

1981

Wyoming Title Standards

Wyoming Legislature

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Wyoming Legislature (1981) "Wyoming Title Standards," *Land & Water Law Review*: Vol. 16 : Iss. 1 , pp. 399 - 409.

Available at: https://scholarship.law.uwyo.edu/land_water/vol16/iss1/19

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

LAND AND WATER LAW REVIEW

VOLUME XVI

1981

NUMBER 1

APPENDIX III

WYOMING TITLE STANDARDS

CHAPTER 4*

Note: Chapter 4 addresses the effects of the Wyoming Marketable Title Act (34-10-101 et. seq.). It should be noted that there is extensive interdependence among the provisions of the Act. Because of the structure of the Act, the standards contained in this chapter are also interdependent and should be read in conjunction with all others. The title examiner is therefore cautioned to consider the interrelationships among both the provisions of the Act itself and the title standards which follow before selecting a single provision of either the Act or the standards to apply to a particular title problem.

Additionally, it should be noted that although the act applies to all real property interests (with the exception of those specified in section 34-10-104 of the Act), the limited scope of the Act (which results from application of the provisions of the Act from the "root of title" only, the notice and possession provisions and various other exceptions) can create a title which is a "Marketable Record Title" under the Act but which is still subject to various legal defects not cured by the Act, thereby leaving the title unmarketable in the traditional legal sense of the term.

STANDARD 4.1 REMEDIAL EFFECT

The marketable title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.

Authority: Wyoming Statutes § 34-10-105
Similar Standards: Model 4.1, Kansas 23.1,
Michigan 1.1, Utah 45

STANDARD 4.2 REQUISITES OF MARKETABLE RECORD TITLE

A "Marketable Record Title" under the Marketable Title Act exists only where (1) a person has an unbroken chain of title of record extending back at least forty years; and (2) nothing appears of record purporting to divest such person of title.

Such "Marketable Record Title" is not necessarily free of legal defects, but is subject to interests that may attach under the provisions of standard 4.6.

Authority: Wyoming Statute § 34-10-103
Similar Standards: Model 4.2, Utah 46, Kansas 23.2

Note: These two requirements are elaborated in standards 4.4 and 4.5.

STANDARD 4.3 DEFINITION OF RECORD

For purposes of the Marketable Title Act, "records" includes probate and other official public records, as well as records in the office of the County Clerk and Ex Officio Register of Deeds.

Authority: Wyoming Statute § 34-10-101(ii)

*In addition to the adoption of Chapter IV, Wyoming Title Standard 3.1 has been eliminated as conflicting with the Wyoming Marketable Title Act.

STANDARD 4.4
UNBROKEN CHAIN OF TITLE RECORD

"An Unbroken Chain of Title of Record," within the meaning of the Marketable Title Act may consist of (1) a single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least forty years; or (2) a connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least forty years.

Authority: Wyoming Statute § 34-10-103

Similar Standard: Model 4.3, Michigan 1.3, Utah 47, Kansas 23.3

NOTE: For a definition of "root of title," see Wyoming Statute § 34-10-101(v). **Illustration 1:** Assume A is grantee in a deed on record for at least 40 years, and that nothing affecting the described land has been recorded since then. Forty years later A has an unbroken chain of title of record. Instead of a conveyance, the title transaction may be a decree of a probate court or a judgment quieting title or assigning title in a district court which was entered in the court records 40 years ago. Likewise, 40 years later A has an unbroken chain of title.

Illustration 2: Suppose that the chain of title is complete down to Frank Jones. The next conveyance is from several persons and spouses who are strangers to the title who convey this property to A. The conveyance to A is over 40 years old and A now claims to be the owner. A has an unbroken chain for the last forty years. The result in the above example is the same if A conveyed to B, and B to C, and C now claims to be the owner because there is a connected series of conveyances. The result in the above example is the same if there is a valid probate court proceeding for the estate of A which assigned this property to W, who now claims to be the owner.

Illustration 3: Suppose the chain of title is complete to Frank Jones, and the next entry is an executor's deed which conveys this property to A. The executor's deed merely recites "John Roberts, executor of the state of Frank Jones, deceased," and is executed properly. The probate court proceedings are not identified and there is nothing further shown. The executor's deed is 40 years old. A has conveyed to B and B to C who now claims to be the owner. C has an unbroken chain of title for the last 40 years.

Illustration 4: Suppose that title is complete in Frank Jones and over 40 years ago there appears a conveyance from Mike W. Roberts, attorney-in-fact for Frank Jones, in which the real estate is conveyed over to A. There is no power of attorney shown for Mike W. Roberts anywhere on record or no other reference to any power of attorney. Assuming no subsequent instruments are recorded, A now has an unbroken chain of title for 40 years.

Illustration 5: Suppose title is complete in Frank Jones, and over 40 years ago there appears a conveyance to A from X and Y, who recite in the deed that they are assignees in bankruptcy of Frank Jones. There is nothing on record to show any conveyance to the grantors from Frank Jones or any bankruptcy proceedings or anything else to indicate how X and Y became vested with title as assignees in bankruptcy for Frank Jones. However, assuming no subsequent interests are recorded, A has an unbroken chain of title for the last 40 years.

Illustration 6: Suppose that the title is complete in the Wyoming Land Corporation, who acquired the property over 40 years ago. Subsequently, and over 40 years ago, there is a deed from several persons who merely recite in the deed that they are the owners of all of the corporate stock of said Wyoming Land Corporation, which has now been dissolved. There is nothing else on record concerning the Wyoming Land Corporation. Since the deed to A was given over 40 years ago, A has an unbroken chain of title.

Illustration 7: Suppose A is the grantee in a deed, executed and delivered over 40 years ago but recorded less than 40 years ago. A does not have an "unbroken chain of title record" since 40 years have not elapsed subsequent to the recording of his deed. He will not have the "unbroken chain" required by the statute until 40 years have elapsed from the date of its recording.

**STANDARD 4.5
MATTERS PURPORTING TO DIVEST**

Matters "Purporting to Divest" within the meaning of the Marketable Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.

Authority: Wyoming Statute § 34-10-103

Similar Standards: Model 4.4, Michigan 1.4, Utah 48, Kansas 23.4

Illustration 1: The most obvious case of a recorded instrument purporting to divest is a conveyance to another person. Assume that the title is complete in A who acquired this property over 40 years ago. The records show that A conveyed to B within the last 40 years. Although A acquired the property over 40 years ago, the deed which he gave to B within the last 40 years is an instrument which purported to divest the title and broke the chain; and therefore, A could not have a marketable record title.

Illustration 2: Suppose that title is complete in A who acquired the property over 40 years ago. A deed for the same land from X to Y was recorded 20 years ago, and it contains the following recital: "being the the same land heretofore conveyed to me by A." Y now attempts to convey a clear title, claiming a 40-year chain starting with A who acquired it over 40 years ago. There is a break in the chain of title since there is no deed from A to X, and the instrument from X to Y was an instrument purporting to divest within the terms of the Act. Therefore, neither A nor Y can claim a good title under the Marketable Title Act.

Illustration 3: Suppose that A acquired a good title over 40 years ago. Twenty years ago there is a conveyance from A to X, but the conveyance was executed by B, Attorney-in-fact for A. There is no power of attorney on record from A to B. This is a break in the title, and this is an instrument purporting to divest within the terms of the Act. There is no marketable record title in A or X.

Illustration 4: Suppose that A has acquired title over 40 years ago. Twenty years ago A conveyed the property to X, and in this deed there is a recital as follows: "Subject to a life estate in C, the mother of A." X now attempts to give a clear title, claiming the 40-year chain beginning with A. The reservation in the deed from A to X is an instrument purporting to divest within the terms of the Act, and X cannot give a good title until the life estate of C has been determined.

Illustration 5: Suppose that A acquired title over 40 years ago. A conveyed to B 20 years ago, and 15 years ago B conveyed to C. In this conveyance to C there is a recital as follows: "Subject to a mortgage on this property to the XYZ Finance Company." There is no mortgage on record on this property to the XYZ Finance Company, and there is no other reference to a mortgage to said XYZ Finance Company. C now is attempting to convey a good merchantable title claiming a 40-year unbroken chain from A. C does have an unbroken chain of title. However, it is subject to the possibility that the XYZ Finance Company might have an interest in this property by virtue of an unrecorded mortgage. The title examiner is put on notice to determine what interest the XYZ Finance Company might have in the property.

Illustration 6: Suppose A is the last grantee in a recorded chain of title, the last deed of which was recorded over 40 years ago. A deed of the same land was recorded 40 years ago, from X to Y, which recites that A died intestate and that X is his only heir. The deed from X to Y is one purporting to divest within the terms of the Act. This is the conclusion to be reached whether the recital of heirship is true or not. A recorded instrument may also purport to divest even though there is not a complete chain of record title connecting the grantee in the divesting instrument with the 40-year chain.

Illustration 7: Suppose that A is the last grantee in a chain of title which he acquired over 40 years ago. Prior to the expiration of 40 years since A acquired his title, there was recorded an affidavit by X, a stranger to the title, which recited that X and his predecessors have been "in continuous, open, notorious and adverse possession of said land as against all the world for the preceding thirty years." This is an instrument purporting to divest A of his interest, within the terms of the Act.

Illustration 8: Suppose A acquired title 40 years ago. Twenty years ago there was recorded a mortgage from X to Y of the same land, containing covenants of warranty. The mortgage is not an instrument purporting to divest within the terms of the Act.

STANDARD 4.6

EFFECT OF MARKETABLE RECORD TITLE ON PRIOR INTEREST

A person who has marketable record title in any interest in land, as stated in Standard 4.2, holds free from: any other interests, claims or charges, the existence of which depends upon any act, transaction, event or omission which antedates the beginning of the unbroken chain of record title extending back at least forty years: provided that (1) such unbroken chain of record title includes no reference containing a specific identification of a recorded title transaction creating such other interest, claim or charge, and no notice of claim based thereon, has been filed in accordance with Wyoming Statutes § 34-10-106 and § 34-10-107 and (2) such unbroken chain of record title is not made subject to such other interest, claim or charge by any provision of Wyoming Statutes § 34-10-104.

Authority: Wyoming Statute § 34-10-105

Similar Standard: Michigan 1.6

Note: The interests to which an unbroken chain of record title may be subject are discussed in Standards 4.7, 4.8, 4.9, 4.10, and 4.11.

Illustration 1: Suppose 43 years ago a deed was recorded conveying a certain tract of land "to A for life, remainder to B and his heirs." A year later (42 years ago) a mortgage was recorded from B to X in which B mortgaged his remainder "subject to A's life estate." Forty years ago a deed was recorded in which B conveyed his remainder to C in fee simple, there being no reference to the mortgage to X. Forty years later, A, the life tenant, still being alive, C has a marketable record title to the remainder under the terms of the Act, and X's mortgage is extinguished. But, being a remainder subject to a life estate, no one but the life tenant is likely to desire to buy it, and it cannot be said to be commercially marketable. Note that the title cannot be commercially marketable to any greater extent than the extent to which such interest is marketable in the first instance.

Illustration 2: Suppose A conveyed a tract of land to B by deed recorded 45 years ago which deed contained one of the following: (a) a condition subsequent that the grantor or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance; or (b) a special limitation that the land was conveyed "so long as" it was used for a specified purpose. Forty years ago B conveyed the tract of land to C by recorded deed, which deed made no mention of, or reference to, such condition or limitation. Since the recording of the deed from B to C, the chain of title contains no reference to such interest or notice of claim based thereon. At the end of the 40 year period since the recording of the deed from B to C, C holds title to the land free from the condition or limitation since it does not appear in the muniments of which his 40-year chain of record title is formed.

Illustration 3: Suppose A conveyed a tract of land to B by deed recorded 50 years ago which deed contained one of the following: (a) a condition subsequent that A or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance; or (b) a special limitation that the land was conveyed "so long as" it was used for a specified purpose. By deed recorded five years later (45 years ago) B conveyed the land to C subject specifically to the condition or limitation contained in the deed from A to B. C then conveyed the land to D by deed recorded 20 years ago, which deed made no mention of, or reference to, such condition or limitation. No other instrument affecting the land has been recorded since the deed from C to D. D is in possession. Although D holds marketable title to the tract of land in question, he does not hold such title free from the condition or limitation because reference thereto appears in the deed from B to C which is one of the muniments of which his unbroken 40-year chain of title is formed.

Illustration 4: Suppose A conveyed a tract of land to B by deed recorded 50 years ago, which contained a condition subsequent that A or his heirs could re-enter in the event of a breach of certain conditions specified in the conveyance. B conveyed the land to C by deed recorded 45 years ago, which deed made no mention of, or reference to, such condition. Forty-three years ago, a deed to

the land was recorded from X, a stranger of title, to Y. Subsequently, by deed recorded 20 years ago, C conveyed the tract of land to D, subject specifically to the condition subsequent contained in the A-B deed recorded 50 years ago. The tract of land in question is unoccupied. At the present time both D and Y have marketable record title within the meaning of the Act. D's title is, however, subject to the condition subsequent for the reasons set forth in Illustration 3 above. Y's title is not subject to such condition, because it does not appear in the deed to him, which is the only instrument contained in his unbroken chain of title of record.

Illustration 5: Suppose A was the grantee in a chain of record title of a tract of land, a deed to which was recorded 50 years ago. Forty-eight years ago, a mortgage of the same land from A to X was recorded. Forty-four years ago a mortgage of the same land from A to Y was recorded. Forty-one years ago a deed of the same land from A to B in fee simple absolute was recorded, which made no mention of the mortgages. Twenty years ago, Y recorded a notice of his mortgage, as provided in Wyoming Statutes § 34-10-106 and § 34-10-107. X did not record any notice. B has an unbroken chain of title of over 40 years. Therefore, B has a marketable record title which is subject to Y's mortgage but not to X's mortgage. B's root of title is the deed from A to B recorded 41 years ago. X and Y had 40 years from the date of recording B's root of title instrument to record a notice for the purpose of preserving their interests. If X had filed a notice after the running of the 40 year period, it would have been a nullity, since his interest was already extinguished.

Illustration 6: Suppose A has the 40-year unbroken record chain of title. Twenty years ago there was filed an affidavit by X stating the following: "I hereby give notice that I have entered into a contract to buy from A a tract of land three acres in size south of the city of Gillette, Wyoming." There is no further description shown in the affidavit, although it was subscribed, sworn, and recorded. This affidavit would not be effective to establish a notice as set forth in Wyoming Statute § 34-10-107. It appears that the land which A owns is 160 acres in size. The affidavit should not be entitled to be recorded in the notice index as set forth in § 34-10-107.

NOTE: The Wyoming Marketable Title Act is not effective: (a) To bar any lessor or his successor as a reversioner of his right to possession on the expiration of any lease; (b) To bar or extinguish the title to any railroad right-of-way or station grounds or to any easement created or held for any pipeline, highway, railroad or public utility purpose the existence of which is clearly observable by physical evidence of its use; (c) To bar or extinguish any water rights, whether evidenced by decrees, or by certificates or appropriation; (d) To bar or extinguish any title, estate or interest in and to any timber or any minerals (including without limiting the generality of that term, oil, gas and other hydrocarbons) and any development, mining, production or other rights or easements related thereto or exercisable in connection therewith; or (e) To bar any right, title or interest of the state of Wyoming and of the United States.

STANDARD 4.7 DEFECTS IN THE FORTY-YEAR CHAIN

If the recorded instrument which constitutes the root of title, or any subsequent instrument in the chain of record title required for a marketable record title under the terms of the Act, creates interests in third parties or creates defects in the record chain of title, then the marketable record title is subject to such interests and defects.

Authority: Wyoming Statute § 34-10-104
Similar Standards: Model 4.6, Kansas 23.5, Utah 50

Illustration 1: Over 40 years ago A conveyed this land to B; and in this conveyance there is the following reservation: "The grantor A does hereby reserve to himself and his heirs and assigns forever all of the mineral interests which lie under said land." B now claims that he has a clear title and that A has not exercised any right to enjoy the mineral rights. The title is good in B, but it is subject to the reservation of the mineral interests in A, and the 40-year chain does not bar the reservation of A.

Illustration 2: Over 40 years ago A, who was a record title holder at that time, conveyed the property to B. In this deed to B there is a reservation as follows: "The grantor A does hereby reserve unto himself and his heirs and assigns a roadway easement over the east 40 feet of this tract." B now attempts to convey to C, claiming that said roadway was never utilized by A and there is no road there. The 40-year chain of title is subject to the prior reservation of a road easement by A, the grantor in the deed, and B cannot convey a clear title to this tract of land without clearing up the interest of the previous reservation and the roadway easement in A. The above two illustrations, the mineral reservation and the roadway easement, are interests and defects which are inherent in the muniments of which such chain of record title is formed as set forth in Wyoming Statute § 34-10-104(a)(i).

Illustration 3: Suppose that A acquired title to a tract of land over 40 years ago, and in this deed to A there appears the following statement: "Subject to a deed to X of the mineral interests in this property." The deed is not further identified, and there is no deed to any mineral interests to X on record. A now attempts to convey claiming a 40-year chain. The reference to a deed to X of a mineral interest is a general reference and is not specific enough to preserve the recorded interest under Wyoming Statute § 34-10-104(a)(i). However, read as a whole, the root purports to create no more than a surface interest and the marketable record title can apply to no greater interest.

Illustration 4: Suppose that A acquired title to a tract of land over 40 years ago; but in this deed to A, there appears the following recital: "The grantors in this deed, John Smith and Mary Smith, hereby reserve unto themselves a life estate in this property, so long as they shall live" or other wording to that effect creating life interest. A is now attempting to convey good title and there is nothing on record to indicate any termination of the life estates of John and Mary Smith. The marketable record title of A shall be subject to the life estates of John and Mary Smith. The title examiner should require conveyances from John and Mary Smith or affidavits of death obtained and recorded.

Illustration 5: Suppose that there is a conveyance to A which was given over 40 years ago, and in this deed there is contained the following reservation: "The grantor, Frank Jones, hereby reserves unto himself, his heirs and assigns, the right to go upon said property and remove sand and gravel along Sand Creek which runs through this property." The marketable title of A shall be subject to this reservation by Frank Jones.

Illustration 6: A acquired title over 40 years ago and now attempts to convey this property to C. X has been using the east 15 feet of this property as a driveway, and the driveway is readily apparent to anyone who makes an inspection of the properties since it leads to X's garage and cuts across the yard of A. This driveway is a right arising from adverse possession by the user of this driveway even though there is no recorded easement on record. This illustration indicates that the Marketable Title Act recognizes acquisition of title by adverse possession (See Wyoming Statute § 34-10-104(a)(iii)). However, if X wishes to perfect and establish a marketable title to his easement, he should either obtain a written easement from A to his 15-foot tract that he is using as a driveway, or else establish a 10-year adverse possession by quiet title suit.

Illustration 7: A acquired title over 40 years ago, and he now attempts to convey by warranty deed to B. However, ten years ago X filed an affidavit in which he referred to this property specifically; and in this affidavit X says that he is in possession of this property by virtue of a contract of sale entered into between A and X. There is nothing further shown concerning any contract of sale or the interests of X, the purchaser under said contract of sale. This is a notice in accordance with Wyoming Statute § 34-10-104(a)(ii), and the marketable title shall be subject to this affidavit.

Illustration 8: Forty years ago A, by recorded deed, conveyed a certain tract of land to "B and heirs so long as the land is used for residence purposes," thus creating a determinable fee in B and reserving a possibility of reverter in A. Thirty years ago a deed to the land was recorded from B to C and his heirs "so long as the land is used for residence purposes, this property being subject to a possibility of reverter in A." At the end of the 40-year period dating from the records of the deed from A to B, C has a marketable record title to a determinable fee, which is subject to A's possibility of reverter.

Illustration 9: Suppose, however, that 43 years ago a deed was recorded conveying a certain tract of land from A, the owner in fee simple absolute, to "B and his heirs so long as the land is used for residential purposes"; and suppose, also, that 40 years ago, a deed was recorded by B to C and his heirs, conveying the same tract of land in fee simple absolute, in which no mention was made of any special limitation or of A's possibility of reverter. There being no other instruments of record at the expiration of the 40-year period from the date of the recording of the deed from B to C, C has marketable record title in fee simple absolute. His root of title is the deed from B to C and not the deed from A to B; and there are no interests in third parties or defects created by the "muniments of which such chain of record title is formed."

STANDARD 4.8 FORTY-YEAR POSSESSION IN LIEU OF FILING NOTICE

If an owner of a possessory interest in land under a recorded instrument (1) has been in possession of such land for a period of forty years or more after the recording of such instrument, and (2) such owner is still in possession of the land, any marketable record title, based upon an independent chain of title, is subject to the title of such possessory owner, even though such possessory owner has failed to record any notice of his claim in accordance with Wyoming Statutes § 34-10-106.

Authority: Wyoming Statutes § 34-10-106
Similar Standards: Model 4.8, Utah 52

Illustration 1: A was the last grantee in a chain of title to a tract of land recorded 41 years ago. There is no subsequent instrument of record in the chain of title from A. A has been in possession of this land since receiving title 41 years ago and continues in possession. Forty years ago there is a conveyance from X to Y. There are no other instruments with respect to the chain of title to this land. At present, ignoring any potential inherent defect through fraud in Y's root, both A and Y have a marketable record title. A did not file any notice as provided by Wyoming Statute § 34-10-106. However, Y is not in possession. It should be noted that A was not required to file any notice as provided in Wyoming Statute § 34-10-106 since he had been in possession of the land continuously for a period of 40 years, and his possession is deemed equivalent to the filing of a notice immediately preceding the termination of the 40-year period as described in Wyoming Statute § 34-10-106(a). As a result, Y's marketable record title is still subject to A's interest.

Illustration 2: Suppose that you have the same fact situation as set out in Illustration 1 above except for the fact that sometime within the last 30 years A went out of possession of this property and Y is now in possession. However, neither A nor Y has filed any notice as provided in Wyoming Statute § 34-10-106. Y is in possession, but his possessory interest does not extend back for a period of 40 years as required by the statute in order that his possessory interest shall be deemed equivalent to the filing of a notice. However, Y does have a 40-year root title which is subsequent to the title of A, and he should have a marketable record title, free of A's interest.

Illustration 3: Suppose that you have the same fact situation as set forth in Illustration 1. That is, A claims to have been in continuous possession for the past 41 years and is now in possession. However, A and Y both claim to be owners of this property. Y claims to be the owner because he has a 40-year root chain of title which is subsequent to A's chain of title, but A claims that he has been in possession continuously for the past 41 years. Since there is some dispute as to the facts of possession during the last 40 years, it is going to be necessary that a quiet title suit be instituted by either A or Y to determine the respective rights of both parties. The Wyoming Marketable Title Act does not establish a good title by adverse possession if there is some dispute between the parties concerning possession during the last 40 years.

STANDARD 4.9 EFFECT OF ADVERSE POSSESSION

A marketable record title is subject to any title by adverse possession which accrues at any time subsequent to the effective date of the root of title, but not to any title by adverse possession which accrued prior to the effective date of the root of title if no notice of claim has been filed in accordance with Wyoming

Statutes § 34-10-106.

Authority: Wyoming Statute § 34-10-104(a)(iii)
Similar Standards: Model 4.9, Kansas 23.8, Utah 53

Illustration 1: Suppose that A is the last grantee in a 40-acre tract of land which was recorded over 40 years ago. A enters into a contract to sell this property to B. Upon inspection of the premises, B finds that X is occupying a tract of land approximately one acre in size in the northwest corner of this 40-acre tract, and that there is a house on it and it has been fenced off. Upon further investigation, X claims that he has been in possession of this property for a period exceeding 20 years. Although A has a 40-year marketable record title, it is subject to X's adverse possession, which according to X continued for a period exceeding 20 years. This adverse possession title by X, however, must be perfected by a quiet title suit.

Illustration 2: Suppose you have a fact situation as follows: A is the last grantee in a deed to a tract of land which was recorded over 40 years ago. In the same year that the deed to A went on record, X entered into possession and claimed adversely for a period exceeding 10 years, but went out of possession over 40 years ago. Forty years ago, A conveys this property to B and B goes into immediate possession. No other instruments concerning the land appear of record. B now has a marketable record title which extinguished X's title by adverse possession which he acquired over 40 years ago and which he gave up over 40 years ago, prior to the effective date of B's root of title.

Illustration 3: Suppose that you have the same fact situation as above, except for the fact that X entered into possession and claimed adversely to all the world for a period exceeding 10 years, but went out of possession sometime within the last 40 years. In this case B has a marketable record title, but it is subject to X's title which he acquired by adverse possession since X has not been out of possession for at least 40 years. Therefore, a quitclaim deed should be obtained from X and his spouse, if married, or title quieted against him.

STANDARD 4.10 EFFECT OF RECORDING INSTRUMENT OF CONVEYANCE DURING FORTY-YEAR PERIOD

A marketable record title is subject to an instrument of conveyance recorded subsequent to the effective date of the root of title which shall have the same effect in preserving any interest conveyed as the filing of the notice provided for in Wyoming Statute § 34-10-106.

Authority: Wyoming Statute § 34-10-104(a)(iv)
Similar Standards: Model 4.10, Utah 54

STANDARD 4.11 INTERESTS EXEMPTED

Under Wyoming Statutes § 34-10-104A marketable record title is subject to certain specified interests which are exempted from operation of the marketable title act. In order for such exemption to apply the interest must have been created, or in the case of a mineral estate it must have been severed from the surface rights, prior to the termination of the 40 year period subsequent to the opponent's root of title.

Authorities: Wyoming Statutes § 34-10-104(a)(v) and § 34-10-108

Illustration 1: Over 40 years ago A conveyed this land to B; and in this conveyance there is the following reservation: "The grantor A does hereby reserve to himself and his heirs and assigns forever all of the mineral interests which lie under said land." B now attempts to convey to C, claiming that he has a clear title and that A has not exercised any right to enjoy the mineral rights. The title is good in B, but it is subject to the reservation of the mineral interests in A, and the 40-year chain does not bar the reservation of A.

Illustration 2: Suppose A acquired title to certain land 50 years ago under a recorded deed. Forty-five years ago, a stranger to the title conveyed the land by a recorded deed to B. Through recorded instruments, B conveyed to C 40 years ago and C conveyed to D 25 years ago. At the expiration of the 40-year period dating from the recording of the deed C from B, D will have acquired

marketable record title, provided A has filed no notice of claim or been continuously in possession of the land. If A conveys the minerals to X after the expiration of the 40-year period dating from B's deed, D will continue to hold a marketable record title in both the surface and mineral rights.

**STANDARD 4.12
QUITCLAIM DEED OR TESTAMENTARY RESIDUARY
CLAUSE IN FORTY-YEAR CHAIN**

A recorded quitclaim deed or residuary clause in a recorded will can be a root of title or a link in a chain of title, for purposes of a forty-year record title under the Wyoming Marketable Title Act.

Authority: Wyoming Statute § 34-10-101(v), (vi)

Similar Standards: Model 4.10, Utah 55

**STANDARD 4.13
FORTY-YEAR ABSTRACT**

The model marketable title act has not eliminated the necessity of furnishing an abstract of title for a period in excess of forty years.

Authority: Wyoming Statute § 34-10-108

Similar Standards: Model 4.10, Utah 56, Kansas 23.9

NOTE: Wyoming Section 34-10-108 names several interests which are not barred by the act, to-wit: rights of reversioners in leases, apparent easements and interests in the nature of easements, water rights, mineral and timber interests and interests of the state of Wyoming and of the United States. These interests must be determined from an examination of the abstract for a period beginning from Government Patent.

**STANDARD 4.14
CONFLICTING MARKETABLE RECORD TITLES**

Where two or more "marketable record titles" (as defined in standard 4.2) exist, a conflict may be resolved by the operation of Wyoming Statutes § 34-10-105. Under said section, the holder of a "marketable record title holds free of interests, claims and charges the existence of which cannot be discovered by an examination of the records covering the period relied upon to make up the "unbroken chain of title of record."

Authority: Wyoming Statutes § 34-10-105

Similar Standards: Michigan 1.7

Illustration 1: Suppose A acquired title to certain land 50 years ago under a recorded deed. Forty-five years ago, a deed from a stranger to the title conveying the land in question to B was recorded. Forty-one years ago B conveyed to C. Twenty-five years ago C conveyed to D. Nothing else appears of record affecting the title to the land, which is unoccupied. At present, therefore, A and D each has a "marketable record title" within the meaning of the Wyoming Marketable Title Act. A's deed is an instrument recorded more than 40 years in the past which purports to create an interest in him; no deed in D's chain purports to divest A of his interest; and there is no one in "hostile possession." A thus has a "marketable record title." D has an unbroken chain of title record; there is nothing "purporting to divest" him of such interest, and there is no one in "hostile possession." Thus D also has a "marketable record title." D, however, holds free of A's title. It is to be noted that although no deed "purports to divest" the interest of A, the deed from B to C nevertheless is an instrument which "purports to create" an interest in C and hence in B's ultimate successor to title, D, and may therefore constitute the basis for the creation of a new "marketable record title" upon the expiration of 40 years from the date of its recording. Under Wyoming Statute § 34-10-105, the respective titles of A and D are held "free and clear of all interests . . . the existence of which depends upon any . . . transaction . . . that occurred prior to the effective date of the root of title." It seems clear that the Wyoming Marketable Title Act benefits A with respect only to claims which arose prior to 50 years ago, because he must use his recorded deed of 50 years ago to make up his "unbroken chain of title of record." Section 34-10-105 does not benefit A with respect to D's title which depends on transactions recorded subsequent to the inception of A's title, and which could be discovered by an examination of the records covering the period upon which A relies. On the other hand, since the inception of D's 40-year

period was 41 years ago with the recording of the deed from B to C constituting the effective date of D's root of title, D and his successors in interest are entitled to hold the title free and clear of the claim of A, whose title "depends . . . upon . . . (a) transaction . . . that occurred prior to the effective date of the root of title." The existence of A's claim cannot be ascertained by an examination of the records covering the period upon which D and his successors would rely to make up "the unbroken chain of title of record." The stranger's deed to B cannot serve as D's root of title because of its inherent fraudulent defect.

Illustration 2: Suppose the same facts as in Illustration 1, except that X died intestate 40 years ago, his estate was probated, the land was inventoried therein, and the order assigning the residue of his estate recorded. Neither the heirs of X nor D is entitled to benefit of Wyoming Statute § 34-10-105 as against the other. D is not entitled to the benefit of § 34-10-105 as against the heirs of X, even though it is true that the title of such heirs "depends in part" upon the deed to A 50 years ago, which is a transaction occurring prior to the 40-year period relied upon by D and his successors. The Wyoming Marketable Title Act bans only those claims the existence of which cannot be ascertained by an examination of the records during the 40-year period. Since the deed from A to X, and the record of the probate of X's estate are matters of record during the 40-year period upon which D relies, the Act does not operate in favor of D as against claims arising therefrom. By the same token, the heirs of X, although they have a "marketable record title" within the meaning of the Act, are not entitled to the benefits of § 34-10-105 as against D, since the transactions on which D depends are of record within the 40-year period following the inception of the title of the heirs of X. The competing claims must be adjudicated in accordance with other principles, since neither claimant is entitled, as against the other, to benefit of § 34-10-105 of the Act.

Illustration 3: Suppose that A is the last grantee in the regular chain of title to a certain tract of land by deed recorded 43 years ago. A deed from a stranger to the title conveying the land in question to X was recorded 42 years ago. Subsequent conveyances from X to Y and from Y to Z were recorded 40 and 30 years ago, respectively. Four years ago, A executed and recorded a notice under oath in conformance with Wyoming Statute § 34-10-106 and 34-10-107. Nothing else appears of record for the past 43 years affecting the title to the land, which is unoccupied. Neither A nor Z is entitled to the benefit of § 34-10-105 as against the other. Z is not entitled to the benefit of the Act as against A, because § 34-10-106 provides that "a person claiming an interest in land may preserve and keep effective" such interest by the filing for record of such a notice. The existence of A's claim can be ascertained by an examination of the public records covering the period upon which Z relies to make up his "unbroken chain of record."

NOTE: The Wyoming Marketable Title Act does not affect the operation of applicable statute of limitation or the doctrine of adverse possession (Wyoming Statute § 1-3-103). It is, therefore, possible that either A or Z may have extinguished the title of the other through open, notorious, continuous and adverse possession of the land in question for the statutory period.

Illustration 4: Assume that the same facts as Illustration 3, except that A executed and recorded his notice in conformance with Wyoming Statutes § 34-10-106 and 34-10-107 two years ago. Although A delayed the filing of his notice for more than 40 years from the time he acquired his interest, he acted within 40 years after the deed from X to Y was recorded, which is sufficient under the Act.

Illustration 5: Suppose that a certain tract of land was conveyed to A, B, and C, as tenants in common, by deed recorded 48 years ago. A deed from B and C purporting to convey the entire fee simple estate in the land to X was recorded 43 years ago. Subsequent conveyances from X to Y and from Y to Z, of the entire fee simple estate in the land, were recorded 33 and 30 years ago, respectively. Nothing else appears of record for the last 48 years affecting the title to the land, which is unoccupied. Although A has a "marketable record title" to an undivided one-third interest in the land, Z has a "marketable record title" to the entire fee simple estate for the reasons set forth in Illustration 1. Z and his successors in interest are entitled to hold the title free and clear of A's claim because the latter's claim "depends . . . upon . . . (a) transaction . . .

that occurred prior to the effective date of the root of title" of Z. The existence of A's claim cannot be discovered by an examination of the records covering the period upon which Z relies to make up his "unbroken chain of title record."

Illustration 6: Suppose the chain of title is complete in Frank Jones who died, and his property was assigned over to X and Y in a probate court proceeding. The proceeding is over 40 years old. Suppose that 15 years ago Y conveyed to A the entire interest in his property, and A has conveyed to B, B to C, and C now claims to be the owner of the full title. All of the deeds are absolute conveyances with no restrictions or reservations whatever. The title is not good in C since his chain is not extended back at least 40 years. We have a situation here in which there is one root of title and two marketable record titles. X has a one-half interest and C has a one-half interest. Suppose, however, in the above illustration that this conveyance from Y to A was over 40 years ago, and it was an absolute conveyance and purported to convey the entire fee with no reservation or restrictions as to the undivided one-half interest in X. This conveyance over 40 years ago from Y to A started a new chain of title with a new root since it was an absolute conveyance with no restrictions or reservations, and A would have a good title since his conveyance extended back over 40 years and the creation of X's interest antedates C's root of title.