



# **Title Examination Process: *Role of Title Standards***

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Published on [www.lorman.com](http://www.lorman.com) - November 2020

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# TITLE EXAMINATION PROCESS

## A. Role of Title Standards

### 1. Practicing attorneys and the analysis of titles

Attorneys have had a longstanding central, professional role in the examination of real estate titles. Historically, the attorney's role in real estate transactions included the practice of reviewing a sequence of deeds or obtaining from an abstractor an abstract of all documents of record pertaining to the particular real property. The attorney would then render an opinion of the validity of the chain of title and would state who owned the property, and what other outstanding encumbrances affected the property. Where applicable statute and case law did not provide sufficient directives over potential title issues, there was room among counsel for the parties to differ about a wide array of issues that grew out of the examination, though routine, of the title.

As a measure to resolve such issues, in many states the state bar association adopted mandatory title standards for members of the bar. In those states where title standards remain in effect, title standards are designed to require that examining attorneys, whose opinions are in turn relied upon by clients, which include title insurers and title agencies, adhere to a prevailing statewide approach or to encourage consistency. The following is an example of a title standard:

Problem: Can one partner execute a conveyance on behalf of the partnership?

Standard: Yes. When real property is held by a partnership, and a conveyance is made on behalf of the partnership by one or more but less than all of

the partners and the conveyance appears to be executed in the usual course of partnership business, it is presumed, in the absence of evidence to the contrary, that the conveyance was made by the partner or partners executing it for the purpose of carrying on in the usual way the business of the partnership. No further evidence of the authority of such partner or partners to execute the instrument should be required by the title examiner.

Iowa Land Title Standards, Iowa State Bar Association, January 15, 2006 (8th ed.) 63.

In other states, bar association title standards originate with county bar associations, are advisory only or, depending upon the property's valuation and the insured's property interest, have comparatively less influence upon title insurance providers that issue title insurance. Several states focus directly on title insurance providers, by prohibiting the issuance of title insurance unless and until the title insurer has caused to be made a reasonable examination of the title. One state prohibits insurers from issuing title insurance altogether. Evidence suggests that in recent years, regardless of title standards and applicable laws, title insurers have streamlined public land records search procedures when insuring lenders, while retaining traditional search procedures when insuring owners, resulting in a growing divergence of premium rates for each.

## 2. Statute laws

Search procedures adopted by experienced real estate counsel and title insurance providers are invariably dependent largely upon the statutes of the state, and in

particular, upon any marketable title legislation and statutes of limitation that time-bar property rights and lien enforcement. For example, if state statute law bars the enforcement of mortgages after the passage of thirty (30) years from the recordation of the mortgage, then real estate counsel and title insurance providers will adhere to a standard that a search of the title extend to a minimum of a thirty-year time-span, so that all mortgages not time-barred are revealed by the title search. However, marketable title laws of the states, in contrast to corporation and commercial law, are decidedly non-uniform, resulting in title businesses that flourish statewide but only when technical or professional staff proficient in procedures and laws of the jurisdiction is available. Title offices remote from the site of the real estate they insure put themselves and their insurers at risk of claims exposure when conducting business in jurisdictions with which they lack expertise.

### 3. Recurring title issues

Title counsel and examiners are unlikely to excel at affording representation or analysis unless they develop and maintain a high degree of proficiency in the laws of the jurisdictions in which their firm practices or does business. Generally, the examiner must observe and adhere to statutes that address a wide array of recurring title issues, including:

- Claims of owners: Is the estate or interest of a party whose name appears in the chain of title as an owner, but who has not by a recorded deed relinquished or conveyed its right, time-barred barred by applicable statute?

- Unsatisfied mortgages: Has the time within which a foreclosure of a mortgage shall be brought elapsed?
- Restrictive covenants: Does applicable statute set a fixed duration for the enforcement of forfeiture and non-forfeiture restrictions, and if so, has the time elapsed? Does the statute provide for a renewal or extension of the restrictions, and if so, has the renewal period elapsed?
- Easements: Does applicable statute set a fixed duration for the enforcement of easements burdening real estate, and if so, has the time elapsed? Does the statute provide a recording requirement to preserve or extend the easements, and if so, has the recording requirement been met? Are any easements, such as prescriptive easements and utility easements, excepted from the time-bar of the statute?
- Concurrent ownership classifications: Subsequent to the recordation of a deed that identified two grantees by name but that lacked any concurrent ownership classification, a grantee has become deceased. Has the surviving grantee succeeded to the decedent's ownership interest by a right of survivorship, or alternatively, is the decedent's interest the property of the decedent's heirs at law and subject to administration in probate?
- Married persons: Does the failure of the spouse of the owner to have joined in by execution the owner's conveyance render the conveyance void or subject the grantee to rights of the spouse?

- Lack of authority: Is a conveyance bearing the signature of corporation officers without any accompanying resolution of the board of directors or shareholders sufficient evidence of the officer's authority to convey? Is a conveyance bearing the signature of limited liability company ("LLC") members without any accompanying LLC operating agreement or articles of organization sufficient evidence of the member's authority to convey?
- Constructive notice: Does the recording but improper entry in the recorder's index, of a conveyance impart, notwithstanding the improper indexing, constructive notice of the estate or interest of the grantee?
- After-acquired title: Does the lack of proper sequence in execution and recording of multiple conveyances among successive owners, including deeds and mortgages, some of which lack any warranties of title, subject the end grantee's interest to invalidity?
- Property descriptions: Does the failure of the description in a conveyance to adhere to statutory criteria pertaining to the description subject the conveyance to invalidity?
- Statutory liens: Has the time within which foreclosure or enforcement of statutory liens (e.g. mechanics' liens), tax liens and judgment liens shall be brought elapsed? Has the applicable statute of limitation been tolled or extended by subsequent action?

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