

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 raised 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 a title objection be made 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.

(Effective May 19, 1955; as amended April 27, 2018)

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 Revised Code Section 2103.021 and if no other instrument containing a description of such lands has been recorded in the office of the recorder of the county in which the 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.

Comment E:

Revised Code Sec. 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 lands has been recorded in the office of the recorder of the county in which the 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.

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