the stability of his title.

Accompanying the statutory change, should be the development of a more liberal attitude toward tax titles on the

86. Ch. 170, § 2. [1975] Wyo. Sess. Laws 308.

87. See SIMES & TAYLOR, MODEL TITLE STANDARDS 86 (1960).



part of courts and practicing attorneys. The tax deed in Wyoming should now represent valuable title rather than a minor claim of uncertain value.

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