

PREFACE

The purposes of the Linn County Title Standards are to provide consistency within Linn County, Iowa, as to matters covered by the Standards and to assist the examining attorney in the examination of abstracts of title. The Standards are intended to supplement the Iowa Land Title Standards (Seventh ed. 1993) and said Iowa Land Title Standards are hereby made a part of the Linn County Title Standards.

The Linn County Title Standards Committee completed the Sixth Edition in August, 1995. The Committee feels that the present format of the Standards will enable the examining attorney to quickly find the relevant Standard. Further, the Linn County Title Standards include an appendix to assist lawyers not only in their examination of abstracts of title, but in completing certain legal procedures and preparing certain legal documents in a manner which will help avoid future title problems.

The Committee intends to continue updating the Standards and adding new Standards as the need arises. Members of the Linn County Bar Association are encouraged to contact members of the Committee if they are aware of recurrent title issues of general concern to members of the Bar which they feel might be resolved by amendments or additions to the Standards or the Appendix thereto.

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STANDARD 1.A.

PROBLEM:

Should the abstract show the patent?

STANDARD:

No, unless the root of title is formed by such patent.

STANDARD 1.B.

PROBLEM:

What abstract showing is required as to a spouse who joins in a contract of sale or other instrument as vendor, grantor or as mortgagor but who does not otherwise appear in the chain of title as having any interest in the property?

STANDARD:

None.

COMMENT:

The examiner should not require any search of such name since such joining is assumed to release, or to show agreement to release, dower and homestead.

Authority: Iowa Code § 557.13.

STANDARD 1.C.

PROBLEM:

Is an abstract covering a lot in Linn County, Iowa, sufficient if it commences with the filing of a subdivision plat under Chapter 354 (formerly Chapter 409A) of the Iowa Code or a proprietor's plat under former Chapter 409?

STANDARD:

Yes, provided:

1. The abstractor certifies that the abstract shows all recorded plats, surveys, easements, unexpired use restrictions, unexpired reversions, party wall and other boundary agreements and unexpired, recorded leases.

2. The abstract is otherwise prepared in substantial accordance with the Iowa Land Title Standards of the Iowa State Bar Association and the Abstracting Standards of the Iowa Land Title Association.

3. In addition to the title opinion recorded with the plat in accordance with Iowa Code § 354.11(3) or under former Iowa Code § 409A.11(3) or § 409.9, the abstract shows title opinions from two other attorneys at law, one of whom shall be a member of the Linn County Bar Association. Both of the attorneys who render the title opinions shall state upon oath that they are (a) licensed to practice law in the State of Iowa, (b) authorized by the Iowa Finance Authority to issue Iowa Title Guaranty certificates, (c) not associated together in the practice of law with each other or with the attorney rendering the title opinion recorded with the plat, and (d) jointly and severally liable to anyone who relies on their title opinions. The title opinions shall also comply with Section 354.11(3) of the Iowa Code and refer by volume and page number to all recorded plats, surveys, easements, unexpired use restrictions, unexpired reversions, party wall or other boundary agreements, unexpired recorded leases and other instruments or proceedings that affect the real estate. Further, said title opinions shall clearly recite that they are based on the examination of an abstract of title prepared in substantial accordance with the Iowa Land Title Standards of the Iowa State Bar Association and the Abstracting Standards of the Iowa Land Title Association and certified through the date of the recording of the plat.

1.C. COMMENTS:

For a proprietor's plat that has been of record for more than ten years, only paragraphs 1 and 2 of this standard are applicable.

A form of an affidavit to be attached to the two title opinions is set forth in Appendix 7.

This title standard is intended to supplement Iowa Land Title Standard 1.5. See Iowa Code 592.3 for legalization of plats recorded prior to the date referenced in that section.

STANDARD 2.A.

PROBLEM:

What proceedings must be shown in the abstract of title in addition to a deed from a city?

STANDARD:

(1) Deed Predating Root of Title. If the deed predates the root of title, the abstractor is not required to show the deed and proceedings.

(2) Deed Which is the Root of Title. The deed must be accompanied by a certified transcript of the minutes authorizing the execution of the deed. Such a transcript must include the minimum requirements prescribed in Iowa Code § 569.7 then in effect.

(3) A Deed After the Root of Title but Prior to July 1, 1975. In addition to the requirements of subsection (2) above, the deed must also be accompanied by a certified record of the proceedings, including the proof of publication of notice in accordance with Iowa Code § 368.39 then in effect.

(4) Deed Delivered Subsequent to June 30, 1975. Such a deed, in addition to the requirements of subsection (2) above, must be accompanied by a certified record of the proceedings, including (a) publication certificate with a notice of vacation of public ways or grounds in accordance with Iowa Code § 364.12(2)(a), effective July 1, 1976; (b) the publication certificate with notice with respect to the proposed sale or other disposition in accordance with Iowa Code § 364.7, effective July 1, 1975; and (c) record of the public hearing for both (a) and (b) above.

COMMENT:

Deed delivered prior to July 4, 1951. An unauthorized city deed is void and, therefore, the examiner must inspect the record of the approval of the deed as prescribed in Iowa Code 569.7 unless the deed predates the root of title. The Committee recognized the apparent contradiction between the opinions which appear in Madsen, Marshall's Iowa Title Opinions and Standards, Annotated 17.1(A) and 17.1(A-1) (2d ed. 1978) with respect to a city deed which is not accompanied by any transcript of minutes verifying approval of the deed. One opinion appears to indicate that the deed is acceptable without any additional showing and the other opinion reaches a contrary conclusion. Authority for

COMMENT 2A (CONTINUED)

subsection (2) of this Standard is found at 2 R. Patton & C. Patton, Patton on Land Titles 407 (2d ed. 1957) and Iowa Land Title News, Jan-Feb. 1983, at pages 6 and 7.

See Appendix 1 for an outline to assist the practitioner in reviewing proceedings pertaining to conveyance of real estate by a city. Only items 4, 7, 8, 9 and 10 should be required to show marketable title. However, the examining attorney should keep in mind the repeal on July 1, 1975, of Iowa Code 368.40 which limited the time for a district court action to 30 days from a city council's final resolution approving the deed. After June 30, 1975, there is no applicable statute of limitations. Notice of vacation and notice of proposed sale or disposition may be combined.

Subsequent to July 1, 1984, a city may convey platted real estate to the adjoining owners by the recording of an ordinance or resolution of vacation pursuant to Iowa Code § 354.23.

The provisions of Iowa Code § 364.12, § 364.7 and §354.23 are general statutes. Pursuant to Iowa Code § 4.7 special provisions will control over general provisions in case of a conflict which cannot be construed to give effect to both. Special statutes may permit or require proceedings not normally permitted or required by the general statute. For an example see Iowa Code § 403.8 which is included in the chapter on Urban Renewal (Law). However, Iowa Code § 364.12, § 364.7 and § 354.23 are treated as controlling, special statutes when compared with the provisions of Chapter 306 Establishment, Alteration and Vacation of Highways. Op. Atty. Gen. <Berger>, September 13, 1977.

STANDARD 3.A.

PROBLEM:

Must the title of a corporate officer signing an instrument be shown on the signature line?

STANDARD:

No, as long as the acknowledgement identifies the corporate capacity of the party signing and the signature line shows the corporate name.

COMMENT:

In the absence of statutory requirement, the showing of corporate titles on the signature line should be regarded as permissive and not mandatory.

Authority: See Iowa Land Title News, Sep. - Oct. 1974, at 4.

STANDARD 3.B.

PROBLEM:

What showing of an officer's authority should be made by the abstracter when a corporation executes a release or assignment of a mortgage or security agreement or a reassignment of an assignment of contract expressly made for security purposes?

STANDARD:

None.

COMMENT:

It is not necessary to show the articles of incorporation, bylaws or resolution of its board of directors that the officer or officers who executed the instrument were authorized to do so.

Iowa Land Title Standard 3.3 states: "Articles of incorporation need not be shown for releases of mortgages." Under this Linn County Title Standard, articles of incorporation need not be shown for an assignment of a mortgage or security agreement or in connection with the reassignment of an assignment for security purposes which is the equivalent of a mortgage release.

The Committee considers an officer to be any person employed by the corporate lender in a supervisory or administrative capacity and by way of illustration would include a cashier, assistant cashier, chairman of a finance committee, manager, assistant manager, loan supervisor or assistant loan supervisor. Any other person may execute any such instrument if a power of attorney in proper form has been recorded in the county where the real estate is located. Of course if the articles of incorporation or a corporate resolution appears in the abstract, its provisions control as to the authority of persons to execute such instruments.

STANDARD 4.A.

PROBLEM:

Does an assignment of a land contract by the vendee require words conveying the real estate?

STANDARD:

No.

COMMENT:

When a contract is to be assigned by the vendee, the Committee recommends that a special warranty deed containing an assignment of the purchaser's interests under the contract be used instead of the "assignment and conveyance" form which had been in common use. Conveyance of the vendor's interest in a real estate contract should be by general warranty deed which should also contain a provision assigning the contract. However, a failure in such deed of vendor or vendee to specifically assign the contract is not fatal since a deed conveys all the interests of the grantor in the property, which would include a contract interest.

Recent cases hold that in order to perfect a security interest in a vendor's interest in a land contract, a U.C.C. filing is required. In re Freeborn, 94 Wash. 2d 336, 617 P.2d 424 (1980); Hughes v. Russo, 20 U.C.C. Rep. Serv. 1349 (S.D.FLA. 1976). See also Iowa Code § 554.9101 et seq. Notwithstanding these authorities, the opinion of the Committee is that a U.C.C. search need not be made a part of the abstract. In representing a party acquiring a security interest in a vendor's interest in a real estate contract, the practitioner should consider recording an appropriate instrument in the recorder's office and filing a financing statement under the U.C.C. in order to perfect the security interest.

STANDARD 4.B.

PROBLEM:

In the event a contract forfeiture appears of record unaccompanied by an affidavit in support of forfeiture of real estate contract, is it proper for the examiner to request such affidavit?

STANDARD:

Yes.

COMMENT:

The Committee recommends that the Iowa State Bar Association form of affidavit be used in such cases. The constitutionality of forfeiture, in strict compliance with Chapter 656 of the Iowa Code, has been affirmed by Jensen v. Schreck, 275 N.W.2d 374 (1979).

STANDARD 4.C.

RESERVED FOR FUTURE STANDARD

STANDARD 4.D.

PROBLEM:

In the forfeiture of a real estate contract for the sale of real property with respect to which a notice of federal tax lien has been filed, what showing is necessary to extinguish the lien?

STANDARD:

An affidavit of mailing notice with attached notice or other proof of service with attached notice which complies with the requirements of Internal Revenue Code § 7425(c)(1).

COMMENT:

As a nonjudicial sale under Internal Revenue Code § 7425(b), the lien may be extinguished in accordance with Iowa law if (1) the notice of tax lien is not recorded more than thirty days before the effective date of the forfeiture or (2) notice of the "sale" is given in the manner prescribed by law. See Internal Revenue Code § 7425(c)(1) and (c)(4). (NOTE: Section 1572 of the Tax Reform Bill of 1986 amended Section 7425(c) of the Internal Revenue Code by adding subsection (4) that specifically provides that a forfeiture of a land sales contract is a sale of property within Section 7425(b). This amendment overruled several cases, including Sigel v. U.S., 1986-2 USTC 119514 (D.C. Minn. 1986), that held that forfeitures were not "sales" requiring compliance with the procedures of Section 7425. This amendment was effective November 21, 1986.)

A notice of sale required to be given to the Internal Revenue Service differs from the notice of forfeiture generally given under Iowa law. The notice of sale must be in writing and given not less than twenty-five days prior to the date of sale, by registered or certified mail or by personal service, to the district director of the Internal Revenue Service for the Internal Revenue district in which the sale is to be conducted. See Internal Revenue Code § 7425(c)(1) and applicable regulations.

A nonjudicial sale includes the divestment of a taxpayer's interest in property which occurs by forfeiture under provisions contained in a contract for a deed. For purposes of this Standard, the date of sale shall be considered to be thirty-one days after the date on which service was completed on the last party required to be served under Iowa Code § 656.2. The United States has the right to redeem the property within 120 days from the date of the sale.

4.D. Comment, CONTINUED

See Appendix 6 for form for Notice of Sale (Forfeiture).

Authority: Internal Revenue Code § 7425 and
applicable regulations.

RESERVED FOR FUTURE STANDARDS

STANDARD 6.A.

PROBLEM:

Are unpaid court costs liens against real estate?

STANDARD:

No, unless a judgment for costs is actually entered.

COMMENT:

Unpaid costs in probate proceedings or other actions are not liens on real estate whether or not the matter is closed unless a judgment for costs has been entered.

See Iowa Land Title Standard 6.2.

STANDARD 6.B.

PROBLEM:

Is there a need for further inquiry after the clerk of court has shown a satisfaction or discharge of a judgment on the lien index?

STANDARD:

No. A judgment is not a lien after the clerk has shown its satisfaction or discharge on the lien index.

COMMENT:

There is no need to inquire as to how or by whom the judgment was satisfied, or whether properly satisfied by an attorney or party, if the clerk makes such showing.

STANDARD 6.C.

PROBLEM:

What is the effect of a deed from a judgment creditor?

STANDARD:

A deed, quit claim or warranty, executed by a judgment creditor, conveying to a nonparty to the action, has the effect of terminating all judgment lien rights in the property conveyed. Accordingly, where the judgment creditor has conveyed, or will convey, the property under examination to a nonparty to the action, the examiner should not object to judgment liens against the property which are solely in favor of such judgment creditor.

STANDARD 6.D.

PROBLEM:

In a conservatorship, whether voluntary or involuntary, is the appointment of a guardian ad litem necessary in a proceeding under Iowa Code § 633.652 to sell, mortgage, etc., the property of the ward?

STANDARD:

Yes, unless the ward is represented by counsel or court-appointed guardian.

COMMENT:

An order entered against a ward, without the appointment of a guardian ad litem, is merely voidable under RCP 13 if the ward was actually represented by an attorney or court-appointed guardian but the order is void if the ward was not so represented. When void, the order is subject to collateral attack whether or not the time for appeal has run.

See Appendix 2 for the chronological steps to be taken by a conservator in the sale, mortgage, etc. of ward's property under Iowa Code §633.652.

Authority: Iowa Code §633.575

Babbe v. Peterson, 511 N.W.2d 726 (Iowa 1994)

Garcia v. Wibholm, 461 N.W.2d 166 (Iowa 1990)

In re Marriage of Payne, 341 N.W.2d 772 (Iowa 1983).

See also Iowa Land Title Standards 6.4 and 6.5.

STANDARD 6.E.

PROBLEM:

In a conservatorship, whether voluntary or involuntary, may the ward accept service or give consent in a proceeding under Iowa Code § 633.652 to sell, mortgage, etc., the property of the ward?

STANDARD:

No.

COMMENT:

A ward, whether under either a voluntary or involuntary proceeding, cannot accept service or waive notice and the court is without power to so prescribe. For example, even if the court prescribes notice under RCP 56.1, the ward is without power to accept service under RCP 56.1(a). On the other hand, RCP 56.1(c) is probably not available because in most conservatorship proceedings, including involuntary proceedings, the ward is not "judicially adjudged incompetent."

Although the mere appointment of a conservator is not an adjudication that the ward is of unsound mind, such appointment removes the power of the ward to act sui juris except for limited statutory purposes. This is not inconsistent with the common law presumption of competency which has to do with the mental capacity of an individual, not the legal competency of the ward to perform certain acts while under conservatorship.

See Appendix 2 for the chronological steps to be taken by a conservator in the sale, mortgage, etc., of ward's property under Iowa Code § 633.652.

Authority: Madsen, Marshall's Iowa Title Opinions and Standards, Annotated § 9.2(A) (2d ed. 1978).
Iowa Land Title News, Jan. - Feb. 1978, at 5.
See also, In re Anderson's Guardianship, 78 N.W.2d 788 (1956), and cases cited therein.

STANDARD 6.F.

PROBLEM:

What procedure is required to extinguish by judicial foreclosure a lien or other interest of the United States in real property?

STANDARD:

The procedure otherwise applicable to foreclosure in Iowa should be followed, except that service of process should be in accordance with 28 U.S.C. Section 2410 and the petition should contain the information required by 28 U.S.C. Section 2410(b).

COMMENT:

As a judicial sale under 28 U.S.C. Section 2410, the foreclosure of a lien or interest of the United States in real property requires service of the original notice upon the United States by serving a copy of the original notice with petition attached upon the United States attorney for the district in which the action is brought or upon the assistant U. S. attorney or clerical employee designated in writing to receive such process and by sending copies of the process, by registered or certified mail, to the Attorney General of the United States at Washington, District of Columbia. The United States has sixty days after the later of the service on the United States attorney or the Attorney General in which to answer, appear or move.

In addition, the petition must set forth with particularity the nature of the interest or lien of the United States. In actions involving tax liens, the petition shall include the name and address of the taxpayer who is liable for the lien, and, if a notice of the tax lien was filed, the identity of the Internal Revenue Service office which filed the notice and the date and place such notice of lien was filed.

The United States has one year from the date of sale in which to redeem, with the exception that, with respect to a lien arising under the Internal Revenue laws, the period of redemption is 120 days or the period allowable for redemption under state law, whichever is longer.

This Standard was approved by R. Collins, Chief, Special Procedures Staff, Des Moines District of the Internal Revenue Service, on November 20, 1985.

Authority: 28 U.S.C. Section 2410

STANDARD 6.G.

PROBLEM:

What is the duration of a lien created by a judgment in favor of United States of America?

STANDARD:

Twenty years, unless renewed for an additional period of twenty years.

COMMENT:

The Federal Debt Collection Procedures Act, which only applies to judgments in favor of the United States of America, provides that a lien thereunder, unless satisfied, is effective for a period of twenty years.

Authority: 28 U.S.C. § 3201(c)(1)

The lien created by a judgment in favor of United States of America may be renewed for one additional period of twenty years and shall relate back to the date the original judgment was entered if, (1) the notice of renewal is filed before the expiration of the original twenty-year period; and (2) the renewal of such lien is approved by the court.

Authority: 28 U.S.C. § 3201(c)(2)

The provisions of the Federal Debt Collection Procedures Act ("FDCPA") concerning the duration of a lien created by a federal judgment does not apply, and therefore does not preempt Iowa Code § 624.23, with respect to a judgment entered more than ten years before May 28, 1991, the effective date of the FDCPA.

Authority: 28 U.S.C. § 3005

The FDCPA has retroactive application to liens created by judgments entered within the ten year period preceding the May 28, 1991 effective date. Therefore, the duration of a federal lien which has not expired pursuant to Iowa Code § 624.23 prior to May 28, 1991, may be extended an additional twenty years if the government files with a county recorder a certified copy of the abstract of judgment in accordance with Iowa Code § 331.609.

COMMENT 6.G. (CONTINUED)

Authority: 28 U.S.C. § 3201(a)

Pub.L. 101-647, Title XXXVI, Subtitle C, § 3631,
104 Stat. 4966

Iowa Code § 331.609

CAVEAT

It is unclear whether Iowa Code § 624.23(3) is applicable to judgment liens created under the provisions of the Federal Debt Collection Procedures Act.

STANDARD 7.A.

PROBLEM:

What showing is necessary before accepting a mortgage release from the successor in interest to the original mortgagee?

STANDARD:

The mortgage release should include a recitation that the institution executing the release was formerly known by the name of the original mortgagee except with respect to well known financial institutions in Linn County, Iowa, listed in Appendix 3. In the alternative: (1) amendments to the articles of incorporation showing a name change or articles of merger or consolidation may be shown in the abstract or (2) an affidavit of identity may be obtained.

COMMENT:

Appendix 3 includes an alphabetical list of such well known financial institutions and their predecessors, the current name being listed first. A mortgage release from a successor in interest to the original mortgagee should be accepted as to those financial institutions listed without requiring any further showing.

STANDARD 7.B.

PROBLEM:

Is an acknowledgement by a government agency, public corporation or private corporation defective if it only states that the executing party was authorized to execute an instrument on behalf of the agency or corporation and that it was the voluntary act and deed of the agency or corporation?

STANDARD:

No.

COMMENT:

Iowa Code §§ 558.38 and 558.39(3), (6), (7), (10) and (11) provide that an acknowledgement by corporate officers include:

- (1) The title or office with the corporation;
- (2) Recital as to the seal of the corporation;
- (3) Recital that the execution was on behalf of the corporation, by authority of its board; and
- (4) Recital that it was the voluntary act and deed of the corporation.

A certificate of acknowledgement need not follow the contents of the statute verbatim, but need only comply with the object and intent of the statute. If the acknowledgment omits the statement pertaining to the seal and a statement as to the source of the authorization but contains the other statements, then the acknowledgement substantially complies with the object and intent of the Iowa statutes. The statements as to the source of the authorization and pertaining to the seal are statements which the Iowa statutory acknowledgement form contains, but they do not relate to the execution of the instrument. An incorrect or omitted date on the acknowledgement certificate should not be objected to unless there are circumstances that indicate further inquiry is justified.

Effective April 27, 1990, Iowa Code §§9E.14 and 9E.15(2) provide an alternative form of acknowledgement for corporate officers which provides, in pertinent part, that an acknowledgement by a corporate officer should include:

7.B COMMENT, CONTINUED

- (1) Identification of the individual as an officer of the corporation; and
- (2) Identification of the corporation.

Iowa Code §589.3 legalizes instruments of record for more than ten years which contain a defective acknowledgement or which are not acknowledged. Iowa Code §589.1 legalizes acknowledgements in instruments executed more than ten years earlier when the officer taking the acknowledgement has not affixed the officer's seal to the acknowledgement.

After April 27, 1990, the notary seal is not required.

Authority: Iowa Code §§ 558.38, 558.39(3), §9E.14 and 9E.15(2).
In re Production Aids Co., 193 F. Supp. 180 (S.D. Iowa 1961).
See also Linn County Title Standard 16.G.

STANDARD 7.C.

PROBLEM:

Are releases of mortgages by Federal National Mortgage Association or Government National Mortgage Association acceptable for mortgages made or assigned to the other entity?

STANDARD:

If a mortgage to the Federal National Mortgage Association is dated and recorded prior to September 1, 1968, it may be satisfied by a release of mortgage executed by either Government National Mortgage Association or Federal National Mortgage Association. If the mortgage to the Federal National Mortgage Association is dated or recorded after August 31, 1968, an assignment or confirmation of transfer of the mortgage from the Federal National Mortgage Association to the Government National Mortgage Association, executed by the Federal National Mortgage Association, making specific reference to the mortgage, must be shown of record before a release executed by Government National Mortgage Association will be acceptable.

COMMENT:

Public law 90-448 (now Title 12 U.S.C. Section 1716b et seq.) partitioned the Federal National Mortgage Association into two separate and distinct corporations. One of such corporations, known by the same name, Federal National Mortgage Association, retained the assets and liabilities of the original corporation accounted for under Title 12 U.S.C. Section 1719, and the other corporation, known as Government National Mortgage Association, retained the assets and liabilities of the original corporation accounted for under Title 12 U.S.C. Sections 1720 and 1721. On September 1, 1968, the former Federal National Mortgage Association ceased to exist. Title 12 U.S.C. Section 1717 (a)(2).

STANDARD 7.D.

PROBLEM:

Should a termination statement be shown for a financing statement on file more than five years?

STANDARD:

No, unless a continuation statement has been filed.

CAVEAT:

However, the following can extend the effectiveness of a financing statement beyond the five year period:

- 1) The debtor is a transmitting utility and the financing statement so states.
- 2) A filed financing statement relates to a lien, pledge or security interest incident to bonds issued under Iowa Code Chapter 419 and the financing statement so states.
- 3) A real estate mortgage effective as a fixture filing remains effective as a fixture filing until the mortgage is released.

See Iowa Code § 554.9403(6).

STANDARD 7.E.

PROBLEM:

Should an examining attorney object to the existence of a financing statement or security agreement when such document does not specifically describe the property being examined or any part thereof?

STANDARD:

No.

COMMENT:

Financial institutions frequently record financing statements or security agreements containing extremely careless descriptions which include a large amount of property. The Committee feels that these are to be distinguished from wild, stray or interloping deeds or other instruments of transfer which may show a claim to the property being examined. Using the words of the Iowa Land Title Standards, it is not believed that such financing statements or security agreements "can reasonably be expected to expose the purchaser or lender to the hazard of adverse claims or litigation." Since this situation is usually a matter of possession rather than title, in the event that the examining attorney feels that some mention should be made thereof, it is suggested that a statement similar to the following be used:

A financing statement appears at Entry 456 to XYZ Bank. You should make certain that the parties executing the statement, John Doe and Mary Doe, have no possessory rights to the property in caption.

RESERVED FOR FUTURE STANDARDS

STANDARD 9.A.

RESERVED FOR FUTURE STANDARD

STANDARD 9.B.

RESERVED FOR FUTURE STANDARD

STANDARD 9.C.

PROBLEM:

Is it necessary that the trustee of a testamentary trust be appointed by court order?

STANDARD:

Yes, unless, under Iowa Code § 633.10(4), the probate court does not have jurisdiction of the trust.

COMMENT:

It is the opinion of the Committee that all testamentary trusts established prior to July 1, 1985 are subject to the jurisdiction of the probate court unless released from jurisdiction by court order entered pursuant to Iowa Code § 633.10(4).

Pursuant to Iowa Code §633.10(4), a testamentary trust created on or after July 1, 1985 "which is administered solely or jointly by a bank or trust company referred to in section 633.63, subsection 2, is not subject to the jurisdiction of the court unless jurisdiction is invoked by the trustee or a beneficiary, or if otherwise provided by the governing instrument." All other testamentary trusts established on or after July 1, 1985 are subject to the jurisdiction of the probate court.

A testamentary trust is created for purposes of this statute on the date of death of the decedent. See Iowa Code § 633.350 and 76 Am Jur 2d, Trusts, Sections 65, 120 and 125.

RESERVED FOR FUTURE STANDARDS

STANDARD 11.A.

PROBLEM:

Is an estate proceeding sufficient to establish the root of title under the Marketable Title Act if the property being examined is not properly described?

STANDARD:

No.

COMMENT:

If the property being examined is not properly described, the abstract must show the deed under which the decedent claimed or would claim title at the time of death.

RESERVED FOR FUTURE STANDARDS

STANDARD 13.A.

PROBLEM:

What effect does a discharge in bankruptcy granted the owner of non-homestead property have on judgments entered against the owner?

STANDARD:

(1) If a judgment lien has attached to real estate prior to the filing of the bankruptcy petition, the lien of the judgment will survive the discharge.

(2) If real estate is acquired by a debtor after filing of a petition, the lien of a judgment entered prior to the filing will not attach to such property, provided a discharge is granted.

COMMENT:

A discharge in bankruptcy discharges only the personal liability of a debtor on a judgment duly listed in the bankruptcy schedule.

A judgment lien that survives a discharge in bankruptcy is enforceable in rem for ten years from the date the judgment was entered.

Authority: Iowa Code § 624.23(3)

CAVEAT:

The Federal Debt Collection Procedures Act, which only applies to judgments in favor of the United States of America, 28 U.S.C. § 3201, provides that a lien thereunder is effective for a period of twenty years. It is unclear whether Iowa Code § 624.23(3) is applicable to such judgments. See Linn County Title Standard 6.G.

STANDARD 14.A

PROBLEM:

What is the proper form for the legal description of a condominium unit?

STANDARD:

In compliance with the provisions of Iowa Code § 499B.5(1) and § 499B.7, it is sufficient to abbreviate both the legal description for a condominium and the percentage of undivided interest in the common areas and facilities of the condominium by incorporating either or both the description and the percentage by reference.

COMMENT:

This Standard conforms with Iowa Land Title Standard 14.2.

An illustration of an acceptable description is:

"Apartment 12, Storage Area 12 and Garage Stall 12 in a horizontal property regime known as Green Acres, a Condominium, Cedar Rapids, Iowa, together with an undivided percentage interest in and to the common areas and facilities appurtenant thereto, all as appears of record and on land described in the Declaration recorded in the Office of the County Recorder, Linn County, Iowa, on January 1, 1985 in Volume 1, beginning at page 1, as may be amended."

The Linn County Title Standards Committee recommends the use of this abbreviated description in subsequent instruments affecting Linn County titles. The express reference to a percentage interest is not required. Iowa Code § 499B.7(2).

STANDARD 14.B.

PROBLEM:

If recorded condominium documents give an owners association, or other party, the right of first refusal to purchase property to be transferred by an owner, what should the examiner require?

STANDARD:

A release of such right of first refusal, which shall include all prior transfers, executed by the authorized official or officials of the party having such right.

COMMENT:

This release does not need to be recorded. See Appendix 4 for suggested form.

STANDARD 15.A.

PROBLEM:

What is the effect of a judgment for temporary alimony or temporary support?

STANDARD:

A judgment for temporary alimony or temporary support, if clearly shown to be such by the abstracter, is not a lien against the property if a final decree in said action or a dismissal of said action was entered more than ten years prior to the abstract examination.

COMMENT:

It should not be assumed that a judgment is for temporary alimony or temporary support unless clearly shown to be such in the abstract.

Authority: See Iowa Code § 598.14.

STANDARD 15.B.

PROBLEM:

What should the title examiner require when a support or alimony judgment appears as a lien?

STANDARD:

- (1) An affidavit or acknowledged statement of the judgment creditor showing payment of all sums due through the date of the recording of the prospective deed, contract or mortgage;
- (2) the judgment creditor's acknowledged release of the property from the liens of all judgments rendered against the other party;
- (3) a full satisfaction by the judgment creditor of all judgments;
- (4) a showing by official statement from the clerk of court or the friend of court as to the amounts and dates of payment on such judgment so that the examining attorney may determine whether the judgment was in default prior to the recording of the prospective deed, contract or mortgage;
- (5) a proper court proceeding resulting in a ruling satisfying the judgment through the date of the recording of the prospective deed, contract or mortgage; or
- (6) a subordination of lien instrument may be acceptable in some circumstances (e.g., when examining for a mortgage of the judgment debtor).

COMMENT:

The title examiner should be cognizant of the fact that there might be an accumulation of interest on the judgment. See Arnold v. Arnold, 140 N.W.2d 874, 258 Iowa 850 (1966). See also Broyles v. Iowa Dept. of Social Services, 305 N.W.2d 718 (Iowa, 1981) regarding assignment of child support payments to the Iowa Department of Social Services.

The committee recommends that the examining attorney not accept alternative (4) unless and until assured that alternatives (1), (2), (3) and (6) are not available. See Standard 6.C. for another alternative.

15.B. COMMENT, CONTINUED

In the event it is not clearly apparent that no delinquency existed at the time of the recording of the instrument from the judgment debtor pursuant to alternative (4), the examining attorney may require the court proceeding under alternative (5).

If a support order has been entered on or after July 1, 1985, which is not made pursuant to the provisions of Iowa Code § 252B.14 or 598.22, no credit shall be given unless there is compliance with Iowa Code § 598.22A. Notice may need to be given to the Iowa Department of Human Services. In the alternative, a partial release of judgment with a specific release of lien on the property is acceptable.

STANDARD 15.C.

RESERVED FOR FUTURE STANDARD

STANDARD 15.D.

PROBLEM:

What should the title examiner require when a cost judgment arising out of a dissolution appears as a lien?

STANDARD:

Unless it also appears that such costs were paid by or for the party against whom the cost judgment was rendered, a mere showing that costs in dissolution actions are paid does not satisfy the lien of a cost judgment. The examiner should require (1) an affidavit or acknowledged statement of the judgment creditor acknowledging payment of the cost judgment through the date of the recording of the prospective deed, contract or mortgage; (2) the judgment creditor's acknowledged release of the property from the lien of the cost judgment rendered against the other party; or (3) a satisfaction by the judgment creditor of the cost judgment.

COMMENT:

A judgment is a lien only by operation of some statute, and there is no statute creating a lien in favor of a person who may become ultimately entitled to the costs if the same are paid to the clerk. The judgment creditor has a right to receive the money and use it in any way he or she sees fit.

Authority: Iowa Land Title Standard 6.2
Van Buren County Savings Bank v.
Rockwell, 154 Iowa 26, 134 N.W. 424
(1912).

STANDARD 15.E.

PROBLEM:

What should the title examiner require when an attorney fee judgment appears as a lien arising out of a dissolution?

STANDARD:

(1) An affidavit or acknowledged statement of the judgment creditor showing payment of the attorney fee; (2) the judgment creditor's acknowledged release of the property from the lien of the attorney fee judgment rendered against the other party; (3) a satisfaction by the judgment creditor of the attorney fee judgment; or (4) an affidavit or acknowledged statement of the attorney for the judgment creditor that the attorney fee judgment for his or her services is paid.

COMMENT:

The Committee's opinion is that an attorney for a judgment creditor cannot release or satisfy any judgments in divorce or dissolution proceedings after entry of the decree and that only the judgment creditor can. However, because of the great improbability of any attempts to enforce liens of attorney fee judgments which have been released or satisfied by the attorney for the judgment creditor, such releases or satisfactions should be accepted by the examiner.

STANDARD 16.A.

PROBLEM:

Should the title examiner object to the addition or omission of the words "City of" in the legal description pertaining to an addition to a city or town?

STANDARD:

No.

STANDARD 16.B.

PROBLEM:

If an abstract discloses the possibility of liability for federal gift taxes, is a showing of nonliability for, or payment of, such tax required?

STANDARD:

No, if the examination is for a purchaser or for a holder of a security interest.

COMMENT:

According to the Federal Tax Lien Act of 1966, as amended, conveyance by the donee or transferee of a donee to a purchaser or holder of a security interest divests the property of the gift tax lien. "Purchaser," as defined by the act, is one who has paid, or is paying, adequate consideration to acquire the property. If full value is paid, actual or constructive knowledge of a possible gift tax lien is immaterial.

Authority: Internal Revenue Code §§ 6323(h)(6) and 6324.

STANDARD 16.C.

RESERVED FOR FUTURE STANDARD

STANDARD 16.D.

PROBLEM:

Whenever an abstract refers to a special assessment deficiency, should the title examiner note that any private improvement constructed on said lot during the period of amortization of said assessment (not exceeding 10 years) may subject the property to a lien for a pro rata assessment of the original deficiency based on the number of calendar years remaining in the period of amortization?

STANDARD:

Yes.

COMMENT:

Iowa Code § 384.63 states that where a special assessment is levied against a lot and it is insufficient to pay its proportion of the cost of the improvement, or if no special assessment may be levied against a lot, the deficiency must be paid from city funds. However, the council shall by resolution provide that the deficiencies for the lots specially benefitted by public improvement shall be certified to the county treasurer, who shall record them in a separate book entitled "Special Assessment Deficiencies." At this point in the procedure, no lien has been created, but abstracters will show references to the county treasurer's Special Assessment Deficiencies" book. If the property is subsequently improved within ten years, a city council may levy a deficiency assessment which becomes a lien on the property at such time as provided by Iowa Code §§ 384.63 and 384.65(5).

STANDARD 16.E.

PROBLEM:

What information should the title examiner provide when it is indicated from the abstract that the land covered by the last extension of the abstract is a part of a larger parcel which may have been divided into two or more parts by a proprietor without a plat of survey or a subdivision plat?

STANDARD:

The examiner should caution the client that: (1) the County Auditor may require a plat of survey or a subdivision plat pursuant to Iowa Code § 354.13 and (2) the client may be denied a building permit for improvements on the land unless a plat of survey or a subdivision plat is established if one is required under Iowa Code § 354.4 or 354.6 or if a subdivision plat is required under a local ordinance.

COMMENT:

See also Linn County Title Standard 16.H.

STANDARD 16.F.

PROBLEM:

What objections to the title should be made as to a defective platting procedure under Chapter 354 of the Iowa Code?

STANDARD:

An abstract of title concerning property platted pursuant to Chapter 354 of the Iowa Code shall be accepted as showing merchantable title if the plat properly identifies the real estate, it being immaterial to the title whether the platting procedure is defective or irregular. However, if public access to the lot under examination is not shown, the examiner should advise his client to ascertain whether access in fact exists.

STANDARD 16.G.

PROBLEM:

When an instrument shows a foreign acknowledgment, what form must the acknowledgement take in order to be valid?

STANDARD:

The acknowledgement must satisfy the requirements either of Iowa law or the law of the foreign state or country where the acknowledgment was executed.

COMMENT:

Chapter 558, § 9E.14 and § 9E.15 of the Iowa Code should be consulted for the Iowa requirements pertaining to the form and execution of acknowledgements. If foreign statutes are not available, the best reference to requirements pertaining to acknowledgements taken in a foreign jurisdiction is Martindale-Hubbell Law Digests.

Iowa Code § 589.3 legalizes instruments of record for more than ten years which contain a defective acknowledgment or which are not acknowledged. Iowa Code 589.1 legalizes acknowledgements in instruments executed more than ten years earlier when the officer taking the acknowledgment has not affixed the officer's seal to the acknowledgment.

After April 27, 1990, the notary seal is not required.

Authority: Iowa Code § 558.39, § 9E.14 and § 9E.15
Madsen, Marshall's Iowa Title Opinions and Standards, Annotated §§ 4.6(A), 4.6(A-1) and 13.8 (2d ed. 1978).
See also Linn County Title Standard 7.B.

STANDARD 16.H.

PROBLEM:

What information should the title examiner provide if the grantor of land uses a metes and bounds description and no plat of survey or subdivision plat has been recorded?

STANDARD:

The examiner should caution the client that: (1) the county auditor or local law may require a plat of survey or a subdivision plat pursuant to Iowa Code §§304.4 or 354.6 or pursuant to a local ordinance and (2) the client may be denied a building permit for improvements on the land unless a plat of survey or a subdivision plat is established if one is required under Iowa Code §354.4 or 354.6 or under a local ordinance.

COMMENT:

The grantor may be required to have a plat of survey made pursuant to Iowa Code §354.4, or a subdivision plat made under Iowa Code §354.6. The duty attaches as a covenant of warranty to all conveyances. Iowa Code §354.3. Reference may be made to the plat of survey without setting forth the metes and bounds description if all of the requirements of Iowa Code §354.5(1) are included.

A plat of survey is not required for a conveyance of an existing parcel after June 30, 1990 if the parcel is described by metes and bounds and if it was conveyed prior to July 1, 1990, by the same description without a plat of survey. Op. Atty. Gen. (FRISK), May 1, 1991.

See also Linn County Title Standard 16.E.

APPENDIX 1

VACATION AND DISPOSAL OF CITY PROPERTY

VACATION.

1. Resolution of city planning commission approving vacation of public ways or grounds. Some cities do not have a planning commission. None is required by state law.
2. Action of city council proposing vacation of public way or ground and prescribing notice. Iowa Code § 364.12(2)(a).
3. Public hearing, though not specifically required by statute.
4. Proof of publication of notice of proposed vacation. Iowa Code § 364.12(2)(a).
5. Proof of publication of an ordinance which vacates public way or ground. Iowa Code §§ 364.12(2)(a) and 380.7(2).

DISPOSAL.

6. Resolution setting public hearing on proposed disposal of interest in real property. If vacation is not necessary this is the first step in disposal of property by a city. Iowa Code § 364.7(1).
7. Proof of publication showing publication of notice of public hearing on proposal to dispose of city property. Iowa Code § 364.7(1).
8. Public hearing record.
9. Resolution approving proposed deed. Iowa Code §§ 364.7(2) and 569.7.
10. City clerk's transcript of the above proceedings verifying that each item is a part of the public records in the custody of the city clerk, and further identifying the council members, those present, and the role call vote showing both ayes and nays on the resolution to approve the proposed deed. Iowa Code §§ 364.7(2) and 569.7.

APPENDIX 1, CONTINUED

COMMENT:

The provisions of Iowa Code § 364.12 are a general statute. Pursuant to Iowa Code § 4.7 special provisions will control over general provisions in case of a conflict which cannot be construed to give effect to both. Special statutes may require proceedings not normally required by the general statute. For an example see Iowa Code § 403.8 which is included in the chapter on Urban Renewal (Law).

See Linn County Title Standard 2.A.

APPENDIX 2

SALE OF REAL ESTATE BY CONSERVATOR

PURSUANT TO IOWA CODE § 633.652

Before proceeding review Linn County Title Standards 6.D. and 6.E.
Steps in chronological order are as follows:

1. Petition. (Iowa Code §§ 633.35, 633.388 and 633.652)
2. Court order fixing the time and place of hearing and prescribing the time and manner of service. (Iowa Code §§ 633.40 and 633.389)
3. Notice served. (See note following Step 5. Iowa Code §§ 633.40 and 633.389)
4. Proof of service. (RCP 59).
5. Application for appointment of guardian ad litem. (RCP 14.)

Note: If notice is to be served on a guardian ad litem, then steps 5 and 6 would be taken before step 3.)
6. Order appointing guardian ad litem.
7. Answer of guardian ad litem (IRCP 13 and 71).
8. Order for sale or mortgage of property. (Iowa Code § 633.396.)
9. Report of sale per Iowa Code § 633.399.
 - (a) If by auction, proof of service of notice is a prerequisite. (Iowa Code § 633.397.)
 - (b) If by private sale, an appraisal or further notice may be necessary. (Iowa Code §§ 633.396 and 633.399.)
10. Order approving sale.

APPENDIX 2, COMMENT

It is most common and certainly preferable for the attorney representing the conservator to proceed under Iowa Code § 633.400, which combines Steps 1 and 9 above, in which event Steps 9(a) and (b) are eliminated.

APPENDIX 3

MORTGAGE RELEASE BY SUCCESSORS IN INTEREST

1. American Federal Savings and Loan Association of Iowa, formerly American Federal Savings and Loan Association of Central Iowa, First Federal Savings and Loan Association or Cedar Rapids Building and Loan Association.
2. Banc Iowa Federal Savings Bank, formerly Banc Iowa Savings Bank, formerly The Bohemian Savings and Loan Association.
3. Best of Iowa Community Credit Union, formerly Light Company Credit Union.
4. Collins Credit Union, formerly Collins Employees Credit Union.
5. 1st Federal Community Credit Union, formerly Federal Family Credit Union.
6. Firststar Bank Cedar Rapids, N.A., formerly The Merchants National Bank of Cedar Rapids.
7. Hawkeye Bancorporation Mortgage Company, formerly Hawkeye Mortgage Company.
8. Hawkeye Bank of Cedar Rapids, formerly United State Bank.
9. Hawkeye Credit Union, formerly Link-Belt Speeder Employees Credit Union, Cedar Rapids FMC Employees Credit Union or Harnco Employees Credit Union.
10. Linn Area Credit Union, formerly Linn Area Schools Credit Union.
11. Midland Savings Bank F S B, formerly Midland Financial Savings and Loan Association, formerly Des Moines Savings and Loan Association, Security Savings and Loan Association, Linn County Savings and Loan Association or Linn County Building and Loan Association.
12. Norwest Bank Iowa, National Association, formerly Norwest Bank Cedar Rapids, National Association; Norwest Bank Marion, National Association; First National Bank of Iowa; First National Bank of Marion, Iowa; or The First National Bank of Marion, Iowa.

APPENDIX 3, CONTINUED

13. Norwest Bank of Iowa National Association, formerly Norwest Bank of Cedar Rapids, National Association, formerly Peoples Bank and Trust Company.

14. Norwest Mortgage, Inc., formerly Banco Mortgage Company or Iowa Securities Company.

15. Perpetual Savings Bank, FSB; formerly Perpetual Savings Bank or Perpetual Savings and Loan Association.

16. Rothschild Financial Corporation, formerly H. & Val. J. Rothschild, Inc. or General Mortgage Corporation of Iowa.

17. South East Cedar Rapids Community Credit Union, formerly Wilson Cedar Rapids Employee Credit Union.

18. United Federal Savings Bank of Iowa, formerly United Federal Savings and Loan Association of Des Moines.

COMMENT:

See Linn County Title Standard 7.A.

APPENDIX 4

CONDOMINIUMS - RIGHTS OF FIRST REFUSAL
AND ASSESSMENTS

Owners Association, a non-profit Iowa Corporation, declines to exercise its right of first refusal and releases such option rights to purchase the property described as follows:

This Release is in reference to the proposed transfer of said property to _____ and all prior transfers.

The undersigned further certify that there are no unpaid assessments which are a lien against this property through the _____ day of _____, 19____.

DATED this _____ day of _____, 19____.

OWNERS ASSOCIATION

By: _____
Title

By: _____
Title

COMMENT:

See Linn County Title Standard 14.B.

APPENDIX 5

RESERVED FOR FUTURE APPENDIX

