



OHIO STATE BAR
ASSOCIATION
Connect. Advance. Succeed.

Ohio Title Standards

Prepared by the Ohio State Bar Association
Real Property Section



Ohio Title Standards

Prepared by the Real Property Law Section of the Ohio State Bar Association.

Table of Contents

	Foreword
1.1	General Rules – Marketability
1.2	General Rules – References to Title Standards in Contracts for Sale or Purchase of Real Property
2.1	Examination – Discovering Defect in Title Previously Examined by Another
2.2	Examination – Period
2.3	Examination – Form
3.1	Conveyances – Acknowledgements
3.2	Conveyances – Descriptions
3.3	Conveyances – Delivery
3.4	Conveyances – Survivorship
3.5	Conveyances – Partnerships and Limited Liability Companies
3.6	Conveyances – Recital of Marital Status
3.7	Conveyances – Dates: Omissions and Inconsistencies
3.8	Conveyances – Variance of Name
3.9	Conveyances – Powers of Attorney
3.10	Conveyances – By Executor or Other Fiduciary
3.11	Conveyances – From Corporation
3.12	Conveyances – Right to Purchase
3.13	Conveyances – Deed from Stranger
3.14	Conveyances – Deeds Subsequent to Mortgage
3.15	Conveyances – Quit Claim Deed
3.16	Conveyances – Federal Revenue Stamps
3.17	Conveyances – By Heirs or Devisees
3.18	Conveyances – Unrecorded Disclosed Trusts
3.19	Conveyances – Re-Recording of Defective Deed, After Corrections
4.1	Encumbrances – Court Costs
4.2	Encumbrances – Estate Tax
4.3	Encumbrances – Release by Attorney
4.4	Encumbrances – Leases
4.5	Encumbrances – Foreclosed Mortgages
4.6	Encumbrances – Judgment Against Heirs
4.7	Encumbrances – Building and Use Restrictions with Forfeiture Provisions
4.8	Encumbrances – Subscription of Subdivision Plat by Lien Holders
4.9	Encumbrances – Current Agricultural Use Valuation
4.10	Encumbrances – Mortgage Release by Corporation
4.11	Encumbrances – Release of Re-Recorded Mortgages
4.12	Encumbrances – Assignment of Rents and Leases
5.1	Probate Court Proceedings – Inventory
5.2	Probate Court Proceedings – Debts After Four Years

- 5.3 Probate Court Proceedings – Certificates of Transfer
- 5.4 Probate Court Proceedings – Summary Land Sale
- 5.5 Probate Court Proceedings – Recording of Out-of-County Proceedings
- 5.6 Probate Court Proceedings – Mental Illness Proceedings
- 6.1 Process – Service by Publication When Name and Address of Defendant are Unknown
- 6.2 Service by Publication – Necessity to Identify Real Property
- 7.1 Court Proceedings – Verification of Pleadings
- 7.2 Court Proceedings – Reliance on Final Orders
- 7.3 Court Proceedings – Lis Pendens
- 8.1 Marketable Title Act – Root of Title
- 9.1 Ohio Rules of Civil Procedure – Return Receipt Under Rule 4
- 9.2 Process – Name Unknown
- 9.3 Ohio Rules of Civil Procedure – Out-of-County Proceedings
- 9.4 Ohio Rules of Civil Procedure – Domestic Relations Proceedings
- 9.5 Ohio Rules of Civil Procedure – Out-of-State Defendants
- 10.1 Condominiums – Bylaws
- 10.2 Condominiums – Drawings
- 10.3 Condominiums – Declaration
- 11.1 Bankruptcy – Title Through Bankruptcy Estate
- 11.2 Bankruptcy – Title Through Foreclosure During Pendency of Bankruptcy Proceeding
- 11.3 Bankruptcy – Pre-Petition Bankruptcy Liens
- 11.4 Bankruptcy – Property Not Listed in Bankruptcy Estate

Ohio Standards of Title Examination Foreword—2020 Edition

Prepared by the Real Property Law Section of the Ohio State Bar Association

This edition of the Ohio Standards of Title Examination (also commonly referred to as the “Ohio Title Standards”) reflects changes and recommendations initiated by the Real Property Law Section Council of the Ohio State Bar Association (“OSBA”) through 2020, as adopted by the OSBA Council of Delegates, and approved by the OSBA Board of Governors.

The first edition of the Ohio Standards of Title Examination project was introduced in June of 1951 and thereafter has been a continuous project of the OSBA Real Property Law Section Council.

In June of 2013, the Title Standards Committee of the OSBA Real Property Law Section Council chaired by John M. Liming, Esq., of Defiance, Ohio, determined that rather than continue to update the Ohio Title Standards only on an *ad hoc* basis as occasionally brought to the attention of the Title Standards Committee, an effort should be made to review and, as necessary, revise and update all of the Ohio Title Standards. Shortly thereafter the Committee began holding monthly telephone conferences during which the Title Standards were divided among willing Committee members (comprised of members of the OSBA Real Property Law Section, interested Ohio real estate lawyers, and Ohio title lawyers --all members of the OSBA) and robust discussions occurred. This 2020 edition of the Ohio Title Standards is the result of that seven-year effort. As stated in the first edition of the Ohio Standards of Title Examination:

The primary purpose of Standards of Title Examination is to promote uniformity of practice pertaining to marketability of titles. The only sanction for the Standards is the attitude of the Bar as a whole; their effectiveness depends upon a general observance. Enforcement through legislative action is believed not to be proper; the inflexibility resulting from incorporation in statutes is thought to be inadvisable. We are convinced that these Standards may be confidently relied upon until amendment is required by subsequent statute or judicial decision. An attorney can be justified as reasonably prudent when following the course approved by this Association.

(November 1952, First Edition, Ohio Standards of Title Examination)

The 1952 statement is as relevant today as it was then. As a living document, the Ohio Standards of Title Examination will continue to be reviewed and updated through the efforts of the Title Standards Committee and the OSBA Real Property Law Section Council. The Title Standards Committee relies on input from its members, other members of the OSBA, and the title insurance community. Users of these Standards of Title Examination are encouraged to submit proposals for modifications to the Ohio Title Standards to the Title Standards Committee.

The 1995 edition of the Ohio Standards of Title Examination included the following acknowledgment of the contributions made by the original drafters:

Thomas J. McDermot (Mansfield), Leon P. Loechler (Columbus), Walter J. Morgan (Cleveland), and Sherman S. Hollander (Cleveland). To the list, I add the name of Dwight Shipley (Columbus). A special thanks is in order for the efforts over the years contributed by Robert L. Hausser (Marietta) who was present at the beginning of this process and continues to serve and contribute today on the subcommittee and the board. The contributions of these men to the practice of real property law in Ohio is significant. The important work that these men initiated and promoted is continued to this day, with your help, by the Real Property Law Section Board of Governors of the Ohio State Bar Association.

The work of the original drafters has continued over the years by the collective contributions of others, including in the undertaking of this 2020 Edition of the Ohio Standards of Title Examination by the following: Charles A. “Chip” Brigham, III; James “Jay” A. Carr II; Douglas A. Daley; Alina Dukstansky; Kevin F. Eichner; Sheila Nolan Gartland; Stephen C. Gregory; Edward R. Horejs, Jr.; Kathryn J. Carlisle-Kesling; Kenton L. Kuehnle; John M. Liming; Donald P. McFadden; G. Scott Miller; Monica E. Russell; and Michael J. Sikora III.

Edward R. Horejs, Jr.
Chair, OSBA Real Property Law Section
Council
July 24, 2020

OTS 1.1

1.1 GENERAL RULES – MARKETABILITY

Problem A:

What is the general rule as to marketability?

Standard A:

A marketable title is one which a purchaser would be compelled to accept in a suit for specific performance. Objections to a title should not be made when the irregularities or defects do not impair the title or cannot reasonably be expected to expose the client to the hazard of adverse claims, litigation or expense in clearing the title.

Comment A:

The Supreme Court states the following in the syllabus of *McCarty v. Lingham*, 111 Ohio St. 551, 146 N.E. 64 (1924): "A marketable title imports such ownership as insures to the owner the peaceable enjoyment and control of the land as against all others."

See also, G/GM Real Estate Corp. v. Susse Chalet Motor Lodge, 61 Ohio St. 3d 375, 575 N.E.2d 141 (1991).

Comment B:

See Ohio Revised Code Sections 5301.47 to 5301.56 Ohio's Marketable Title Act (the "MTA"). A "marketable title" is not the same as a "marketable record title," which is defined in Ohio Revised Code Section 5301.47(A) as "* * * a title of record, as indicated in Section 5301.48 of the Revised Code, which operates to extinguish such interests and claims, existing prior to the effective date of the root of title, as are stated in Section 5301.50 of the Revised Code." The MTA uses the term "marketable record title" and "record marketable title" interchangeably.

(Amended July 24, 2020; originally effective November 1, 1952; original comment B added May 20, 1965)

OTS 1.2

1.2 GENERAL RULES – REFERENCE TO TITLE STANDARDS IN CONTRACTS FOR SALE OR PURCHASE OF REAL PROPERTY

Standard A:

An attorney drawing a contract for the sale or purchase of real property should recommend that the terms of the contract provide that marketability be determined in accordance with Title Standards of The Ohio State Bar Association and that the existence of encumbrances and defects, and the effect to be given to any found to exist, be determined in accordance with such standards.

Comment A:

An attorney, drawing a contract for the sale or purchase of real property, should recommend the inclusion of the following language or its equivalent in the contract:

"Marketability of title, if the owner is required to furnish marketable title, shall be determined in accordance with the Title Standards approved by The Ohio State Bar Association."

(Effective November 12, 1960)

OTS 2.1

2.1 EXAMINATION – DISCOVERING DEFECT IN TITLE PREVIOUSLY EXAMINED BY ANOTHER

Problem A:

When an attorney examines a title that is believed to be unmarketable or brings into question whether there is a marketable record title, what steps should be taken if the attorney has knowledge that the same title has been examined by another attorney, and the examining attorney has not objected to the defect?

Should the attorney communicate with the other attorney?

Standard A:

Yes, if practicable, it is recommended that the attorney should communicate with the previous examining attorney, explain the matter objected to and an opportunity should be afforded for discussion, explanation, and correction. The attorney contacted should cooperate fully and promptly in investigating his/her records and taking whatever steps are necessary to explain and/or correct the title defect complained of.

(Amended April 28, 2017; originally effective November 1, 1952)

OTS 2.2

2.2 EXAMINATION – PERIOD

Problem A:

How many years should title be searched in connection with the issuance of a certificate or an opinion of title?

Standard A:

The examining attorney shall confirm that the search period is sufficient to establish marketable title. The search period may vary depending on the purpose of the opinion of title, among other factors. Although the Marketable Title Act (Ohio Revised Code Sections 5301.47 to 5301.56) has several provisions which become operative over a period of 40 years, the Marketable Title Act does not present any length of time for a search period. As such, any references to a period of 40 years in the Marketable Title Act shall not be construed as providing for a 40 year search period for an opinion of title.

(Amended April 27, 2018; original standard had been suspended effective November 15, 1986)

OTS 2.3

2.3 EXAMINATION – FORM

Problem A:

What should a certificate or opinion on title contain?

Standard A:

The attorney certificate or opinion should include, at minimum:

- (1) The period of time of the examination.
- (2) That the certificate or opinion is based on a title examination of the public records of _____ County, Ohio, as disclosed by the recorded documents that have been properly indexed affecting title to the real property, including documents filed in the United States District Court and/or the United States Bankruptcy Court if such Courts are located in that County.
- (3) That the certificate or opinion does not purport to cover the following matters: (a) matters not of public record; (b) rights of persons in possession; (c) questions that a correct survey or inspection of the real property would disclose; (d) rights to file mechanics' liens; (e) special taxes and assessments not shown by the county records; (f) zoning and other governmental regulations; (g) liens asserted by the United States and State of Ohio, their agencies and officers under the Ohio Solid and Hazardous Waste and Disposal Act [Ohio Revised Code Sections 3734.21 and 3734.22] and Federal Super Fund Amendments, and under Racketeering Influence and Corrupt Organization Act and receivership liens, unless the lien is filed in the public records of the county in which the real property is located; and (h) records of the United States District Court and/or the United States Bankruptcy Court, unless the Court (as applicable) is located in the county in which the real property is located.
- (4) A certification or opinion that marketable title is vested in [*identify fee simple or other estate*] in [*insert name of owner*] by the instrument recorded in the _____ Records, [*provide recording information*] of _____ County, Ohio.
- (5) That the title is marketable and free from defects and encumbrances except those matters set forth in the certificate or opinion.
- (6) Clear and concise language setting forth the defects and encumbrances.
- (7) The following basic form of certificate or opinion is suggested:

The undersigned hereby certifies that the undersigned has made a title examination of the records of _____ County, Ohio, as disclosed by the recorded documents that have been properly indexed affecting title to the real property herein

described, including documents filed in the United States District Court and/or the United States Bankruptcy Court if such Courts are located in said County, in accordance with the Ohio Title Standards (as promulgated by the Ohio State Bar Association), covering the period from _____, _____ to _____, _____ at _____[A.M./P.M.]

This certificate does not purport to cover the following: matters not of record in said County; rights of persons in possession; questions which a correct survey or inspection would disclose; rights to file mechanics' liens; special taxes and assessments not shown by the county treasurer's, county auditor's, or county fiscal officer's records; zoning and other governmental regulations or liens asserted by the United States and State of Ohio, their agencies and officers under the Ohio Solid Hazardous Waste Disposal Act, Federal Superfund Amendments, Racketeering Influence and Corrupt Organization Act and receivership liens, unless the lien is filed in the public records of said County; and records of the United States District Court and/or the United States Bankruptcy Court, unless the Court (as applicable) is located in said County.

The undersigned further certifies that, in the undersigned's opinion based upon said public records, [*identify fee simple or other estate*] title to the real property is vested in [*insert name of owner*] by a [*describe type of instrument*] from [*insert name of grantor*], dated _____, filed for record on [*insert date*] at [A.M./P.M.] and recorded in Volume _____, Page _____ or at Instrument No. _____ of the _____ County, Ohio Recorder; and that, as appears from said records, the title is marketable and free from defects and encumbrances except and subject to the matters set forth herein.

Dated _____

Attorney at Law

(Amended July 24, 2020; amended November 14, 1992; amended May 8, 1969; originally effective November 1, 1952)

OTS 3.1

3.1 CONVEYANCES – ACKNOWLEDGMENTS

Problem A:

A deed is executed outside of Ohio without an attached certificate showing authority of the notary public. Should an objection be made to the title?

Standard A:

No.

Comment A:

See generally, Ohio Revised Code Chapter 147 and Ohio Revised Code Section 5301.07.

(Comment A added July 24, 2020; originally effective November 1, 1952)

(Problem B and Standard B removed July 24, 2020)

Problem C:

Is a deed defective because the seal of the officer taking the acknowledgment is omitted?

Standard C:

No.

Comment C:

See, Ohio Revised Code Section 5301.071.

(Amended and Comment C added July 24, 2020; originally effective May 21, 1953)

Problem D:

Is a deed defective because the term of office of the officer taking the acknowledgement has expired?

Standard D:

No.

Comment D:

See, Ohio Revised Code Section 147.12.

(Amended and Comment D added July 24, 2020; originally effective May 21, 1953)

Problem E:

Should a certificate of acknowledgment be deemed sufficient where the acknowledger is not specifically named, but is described as (a) "John Doe and his wife" or (b) "personally came the above named grantors"?

Standard E:

Yes.

(Amended July 24, 2020; originally effective May 19, 1955)

Problem F:

Should the omission of venue from a certificate of acknowledgment render a title unmarketable?

Standard F:

No, the omission of venue from the certificate does not render title unmarketable when the authority of the certifying officer can be established by other records.

Comment F:

See generally, Ohio Revised Code Section 5301.07.

(Comment F added July 24, 2020; amended November 21, 1964; originally effective May 19, 1955)

OTS 3.2

3.2 CONVEYANCES – DESCRIPTIONS

Problem A:

Should an objection be made to a title because one or more deeds in the chain of title contains an error with respect to the reference to the correct plat book and plat book page of platted real property?

Standard A:

If the deed refers to a subdivision by an exclusive descriptive name, an objection should not be made because of an error in the reference to the plat book and the plat book page where that subdivision is recorded.

(Amended April 28, 2017; originally effective November 1, 1952)

Problem B:

Should an objection be made to a title on account of minor typographical errors, irregularities or deficiencies in a description of real property?

Standard B:

Such an objection should not be made when a subsequent conveyance contains a correct description, or when the minor error, irregularity or deficiency is explained by a person with personal knowledge in a suitable affidavit of facts related to title pursuant to Ohio Revised Code Section 5301.252 (B)(4) or (5).

(Amended April 28, 2017; originally effective May 19, 1955)

Comment B:

Errors, irregularities and deficiencies in real property descriptions in the chain of title do not impair marketability unless, after all circumstances of record are taken into account, a substantial uncertainty exists as to the real property that was intended to be conveyed, or the description falls beneath the minimal requirement of sufficiency and definiteness which is essential to an effective conveyance. Lapse of time, subsequent conveyances, the obvious or typographical nature of errors or omissions, accepted rules of construction and other considerations should be relied upon to approve descriptions that are sufficient to place the world on notice of the precise real property that was intended to be conveyed.

(Amended April 28, 2017; amended and supplemented November 1960; originally effective May 19, 1955)

Problem C:

If multiple descriptions are provided in a deed, such as a street address, parcel number, and legal description, then which description is controlling?

Standard C:

Legal description.

(Effective April 28, 2017)

OTS 3.3

3.3 CONVEYANCES – DELIVERY

Problem A:

Should a title be considered unmarketable when it appears from the county records that the grantor died before the deed was filed for record?

Standard A:

Yes, unless waived for lapse of time or unless there is satisfactory proof of delivery before death.

An affidavit of the notary public or the witnesses, if any, of an attorney at law for a party in the transaction, or of other responsible persons who were present at the time of delivery, setting forth specific facts sufficient to confirm the delivery of the deed to the named grantee(s), should be deemed satisfactory proof.

Delivery should be presumed after the deed has been of record for twenty-one years, in the absence of other facts raising a doubt.

Comment A:

See *Kniebbe v. Wade*, 161 Ohio St. 294, 118 N.E. 2d 833 (1954). The *Kniebbe* case was decided after the above standard was adopted.

(Amended April 28, 2017; Comment A added November 21, 1964; originally effective November 1, 1952)

OTS 3.4

3.4 CONVEYANCES – SURVIVORSHIP

Problem A:

What language creates an estate with right of survivorship?

Standard A:

Where the operative words of a deed clearly express an intention to create the right of survivorship, such expressed intention will be given effect and the survivor will take by force of the terms of the grant. Upon the death of the other grantee or grantees, the survivor acquires the entire estate, subject to the charge of estate taxes.

A conveyance is sufficient to create an estate with right of survivorship when it contains “to A and B for their joint lives, remainder to the survivor of them,” or substantially similar language. To be sufficient the conveyance should contain the names of the grantees and a reference that the survivor is entitled to the remainder.

Any deed or will containing language that shows a clear intent to create a survivorship tenancy shall be liberally construed to do so. Use of the word “or” between the names of two or more grantees or devisees does not by itself create a survivorship tenancy, but shall be construed and interpreted as if the word “and” had been used between the names. Ohio Revised Code Section 5302.20.

Comment A:

Ohio Revised Code Section 5302.20 became effective on April 4, 1983.

(Amended April 28, 2017; amended November 11, 1989; amended May 8, 1969; originally effective November 1, 1952)

Problem B:

What shall be sufficient proof of the death of a grantee of a survivorship deed when one or more other grantees set forth in a survivorship deed remain alive?

Standard B:

A certificate of transfer as provided in Section 2113.61 under the Ohio Revised Code or an affidavit accompanied by a certificate of death. For contents of the affidavit see Ohio Revised Code Section 5302.17.

Comment B:

For real property affected by Ohio Revised Code Section 5309.09 (Torrenized Property) the procedure for the transfer of the interest of the decedent shall be pursuant to Section 5309.081 of the Ohio Revised Code.

Problem C:

Does subsequent incompetency of one or more of such owners alter the interests so created?

Standard C:

No.

Comment C:

The incident of survivorship is not destroyed.

(Amended April 28, 2017; originally effective November 15, 1969; replaces Problem C of May 21, 1953)

Problem D:

What is the effect of a deed that contains the names of the grantees and a reference that the survivor is entitled to the remainder that does not state the marital status of the grantees?

Standard D:

The failure to cite the grantees' marital status does not make the survivorship tenancy defective.

(Effective April 28, 2017)

OTS 3.5

3.5 CONVEYANCES – PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

Problem A:

What should be required to show the authority of partners to execute conveyances on behalf of the partnership?

Standard A:

A conveyance from a partnership holding the title is sufficient if it recites that the partners executing it are all the partners, in the absence of information to the contrary. When it does not appear that all the partners executed the conveyance, satisfactory evidence of authority, such as a resolution or a certified copy of a Statement of Partnership Authority pursuant to Ohio Revised Code Section 1776.33(D)(2), should be required. Any such evidence of authority should be signed by all the partners in order to be considered satisfactory.

Authority of the partner or partners executing the conveyance should be presumed after it has been of record for five years.

Problem B:

What should be required to show the authority of a person or persons to execute a conveyance on behalf of a limited liability company?

Standard B:

A conveyance from a limited liability company is sufficient if it recites that the member or members executing the conveyance are all the members, in the absence of information to the contrary. When it does not appear that all the members are executing the conveyance, or the conveyance is executed by a manager or an officer, satisfactory evidence of authority, such as the current operating agreement, resolution, or affidavit should be obtained. Any such evidence of authority should be signed by all the members. Confirmation that the entity is in good standing with the secretary of the state of organization should be obtained. Authority of the member or members executing the conveyance should be presumed after the conveyance has been of record for five years.

(Amended April 28, 2017 and April 27, 2018, originally effective November 1, 1952)

OTS 3.6

3.6 CONVEYANCES – RECITAL OF MARITAL STATUS

Problem A:

After what lapse of time should the omission from a deed of a recital of grantor's marital status not be regarded as a defect?

Standard A:

The omission of such recital is not a defect when the deed has been of record for more than fifty years, in the absence of notice of subsequent facts indicating the contrary.

(Effective November 1, 1952)

Problem B:

Should an objection be made to a title when the chain of title discloses that the grantor previously had a spouse who did not release dower?

Standard B:

Yes, unless omission of the release is satisfactorily explained.

(Effective May 21, 1953)

Problem C:

Should an objection be made to a title where the deed recites that the grantor is divorced and the record of the divorce proceedings is not available for examination?

Standard C:

Yes.

(Effective May 21, 1953)

Problem D:

Should the descriptive terms "single," "widow," and "widower," be considered a sufficient showing of marital status?

Standard D:

Yes.

Comment D:

The descriptive term "relict" is not sufficient. The term "divorced" should include the additional descriptive phrase of "and not remarried" to indicate current marital status.

The examining attorney is directed to traditional and long standing legal definitions defining "widow" and "widower" as indicating someone whose spouse is deceased and who has not remarried. If the individual has remarried, current marital status should be indicated.

(Amended April 27, 2018; originally effective May 19, 1955)

Problem E:

Where a trust is not otherwise shown by a recorded instrument, should a release of dower be required from the spouse of a person whose name as grantee, in the deed acquiring title, was followed by "trustee," "as trustee," "agent," or words of similar import?

Standard E:

No, where the conveyance from such grantee is to a bona fide purchaser, unless an instrument has been filed by the claiming spouse of such grantee in accordance with Ohio Revised Code Section 2103.021 and if no other instrument containing a description of such real property has been recorded in the office of the recorder of the county in which the real property is situated which puts upon inquiry any person dealing with such real property that a spouse of such grantee would have a dower interest in such real property.

Comment E:

Ohio Revised Code Section 2103.021 provides that the spouse of such grantee has a continued right to a dower interest when such grantee conveys to a bona fide purchaser only if "such spouse, prior to the recording of such conveyance by such grantee to said purchaser, has recorded in the office of the recorder of the county in which the land is situated, an affidavit describing such land and setting forth the nature of such spouse's interest in such land" and if "no other instrument containing a description of such land has been recorded in the office of the recorder of the county in which such land is situated which puts upon inquiry any person dealing with such land that a spouse of such grantee would have a dower interest in such land."

This statute does not purport to cover conveyances to persons who do not qualify as bona fide purchasers.

Problem F:

What words on an instrument of conveyance are sufficient to indicate that two persons are married to each other?

Standard F:

The descriptive words, “husband and wife,” “a married couple,” “husband and husband,” “wife and wife,” or any similar language indicating that two persons are married to each other, regardless of the state in which their union was legally created, shall be sufficient to establish their marital status as married, or as married to one another.

(Amended April 27, 2018; amended November 14, 1992; amended May 20, 1965; prior conflicting standard effective November 17, 1956)

OTS 3.7

3.7 CONVEYANCES – DATES: OMISSIONS AND INCONSISTENCIES

Problem A:

Shall errors or omissions in the dates of a conveyance or other instrument affecting title, in themselves, impair marketability?

Standard A:

No.

Comment A:

Even if the date of execution is of peculiar significance an undated instrument will be presumed to have been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support that presumption.

Inconsistencies in recitals or indications of dates, as between dates of execution, attestation, acknowledgment or recordation, do not, in themselves, impair marketability. Absent a peculiar significance of one of the dates, a proper sequence of formalities will be presumed notwithstanding such inconsistencies.

(Amended and supplemented November 12, 1960; originally effective November 1, 1952)

OTS 3.8

3.8 CONVEYANCES – VARIANCE OF NAME

Problem A:

When shall a variance between the name of the grantor in a deed and the name of the grantee in the next preceding deed be considered a defect of title?

Standard A:

A slight variance shall not be considered a defect when the variance is not so material as to render the deed outside the chain of title:

- (a) when the name of the grantee agrees with the name of the grantor as the latter appears of record in the granting clause, or in the signature, or in the certificate of acknowledgment;
- (b) when the variance consists of a commonly recognized abbreviation or derivative;
- (c) when the identity of a corporation, partnership, or limited liability company can be inferred with reasonable certainty from the names used and other circumstances of record in the chain of title to the real property, even if the exact name of the entity is not used and slight variations in the name exist from instrument to instrument. Among other variances, addition or omission of the word "the" preceding the name; use or nonuse of the symbol "&" for the word "and"; use or nonuse of abbreviations for "company," "limited," partnership," "corporation" or "incorporated"; and inclusion or omission of all or part of a place or location ordinarily may be ignored. Affidavits and recitals of identity may be used and relied upon to provide evidence of title concerning variances too substantial or too significant to be ignored (Note: This standard pertains to name variations only and Ohio case law should be reviewed and considered to determine whether the particular facts and circumstances of record are such that the variance should not be considered a defect);
- (d) when the difference is trivial or the error is apparent on the face of the instrument;
- (e) when a middle name or initial is used in one instrument and not in another, unless the examining attorney is otherwise put on inquiry that the individuals are different people;
- (f) when both instruments have been of record for more than 21 years.

(Amended April 27, 2018; amended and supplemented at various times including May 11, 1967; originally effective November 1, 1952)

Problem B:

Should an objection be made because a grantor or grantee is designated by a spouse's given name, as "Mrs. John Doe"?

Standard B:

Yes. Evidence as to the person intended by such designation should be required.

(Amended April 27, 2018; amended May 11, 1967; originally effective May 21, 1953)

Problem C:

Should an examining attorney rely upon a recital purporting to cure an error in the name of a person or entity in the chain of title?

Standard C:

Yes, unless the variance is so great or unless the other circumstances are such as to create a reasonable doubt of the truth of the recital.

(Amended April 27, 2018; originally effective May 21, 1953)

OTS 3.9

3.9 CONVEYANCES – POWERS OF ATTORNEY

Problem A:

Is one spouse competent to act for the other under a power of attorney to convey real property or to release dower?

Standard A:

Yes.

Problem B:

Should it be presumed that the principal of a power of attorney was living at the time it was exercised?

Standard B:

Yes, unless circumstances known or appearing of the public record indicate that the principal of a power of attorney was not living at the time the power of attorney was exercised.

Problem C:

If a power of attorney includes a statement that the power of attorney becomes effective only upon the occurrence of a specified event, as the disability or incapacity or adjudged incompetency of the principal as provided in Ohio Revised Code Section 1337.09, should proof of the occurrence of the contingency be required?

Standard C:

Yes, if the instrument provides for the happening of a contingency, proof of that contingent event should be required and recorded.

Problem D:

Should an objection be made to a title if a general power of attorney is not executed as of a recent date?

Standard D:

No, if the general power of attorney sets forth a durability clause or if the durability is presumed under the provisions of any applicable law.

(Problem D and Standard D effective April 27, 2018; Problem C and Standard C effective November 11, 1989; originally effective May 19, 1955)

OTS 3.10

3.10 CONVEYANCES – BY EXECUTOR OR OTHER FIDUCIARY

Problem A:

Can an executor validly convey title, under an express power of sale in the will, immediately after the admission of the will to probate and the filing of the certificate of service required under Ohio Revised Code Section 2107.19?

Standard A:

Yes, when conveyed in good faith and provided proceedings to contest the will have not been commenced and assuming no rights of spouse under Ohio Revised Code Section 2106.16 have been exercised, at the date the deed is delivered. Good faith is ordinarily presumed.

Comment A:

Ohio Revised Code Section 2113.39 makes clear that a power of sale authorizes a sale for any purpose considered by the executor to be in the best interest of the estate unless the power is expressly limited by the will. Ohio Revised Code Section 2113.23 provides that, notwithstanding any subsequent revocation of authority or removal of the executor, all previous sales made lawfully and in good faith by the executor and with good faith of the purchaser shall be valid as to such executor and purchaser.

(Amended April 27, 2018; amended May 18, 1994; amended May 18, 1972; originally effective November 1, 1952)

Problem B:

Is a conveyance defective because a fiduciary signs and acknowledges as an individual?

Standard B:

No. *See*, Ohio Revised Code Section 5301.071(D)

(Amended April 27, 2018; originally effective May 21, 1953)

OTS 3.11

3.11 CONVEYANCES – FROM CORPORATION

Problem A:

When should the authority and identity of officers of a corporation to execute a corporate deed not be questioned?

Standard A:

The authority and identity should not be questioned when the deed is executed by an officer, in the absence of known facts creating a doubt. This standard is not intended to apply to the requirements of an attorney for the purchaser from a corporation or an attorney for such a purchaser's mortgage lender at the time of the closing of the purchase or the loan.

(Amended November 11, 1972; prior inconsistent standard first effective November 1, 1952 and amended at various times)

Problem B:

Is a corporate deed sufficiently executed where the name of the corporation does not appear in the signature or certificate of acknowledgment?

Standard B:

The title is not unmarketable where the deed appears to be signed and acknowledged by the corporate officers if the deed as a whole purports to be that of the corporation.

(Effective May 19, 1955)

Problem C:

When should a corporate existence (either foreign or domestic) not be questioned?

Standard C:

Where an instrument of a corporation appears in the title, the examining attorney should, if it is an Ohio corporation (or incorporated in another state which has easily accessible records which are free or available at nominal cost) determine if the corporation was legally in existence at the time of the conveyance. If such corporation was not in existence at such time, the ramifications should be determined with reference to Chapter 1701 of the Ohio Revised Code (or similar provisions of the law of the state of incorporation). If the corporation's existence cannot be determined as of the date of the instrument, and the instrument has been of record for a period of at least seven years, and the instrument is executed in proper form, the examining attorney may assume that the corporation was legally in existence at the time the instrument took effect.

(Amended April 27, 2018; originally effective May 11, 1967)

OTS 3.12

3.12 CONVEYANCES – RIGHT TO PURCHASE

Problem A:

When should a recital, contained in an instrument in the chain of title, of a right to purchase under a contract by a person otherwise a stranger to the title, no longer be considered a cloud?

Standard A:

After the instrument containing the recital has been of record for 15 years, provided the real property has been apparently conveyed to a bona fide purchaser since the date of such instrument.

(Effective May 19, 1955)

OTS 3.13

3.13 CONVEYANCES – DEED FROM STRANGER

Problem A:

Is a cloud on title created by a deed or encumbrance from a stranger to the record title?

Standard A:

A stray deed or other interloping instrument does not create a cloud on the title unless its recitals or other known circumstances are sufficient to put a purchaser on inquiry. Other known circumstances should include the passage of time and consideration of the Ohio Marketable Title Act (Ohio Revised Code Sections 5301.47 to 5301.56).

Comment A:

The examining attorney must consider the possible application of the Ohio Marketable Title Act, under which a stray deed can become the "root of title" to a competing chain of record title that is superior to the chain of transactions being searched.

(Amended May 15, 1991; originally effective May 19, 1955)

OTS 3.14

3.14 CONVEYANCES – DEEDS SUBSEQUENT TO MORTGAGE

Problem A:

Is a mortgage still considered to be an encumbrance on the title when, after the mortgage is recorded, the mortgagor conveys fee simple title of the real property to the mortgagee?

Standard A:

No, unless the mortgage or the deed conveying title to the mortgagee indicates that a merger of title will not occur.

(Amended April 27, 2018; originally effective May 19, 1955)

OTS 3.15

3.15 CONVEYANCES – QUIT CLAIM DEEDS

Problem A:

Does the fact that a conveyance necessary to the chain of title, including the conveyance to the proposed grantor, is a quit claim deed impair marketability or necessitate inquiry or corrective action?

Standard A:

No.

(Effective November 12, 1960)

OTS 3.16

3.16 CONVEYANCES – FEDERAL REVENUE STAMPS

(Repealed October 27, 1986)

OTS 3.17

3.17 CONVEYANCES – BY HEIRS OR DEVISEES

Problem A:

Does the fact that a decedent's estate has not been closed prevent his heirs or devisees, whose title is evidenced by a certificate of transfer, from conveying good title?

Standard A:

No, provided the time period for will contests and presentation of claims has passed and provided any estate or inheritance tax liens to which the estate is subject are either discharged or the real property in question released therefrom, and provided one or more partial accounts of the fiduciary have been approved which appear to show payment of all claims against the estate or releases of the claims are filed.

Comment A:

If decedent has been dead more than ten years, any estate tax liens will have expired. Ohio Revised Code Section 5731.38 (Ohio Estate Tax) and Sec. 6324(a)(I) of the Internal Revenue Code (Federal Estate Tax). If administration proceedings have been pending four years or more, consideration should be given to the potential effect of Ohio Revised Code Section 2117.36, with respect to claims against the estate.

Depending on the circumstances of the particular case, other things may sometimes prevent the heirs or devisees from conveying good title, for example a pending or possible adversary proceeding, a statutory bar to taking an inheritance or devise, an unresolved question concerning the identity of the heirs or devisees, one or more competing rights of the surviving spouse, or unpaid legacies which are a charge against the real property in question.

(Amended April 27, 2018; originally effective May 11, 1967)

OTS 3.18

3.18 CONVEYANCES – UNRECORDED DISCLOSED TRUSTS

Problem A:

Should an objection be made to a title dependent upon a disclosed trust not of record?

Standard A:

Yes, unless there is placed of record either (1) excerpts of the operative provisions of the trust agreement, together with an affidavit that it is a true copy of the text in the trust agreement, or (2) a Memorandum of Trust in conformity with the requirements of Ohio Revised Code Section 5301.255. (Ohio Revised Code Section 5301.01, effective August 10, 1994 (as amended); Ohio Revised Code Section 5301.255, effective, as amended, January 17, 2008).

Comment A:

A disclosed trust is one in which some identifying information about the trust beyond the word “Trustee” or “Agent” is used to indicate that the real property is held in trust. (Ohio Revised Code Section 5301.03, effective October 1, 1953).

(Amended May 10, 2019; amended May 13, 2009; amended May 18, 1995; originally effective November 15, 1986)

OTS 3.19

3.19 CONVEYANCES – RE-RECORDING OF DEFECTIVE DEED, AFTER CORRECTIONS

Problem A:

Under what circumstances may a deed containing errors of content or execution be corrected and re-recorded, and be acceptable for clearing of title?

Standard A:

The answer depends on the nature of the defect and whether the deed is acknowledged before recording. A change made to alter the substance of the document is ineffective.

Whenever a document is re-recorded to make a correction, the re-recorded document should contain on the face of the document a statement of the changes that were made.

Comment A:

The following are examples of changes that are permissible without a reacknowledgement by the grantor: to correct a spelling or to add an initial in the name of the grantor who was in title or an initial of the name of the intended grantee; to show the correct tax-mailing address of the grantee; to make a correction in the address or the tax parcel number of the subject real property to conform such information to the legal description; to correct a minor defect in the attestation or acknowledgment.

If a grantor reacknowledges the instrument before it is recorded, then a more significant error or omission may be corrected, such as a missing marital status may be recited, or a correction may be made to correct serious errors or omissions in a legal description.

In the event that an instrument erroneously conveys an interest owned by a grantor to a grantee, a corrective deed, even if reacknowledged, is insufficient to correct the error. The following are examples of changes that are impermissible and cannot be corrected by re-recording a prior document: to add or delete a grantee; to make substantive changes in the legal description — for example: Lot 1 conveyed, whereas Lot 11 intended to be conveyed; to add or delete restrictive covenants or easements.

Particular circumstances may alter generalities. A grantee may not confer good title on himself or herself by adding or deleting a few words to a deed and recording it; nor may a grantor diminish (although he or she may augment) a title previously conveyed.

(Amended May 10, 2019; originally effective May 18, 1994)

OTS 4.1

4.1 ENCUMBRANCES – COURT COSTS

Problem A:

When should an objection be made to a title because of unpaid court costs assessed against one or more owners in the chain of title?

Standard A:

An objection should be made only when such unpaid costs are a lien.

Comment A:

Court costs are a lien only when execution has been duly levied on the real property or when a certificate of judgment has been filed during the judgment debtor's ownership of the real property.

(Effective November 1, 1952)

OTS 4.2

4.2 ENCUMBRANCES – ESTATE TAX

Problem A:

Is a decedent's real property divested of the lien of the state estate tax by a conveyance by an executor acting pursuant to a testamentary power of sale?

Standard A:

Yes, provided the conveyance is to a bona fide purchaser for an adequate consideration.

Comment A:

See Ohio Revised Code Section 5731.02 (A) as amended, the levy of an estate tax is limited to persons dying on or after July 1, 1968 and before January 1, 2013. Further, the lien is divested generally after ten years from the date of decedent's death. Ohio Revised Code Section 5731.38.

(Amended May 10, 2019; amended November 11, 1972 and at various times; originally effective May 21, 1953)

Problem B:

Should a title be considered unmarketable in the hands of a purchaser, encumbrancer or lessee for value, as disclosed by the record, whose grantor acquired title by gift, the donor of which gift survived the gift by more than three years?

Standard B:

No. *See Ohio Revised Code Section 5731.05 (C) (1).*

(Amended May 10, 2019; amended November 13, 1971; originally effective November 16, 1957)

OTS 4.3

4.3 ENCUMBRANCES – RELEASE BY ATTORNEY

Problem A:

Does the attorney for a judgment creditor have implied authority to release specific real property for a lien, or to satisfy the judgment upon partial payment, or to assign the judgment?

Standard A:

Only the judgment creditor may assign, waive or partially release the judgment. The attorney may release the judgment only if the judgment is paid in full. An attorney for a judgment creditor by reason of the limited agency relating to the case, cannot, without specific authority from his or her client, assign, waive or partially release the judgment. See *Card v. Walbridge*, 18 Ohio 411 (1849); *Wilson, et al. v. Jennings, et al.*, 3 Ohio St. 528 (1854), *Beard v. Westerman*, 32 Ohio St. 29 (1876); *Countee v. Armstrong*, 9 Dec. Rep. 62 (1876); *Holdon v. Lippert*, 4 O.C.D. 527, 12 C.R. 767 (1894); and *Harrison v. Kirk Bride*, 16 O.D. 389 (1883).

(Amended November 16, 1957; originally effective May 21, 1953)

OTS 4.4

4.4 ENCUMBRANCES – LEASES

Problem A:

May an examining attorney omit from the examining attorney's opinion reference to a recorded lease, other than a coal lease or an oil and gas lease, when the term expressed in the lease has expired?

Standard A:

Yes, in the absence of notice of renewal arising from possession, instruments of record, or otherwise.

(Amended May 10, 2019; originally effective November 12, 1960)

Problem B:

Should a coal lease or an oil and gas lease be shown even if satisfactory evidence is furnished that rentals are in default and that minerals are not being produced?

Standard B:

Yes.

Comment B:

As to oil and gas leases, *see* Ohio Revised Code Section 5301.332.

(Amended May 10, 2019; amended May 20, 1965; originally effective May 21, 1953)

OTS 4.5

4.5 ENCUMBRANCES – FORECLOSED MORTGAGES

Problem A:

Should any record of a mortgage release in the office of the county recorder be required when the mortgaged real property has been conveyed pursuant to a proper foreclosure sale?

Standard A:

No.

(Effective May 21, 1953)

Problem B:

Should a title to real property be considered unmarketable if any lien thereon has been judicially extinguished but no record of its cancellation has been noted on the record of such lien?

Standard B:

No. The examining attorney is, however, reminded of the Federal right of redemption pursuant to 28 United States Code Section 2410(c), which provides, in pertinent part, as follows:

Where a sale of real estate is made to satisfy a lien prior to that of the United States, the United States shall have one year from the date of sale within which to redeem, except that with respect to a lien arising under internal revenue laws, the period shall be 120 days or the period allowable for redemption under state law, whichever is longer...

to which reference should be made.

(Standard B was amended September 1999; originally effective May 16, 1957)

OTS 4.6

4.6 ENCUMBRANCES – JUDGMENT AGAINST HEIRS

Problem A:

Where a will authorizes the executor to sell real property and sale is made pursuant to such power, do judgments against the heirs or devisees affect the marketability of title to the real property so sold?

Standard A:

No.

(Effective November 12, 1960)

OTS 4.7

4.7 ENCUMBRANCES – BUILDING AND USE RESTRICTIONS WITH FORFEITURE PROVISIONS

Problem A:

After what period of time should a breach of a building and use condition or restriction which entails a forfeiture of title be disregarded?

Standard A:

If the condition or restriction remains valid under the Ohio Marketable Title Act (Ohio Revised Code Sections 5301.47 to 5301.56), an objection should be made.

(Amended May 10, 2019; originally effective November 12, 1960)

OTS 4.8

4.8 ENCUMBRANCES – SUBSCRIPTION OF SUBDIVISION PLAT BY LIEN HOLDERS

Problem A:

Is the statutory dedication of a subdivision plat affected by the failure of lien holders to join in the dedication?

Standard A:

No.

Comment A:

The rights of lien holders continue unaffected by the platting and dedication. As such, any rights of the landowner in and to the real property that are dependent upon the plat and the dedication thereof are subordinate to the lien(s).

(Amended May 10, 2019; originally effective May 8, 1969)

OTS 4.9

4.9 ENCUMBRANCES – CURRENT AGRICULTURAL USE VALUATION

Problem A:

Is the examining attorney under a duty to report that the real property has been certified for current agricultural use valuation for reduced taxation?

Standard A:

Yes.

Comment A:

See Ohio Revised Code Section 5713.31 et seq., under which an owner of real property may file annually an application or a renewal that the real property be valued, for real property tax purposes, at the value such real property has for agricultural use. However, if the real property fails to comply with the statute it may lose the agricultural tax status and become subject to a recoupment in an amount equal to the tax savings during the three preceding tax years.

(Amended July 24, 2020; originally effective November 9, 1991)

OTS 4.10

4.10 ENCUMBRANCES – MORTGAGE RELEASE BY CORPORATION

Problem A:

When should the authority and identity of a person or persons executing a mortgage release on behalf of a corporate mortgagee be questioned?

Standard A:

The authority and identity should not be questioned in the absence of known facts creating a doubt.

(Effective May 9, 2001)

OTS 4.11

4.11 ENCUMBRANCES – RELEASE OF RE-RECORDED MORTGAGES

Problem A:

When a mortgage has been re-recorded and there is a valid release by separate instrument of record making reference to the volume and page of either of the original recording or of the re-recording of the mortgage, but not both, should the mortgage be treated as having been properly released?

Standard A:

Yes, but only if such release was recorded after the re-recording of the mortgage.

Comment A:

Mortgages are re-recorded to correct clerical or scrivener's errors, and re-recording does not alter, amend or otherwise change the obligations of the mortgagors under the mortgage. Historically, mortgages were often released by marginal notation, which clearly indicated the mortgagee's intention to release the mortgage as recorded, and as re-recorded, since the notation of release was on the original instrument. Now, pursuant to Ohio Revised Code Section 5301.28, county recorders may, and frequently do, require that all releases of mortgages be made by separate instrument. Those separate instruments may, in error, fail to reference the original volume and page of recording of the mortgage and/or the volumes and pages of any re-recordings thereof. Such defects in releases of mortgages being made by separate instruments do not cause the subject real property to be considered unmarketable and an examining attorney may omit from the examining attorney's opinion reference to any such re-recorded mortgage if: (a) a release of mortgage by separate instrument correctly references either the volume and page of the recording or of any re-recording thereof, and (2) such release was recorded after all re-recordings of the mortgage. If the release was recorded before the mortgage was re-recorded, the re-recording of the mortgage may constitute an attempt by the mortgagee to assert a mortgage canceled in error, and in such an instance the re-recorded mortgage should still be identified as an encumbrance against the real property.

(Effective November 7, 2003)

OTS 4.12

4.12 ENCUMBRANCES – ASSIGNMENT OF RENTS AND LEASES

Problem A:

When an assignment of rents and/or leases instrument has been recorded contemporaneously with a mortgage and the mortgage has been cancelled or released of record but not the corresponding assignment of rents or leases, should the assignment of rents and/or leases be treated as having been released?

Standard A:

Yes, unless other facts in the recorded instruments indicate a contrary intention and only if such release was recorded after the recording of the assignment of rents and/or leases and the legal description for the corresponding mortgage describes the same real property set forth in the assignment of rents and/or leases.

(Effective May 10, 2019)

OTS 5.1

5.1 PROBATE COURT PROCEEDINGS – INVENTORY

Problem A:

Does omission of the real property from the inventory and appraisement cast a cloud on a title?

Standard A:

No, such omission standing alone does not affect marketability.

(Effective November 1, 1952)

OTS 5.2

5.2 PROBATE COURT PROCEEDINGS – DEBTS AFTER FOUR YEARS

Advisory Note: This Standard was eliminated effective July 24, 2020. Its number has been retained solely as a “placeholder.”

OTS 5.3

5.3 PROBATE COURT PROCEEDINGS – CERTIFICATES OF TRANSFER

Problem A:

Do errors in a certificate of transfer from probate court affect the title?

Standard A:

No. Objections on account of errors in a certificate of transfer should not be made (a) unless the errors are such as to cause future difficulties to a client in obtaining a transfer on the real property tax records, or (b) unless the terms of the certificate raise a reasonable doubt of the facts of ownership shown by other records of title.

(Amended May 10, 2019; originally effective May 21, 1953)

OTS 5.4

5.4 PROBATE COURT PROCEEDINGS – SUMMARY LAND SALE

Problem A:

Should an objection be made for failure to give notice of any kind in summary land sale proceedings pursuant to Ohio Revised Code Section 2127.11?

Standard A:

No, as to the service of summons that is set forth in Ohio Revised Code Section 2127.14. However, not all notice requirements are eliminated, as some form of proper notice would need to be given to any party that has an interest in or a lien against the real property, unless such party has waived notice.

Problem B:

Is a summary land sale valid when prosecuted under Ohio Revised Code Section 2127.11 by a commissioner appointed by the court as provided by Ohio Revised Code Section 2113.03 in estates under \$3,000?

Standard B:

No, only an executor or administrator is authorized to institute summary land sale proceedings.

(Amended July 24, 2020; amended January 18, 1991; originally effective May 21, 1953)

OTS 5.5

5.5 PROBATE COURT PROCEEDINGS – RECORDING OF OUT-OF-COUNTY PROCEEDINGS

Problem A:

If administration proceedings in an Ohio estate are not admitted to record in the county where the real property is situated, should an objection be made to a title evidenced by a certificate of transfer, or a deed of the executor or administrator of such out-of-county proceedings?

Standard A:

Yes.

Comment A:

Before a title can be considered to be marketable, it is necessary to admit to record in the probate court of the county where the real property is situated at least those portions of the out-of-county proceedings which are necessary to show that the title which was derived through such deed or as noticed by such certificate of transfer was at the time in question duly authorized, and with respect to any such deed, the executor or administrator was duly appointed, qualified, and acting in the fiduciary capacity described in the deed. As a general matter, those portions of the proceedings necessary to evidence authority for a certificate of transfer or for the executor or administrator include authenticated copies of the admission to probate with copy of the will, if testate, pursuant to Ohio Revised Code Section 2107.21 and the appointment of the executor or administrator. In the absence of a testamentary power of sale or an administrator when there is no will annexed with power of sale, there should also be an appropriate order of court authorizing the sale by the fiduciary, or a power of sale by written consent pursuant to Ohio Revised Code Section 2127.011.

(Amended May 10, 2019; amended November 13, 1971; prior conflicting standard effective May 11, 1967)

OTS 5.6

5.6 PROBATE COURT PROCEEDINGS – MENTAL ILLNESS PROCEEDINGS

Problem A:

Where the indices of a probate court contain a notation of the name of a person in the chain of title to real property but no disclosure of the person's status is available because of Ohio Revised Code Section 5122.31, or any similar provision, should such notation alone cause an objection to be made as to the competency of such persons?

Standard A:

No.

Comment A:

Unless it affirmatively appears from the information disclosed, or permitted to be disclosed without a formal court order, that the probate court has denied or removed such person's rights to contract or other "civil rights" either in whole or in part, including the right to convey or contract for the conveyance of real property, an index notation alone is not sufficient information upon which to base an objection.

(Effective May 12, 1983)

OTS 6.1

6.1 PROCESS – SERVICE BY PUBLICATION WHEN NAME AND ADDRESS OF DEFENDANT ARE UNKNOWN

Problem A:

Where both the name and residence of a defendant are unknown to the plaintiff, must the plaintiff seek a court order respecting the publication of notice in addition to the affidavit required in Ohio Rule of Civil Procedure 4.4?

Standard A:

Yes. Rule 4.4(A) of the Ohio Rules of Civil Procedure (adopted July 1, 1970) did not overrule Ohio Revised Code Section 2703.24 (amended effective October 4, 1955), which requires that, when it appears by affidavit that the name and residence of a necessary party are unknown to the plaintiff, the court shall make an order respecting the publication of notice.

(Amended May 15, 1991; originally effective November 17, 1956. Original standard has been incorporated in Civil Rule 4.4(A))

OTS 6.2

6.2 SERVICE BY PUBLICATION – NECESSITY TO IDENTIFY REAL PROPERTY

Problem A:

Where service of process is had by publication in an action relating to title to real property must the publication identify the real property?

Standard A:

Yes.

Comment A:

Rule 4.4 of the Ohio Rules of Civil Procedure, “Process: Service By Publication,” does not require that the publication contain a legal description of the real property to be subjected to the action. Metes and bounds descriptions are not required. Other methods of identification may be used. Reference to intersections, roads and streets, official municipal street numbers, postal addresses, county designated house numbers, county auditor's permanent parcel numbers, or other like descriptions, suffice.

(Amended May 10, 2019; amended January 18, 1991; originally effective November 13, 1971)

OTS 7.1

7.1 COURT PROCEEDINGS – VERIFICATION OF PLEADINGS

Problem A:

Does the omission or irregularity of a verification of a pleading render a title unmarketable when title is based upon a subsequent order in the case?

Standard A:

No.

(Amended May 10, 2019; originally effective May 16, 1957)

OTS 7.2

7.2 COURT PROCEEDINGS – RELIANCE ON FINAL ORDERS

Problem A:

May a final order be relied upon as affecting title in whatever manner is stated in that order, without reviewing any of the other documents filed in the case?

Standard A:

No.

Comment A:

The documents filed in the case should be reviewed to confirm that the proceedings were in order and that there is a final order. For example, care should be taken to ensure that all parties that had an interest in the real property were named and properly served, if the final order would have any effect on the interests of those individuals or entities. Consideration should also be given to whether the time to appeal from the final order has expired and whether a stay of execution of the final order has been sought or other execution has been made.

(Effective May 10, 2019)

OTS 7.3

7.3 COURT PROCEEDINGS – LIS PENDENS

Problem A:

May court proceedings that are not final affect title to real property?

Standard A:

Yes, court proceedings that are not final may affect title to real property if the doctrine of lis pendens applies to those court proceedings. Any interest acquired in real property after lis pendens applies is taken subject to the outcome of the case. *See*, Ohio Revised Code Section 2703.26 and interpretive cases.

(Effective July 24, 2020)

OTS 8.1

8.1 MARKETABLE TITLE ACT – ROOT OF TITLE

Problem A:

Can a conveyance or title transaction in the chain of title of a person which otherwise qualifies as a root of title but which results from defective legal proceedings be deemed a proper root of title?

Standard A:

Yes.

Comment A:

It is unnecessary to examine the legal proceedings which form the basis for the conveyance or title transaction in question.

(Amended July 24, 2020; amended November 9, 1991; originally effective November 15, 1969)

OTS 9.1

9.1 OHIO RULES OF CIVIL PROCEDURE – RETURN RECEIPT UNDER RULE 4

Problem A:

Is it a requirement that the return receipt be signed by the addressee?

Standard A:

No.

Comment A:

Certified mail service as provided under the Ohio Rules of Civil Procedure does *not* require "actual service" upon the defendant, but is effective upon a "certified delivery." Due process is effectively met by the standard delineated in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, and *In re Foreclosure of Liens*, 62 Ohio St. 2d 333. The standard provides that for certified mail service to be valid, such service "...must be *reasonably calculated under all the circumstances*, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objection." (Emphasis added.) *Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 51, 413 N.E.2d 1182 (1980).

(Amended November 11, 1972, and further amended effective November 7, 1981. Standard A originally effective April 29, 1971)

Problem B:

When the return receipt is signed by someone other than the addressee, is it a requirement that the addressee's name appear on the return receipt as the post office provides?

Standard B:

No.

Comment B:

However, in multiple-defendant cases each return receipt should show data sufficient to enable the examining attorney to identify the addressee to whom the receipt pertains. If the name of the addressee does not appear on the receipt or is illegible, the examining attorney should attempt to identify the addressee by comparing the certified number, the address where delivered, the postmark or other data shown on the receipt with the clerk's records concerning the mailing and with the other return receipts in the file.

"Certified mail service ... is valid where the envelope containing the documents to be served is

delivered to a person other than the defendant at the defendant's address." *Mitchell v. Mitchell*, 64 Ohio St. 2d 49, 51, 413 N.E.2d 1182 (1980).

Further, both Rule 4.1 and Rule 4.3 of the Ohio Rules of Civil Procedure provide that once the clerk has properly addressed the envelope to the person to be served at his/her last known address, affixed postage and sealed the envelope as certified mail, return receipt requested, the clerk must instruct the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

(Amended November 7, 1981; amended November 11, 1972. Standard B originally effective April 29, 1971)

Problem C:

Is it a requirement that signatures on the return receipt be legible?

Standard C:

No.

Comment C:

The illegibility of a signature should be considered objectionable only when the identity of the signatory would be especially significant (as in Title Standard 9.4 for example) and such identity is not otherwise ascertainable from the record.

Problem D:

Is it a requirement that the return receipt bear the certified number?

Standard D:

No.

Comment D:

But see Comment B, above.

Problem E:

Is it a requirement that the return receipt show: (1) to whom delivered, (2) the date of delivery, and (3) the address where delivered, as the post office form provides?

Standard E:

No.

Comment E:

The receipt should ordinarily be considered sufficient if it appears to show that delivery was made by the postal authorities either to the addressee or to another for the addressee, notwithstanding the fact that it is incompletely or improperly filled out. See Comment B, above.

(Amended November 11, 1972; Standards C, D, and E originally effective April 29, 1971)

Problem F:

Is it a requirement that the return receipt be a part of the file?

Standard F:

Yes.

Comment F:

If the receipt is missing from the file, the examining attorney, in an appropriate case, may wish to rely upon the docket entry made by the clerk in accordance with Rule 4.1 or Rule 4.3 (B)(1) of the Ohio Rules of Civil Procedure with respect to the fact of notification.

Rules 4.1 and 4.3(B)(1) of the Ohio Rules of Civil Procedure specifically provide that "the clerk shall file the return receipt or returned envelope in this action."

(Amended November 7, 1981; amended November 11, 1972. Standard F originally effective April 29, 1971)

Problem G:

When the return receipt is not signed by the addressee, is it necessary that inquiry be made concerning the identity of the recipient, the relationship to the addressee or the connection with the place of delivery?

Standard G:

No, unless there are other factors which would be sufficient to create a reasonable doubt in the mind of the examining attorney concerning the propriety of the delivery.

Comment G:

The fact that the record fails to reveal any apparent relationship between the recipient and the addressee or the place of delivery is not of itself sufficient ground for questioning the propriety of the delivery. In the absence of other circumstances which would create a reasonable doubt in the mind of the examining attorney, it should ordinarily be presumed that delivery was made by the postal authorities to an appropriate person at a proper address. If the circumstances as a

whole are sufficient to create such a doubt, satisfactory proof of ultimate delivery to the addressee should be required. If furnished, such proof should be made a matter of record. (See Comment A, above.)

(Amended November 11, 1972; originally effective April 29, 1971)

OTS 9.2

9.2 PROCESS - NAME UNKNOWN

Problem A:

Does Rule 15(D) of the Ohio Rules of Civil Procedure require personal service in a case covered by Ohio Revised Code Section 2703.24?

Standard A:

No.

(Effective April 29, 1971)

OTS 9.3

9.3 OHIO RULES OF CIVIL PROCEDURE – OUT-OF-COUNTY PROCEEDINGS

Problem A:

Should an objection be made to a title if a certified copy of the proceedings is not filed with the certified copy of the judgment transmitted in accordance with Rule 3(G) of the Ohio Rules of Civil Procedure?

Standard A:

Yes.

(Effective July 24, 2020)

OTS 9.4

9.4 OHIO RULES OF CIVIL PROCEDURE – DOMESTIC RELATIONS PROCEEDINGS

Problem A:

Should an objection be made to a title derived through an uncontested divorce, alimony or annulment action when the certified mail return receipt or the sheriff's return of service in the action shows that summons was served on the defendant by delivering it to the plaintiff?

Standard A:

Yes.

Comment A:

In such an action under the circumstances described, proof that the defendant actually received the summons should be required. If furnished, such proof should be made a matter of record.

(Effective November 13, 1971)

OTS 9.5

9.5 OHIO RULES OF CIVIL PROCEDURE – OUT-OF-STATE DEFENDANTS

Problem A:

With respect to an action affecting title to real property in which service by publication is authorized by law, when service of summons has been attempted on an alleged out-of-state defendant by certified mail, but the envelope is returned with an endorsement showing failure of delivery, may service be completed by filing an affidavit of due diligence?

Standard A:

No.

Comment A:

In such an action under the circumstances described, service should be effected by some other authorized method, including service by publication if the whereabouts of the defendant prove to be unknown.

Comment B:

Prior to July 1, 2012, Rule 4.3(B) of the Ohio Rules of Civil Procedure permitted service outside the state to be completed by the filing of an affidavit of due diligence when service by certified or express mail was returned showing failure of delivery. Rule 4.3(B) was amended July 1, 2012 to, among other changes, eliminate the provision permitting service outside the state to be completed by the filing of an affidavit when service by certified or express mail is returned showing failure of delivery. The prior version of this Standard did not accept such an affidavit as valid service and the Standard remains unchanged for actions commenced on or after July 1, 2012.

(Amended July 24, 2020; originally effective November 13, 1971)

OTS 10.1

10.1 CONDOMINIUMS – BYLAWS

Problem A:

If the bylaws of a condominium are amended must the declaration be amended?

Standard A:

Yes.

Comment A:

The bylaws are attached to the declaration and for the bylaws to be amended, it is necessary to amend the declaration in the manner provided for in the declaration which normally requires the affirmative vote of unit owners exercising not less than 75% of the voting power. (Ohio Revised Code Sections 5311.05(B)(10), 5311.06(A)(2) and 5311.08 (B))

Problem B:

Must the bylaws be signed, witnessed and acknowledged by the owner?

Standard B:

No.

Comment B:

A true copy of the bylaws must be attached to the declaration. Chapter 5311 of the Ohio Revised Code contains no requirement as to the execution of the bylaws. However, *see* Ohio Revised Code Section 5311.05(A) as to the requirements for execution of the declaration.

(Amended July 24, 2020; amended May 13, 2009 to revise statutory references changed by 2004 amendment to the condominium statute; originally effective May 20, 1976)

OTS 10.2

10.2 CONDOMINIUMS – DRAWINGS

Problem A:

Ohio Revised Code Section 5311.07(B) provides that each drawing shall bear the certified statement of a registered professional surveyor and registered architect or registered professional surveyor and registered professional engineer. May the certified statement be made by one person acting in both of these capacities, if that person is so qualified?

Standard A:

Yes.

Comment A:

If one individual does perform both functions that person's certification should clearly show that he or she is making the statement in both capacities.

Problem B:

Must the drawing show that the building or buildings are substantially completed when the declaration is filed?

Standard B:

Yes, subject to the following comment.

Comment B:

Ohio Revised Code Section 5311.07(B)(1) provides that a registered architect or registered professional engineer certify that the drawings accurately show each building built or constructed. Accordingly, the improvements must be finished to such an extent that the drawings can identify three dimensional boundaries of the cubicles in space comprising the units. Ohio Revised Code Section 5311.07(D) permits the notation "NOT YET COMPLETED" to indicate improvements "other than units" and only with respect to improvements which have not been substantially completed. However, such exception is permitted only with respect to improvements which "have been begun".

The drawings for commercial units that do not have wall surfaces shall show the monumental perimeter boundaries of those units. Ohio Revised Code Section 5311.07(A)(3).

(Amended July 24, 2020; amended May 13, 2009 to revise statutory references changed by 2004 amendment to the condominium statute; Standard A and Standard B originally effective May 20, 1976)

Problem C:

Should the drawings show the building or buildings in such detail that the boundaries of the cubicles in space comprising the units can be located and reconstructed therefrom?

Standard C:

Yes.

Comment C:

The detail so required is no more than that required for a proper plat of a boundary survey. A plat of a boundary survey is sufficiently detailed if it can be used to locate and reconstruct the boundaries of the real property in the field. Similarly, the drawings of the building or buildings are sufficiently detailed in this respect if the three dimensional boundaries of the cubicles in space comprising the units can be located and load bearing walls are shown. Ohio Revised Code Section 5311.07 (A)(4).

(Amended July 24, 2020; amended May 13, 2009 to reflect the 2004 amendment to the condominium statute; Standard C originally effective November 13, 1976)

OTS 10.3

10.3 CONDOMINIUMS – DECLARATION

Problem A:

Must the undivided interests in the common elements appertaining to each unit that are set forth in the declaration total one (or one hundred percent)?

Standard A:

Yes.

Comment A:

Ohio Revised Code Section 5311.04 provides that the common elements shall be owned by the unit owners as tenants in common and shall remain undivided, that the undivided interest of the units in the common elements shall be those interests set forth in the declaration, and that such interests shall not be altered except by an amendment to the declaration approved by all of the unit owners affected. If such total of such interests equals less than one (or one hundred percent), an interest in the common elements would remain in the declarant after the declarant no longer owned any of the units. If the total of such interests equals more than one (or one hundred percent), it would be impossible to determine the respective interests of the unit owners in the common elements in the absence of a corrective amendment unanimously approved by the unit owners.

(Amended July 24, 2020; amended May 13, 2009 to reflect the 2004 amendment to the condominium statute; Standard C originally effective November 13, 1976)

OTS 11.1

11.1 BANKRUPTCY – TITLE THROUGH BANKRUPTCY ESTATE

Problem A:

If the chain of title indicates that the real property was conveyed through a bankruptcy proceeding, or is/was subject to a bankruptcy proceeding, should the examining attorney confirm that a grantor had authority to convey the real property?

Standard A:

Yes.

(Effective July 24, 2020)

OTS 11.2

11.2 BANKRUPTCY – TITLE THROUGH FORECLOSURE DURING PENDENCY OF BANKRUPTCY PROCEEDING

Problem A:

Should an objection be raised where title is conveyed through a foreclosure proceeding during the pendency of a debtor/defendant's bankruptcy case?

Standard A:

Yes, objection should be raised unless the foreclosure proceeding or the underlying bankruptcy proceeding evidences that: a) the bankruptcy court has granted relief from stay, b) the real property has been abandoned, or c) there exists other authority to continue the foreclosure and to convey the real property.

Comment A:

If a relief from stay is granted (or if no automatic stay was in effect) and there has not been an abandonment, the bankruptcy trustee must have been named in the foreclosure proceeding.

(Effective July 24, 2020)

OTS 11.3

11.3 BANKRUPTCY – PRE-PETITION BANKRUPTCY LIENS

Problem A:

Should an objection to a title be raised when there are liens encumbering the real property that were recorded before a current or former owner of the real property filed a bankruptcy petition?

Standard A:

Yes, an objection to a title should be raised unless the confirmed plan, or the confirmed and completed plan, where applicable, and/or a final, non-appealable order specifically avoiding the liens has been entered by the bankruptcy court.

(Effective July 24, 2020)

OTS 11.4

11.4 BANKRUPTCY – PROPERTY NOT LISTED IN BANKRUPTCY ESTATE

Problem A:

Should an objection to a title be raised when a known bankruptcy case fails to include the real property in the petition?

Standard A:

Yes.

Comment A:

Investigation and assessment should be performed to determine the effect on title due to such failure.

(Effective July 24, 2020)