TITLE 2—APPENDIX

TEXAS TITLE EXAMINATION STANDARDS

For easier reference, the Title Examination Standards appear in their entirety in the pocket part of V.T.C.A., Property Code, vol. 1.

As Initially Adopted by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas on June 27, 1997 and Current Through September 1, 2005

By

THE TITLE STANDARDS JOINT EDITORIAL BOARD OF

THE SECTION OF REAL ESTATE, PROBATE AND TRUST LAW AND

THE OIL, GAS AND ENERGY RESOURCES LAW SECTION OF

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To the extent the Chapter XV standards have been completed and adopted, they are included herein. Upon completion of Chapter XV, the standards will be renumbered and the titles will be included in this table of contents.

PREFACE

TEXAS TITLE EXAMINATION STANDARDS

In 1989, the Council of the Section of Real Estate, Probate and Trust Law of the State Bar of Texas approved the formation of a committee to study the formulation and development of title examination standards. Through the newsletter of that Section, Section members were notified of the project. Lawyers from all parts of Texas responded evidencing their interest in working as active participants on this project. Subsequently, the Oil, Gas and Mineral Law Section (now the Oil, Gas and Energy Resources Law Section) of the State Bar of Texas asked to co-sponsor this project.

After substantial study of the use of title examination standards and many hours of drafting and meeting time, proposed standards were published for comment in 1996 in the newsletters of both of the sponsoring sections. Following the receipt of comments from lawyers across Texas, additional revisions were made by the committee (now the "Title Standards Joint Editorial Board") and the proposed standards were once again published for comment in the Spring of 1997.

At the State Bar of Texas Convention on June 27, 1997, 33 standards were approved by both the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Mineral Law Section. The initial standards constituted the beginning of title examination standards in Texas. Under current procedure, the Title Standards Joint Editorial Board, appointed by these two sections, meets at least semiannually to consider amendments to existing standards and additional standards. As with the initial standards, amendments or new standards are presented to the membership of these two sections prior to formal adoption; however, the Board makes changes to the comments and cautions as needed. In keeping with this process, the Comments, Cautions, Sources, and Histories have been updated from the initial Standards.

DISCLAIMER AND INTRODUCTION

Disclaimer: These title examination standards represent the collective consensus of The Title Standards Joint Editorial Board established by the Section of Real Estate, Probate and Trust Law and the Oil, Gas and Energy Resources Law Section of the State Bar of Texas. These standards should not be construed as reflecting the opinion of the State Bar of Texas, its officers, members or staff. These standards are presented with the understanding that neither the publisher nor the Joint Editorial Board is engaged in rendering legal services. In no event shall the Joint Editorial Board, the reviewers, or the publisher be liable for any direct, indirect, or consequential damages resulting from the use of this publication, including damages resulting from the sole or concurrent negligence of the Joint Editorial Board, its members, the reviewers, or the publisher.

Because statutory law prohibits title insurance companies from insuring against loss by reason of unmarketable title, these standards do not apply to title examination for purposes of title insurance. See Tex. Ins. Code Ann., Ch. 9. Moreover, these standards do not apply to the exercise of discretion by a title insurance company in determining the insurability of title.

Standards for real estate title examinations are statements that declare an answer to a question or a solution for a problem that is commonly encountered in the process of a title examination. Their purpose is to alleviate disagreements among members of the bar regarding real estate transactions and to set forth propositions (standards) with which title lawyers can generally agree concerning title documents to promote uniformity in the preparation, use, and meaning of such documents. In other words, title standards can be viewed as a reference that can be consulted in the preparation and examination of title documents. Although standards do not, by themselves, impose compulsory legal requirements, they do establish guidelines upon which a reasonable and practical examination can be based. And although standards should state fundamental and enduring principles, they are subject to amendment as required by changes in governing law and in title and conveyancing practice.

Title standards may address a variety of concerns, including the attitudes and relationships among examiners and between examiners and the public, the appropriate duration of a title search, the effect of the lapse of time on a defective or improperly recorded title document, the appropriate presumptions of fact that can be relied upon in the course of an examination, and the law applicable to commonly encountered situations. Standards should represent the near unanimous opinion of the experienced and competent title bar.

Even with title standards, however, title examiners must advise their clients honestly as to their beliefs and opinions regarding the ownership of a particular interest in land. The judgment of an examiner must necessarily reflect rules of law (both legislative and case law) as well as justifiable presumptions that are applicable to title documents and to fact situations arising from

the chain of title appearing of record. For example, when the name of a grantee in one deed corresponds with the name of the grantor in a later deed, the universal practice is to presume that they are the same person. And although there is nothing of record to show that the grantor was competent, that the signature is genuine, or that the deed was actually delivered, the universal practice is to presume that these are facts. Indeed, any attempt to require proof of these matters regarding each document in the chain of title would create chaos.

Of course, when minor title questions do arise, the reaction of different examiners may not always be the same. For example, title examiners may respond differently regarding the effect of a recorded, unacknowledged deed; of a deed that fails to state the marital status of the grantor; or of a deed from a married grantor that does not contain the signature of the grantor's spouse. Thus, a chief objective of title standards is to set forth uniform principles to resolve certain common title problems.

CHAPTER I

TITLE EXAMINER

STANDARD 1.10. PURPOSE OF TITLE EXAMINATION

The purpose of an examination of title and comments, objections, and requirements is to advise an examiner's client of the status of title and of the methods by which the client may secure marketable title to real property. Based upon the materials examined, the title opinion should advise an examiner's client of all irregularities, defects, and encumbrances that may reasonably be expected to affect materially the value or use of the property; or that may expose the owner to litigation or adverse claims even if the litigation or adverse claims can reasonably be expected to be successfully defended.

Comment:

A major goal of title standards is to eliminate technical objections that do not impair marketability and common objections that are based upon a misapplication of law. An examiner should determine what irregularities, defects, and encumbrances have been discovered by the examination. Then an examiner should determine, to the extent reasonably possible, who, if anyone, can take advantage of each irregularity, defect, or encumbrance against the owner and/or client, and if there are consequent risks.

Source:

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 2.1 (1960).

History:

Adopted, June 27, 1997.

Standard 1.20. Review By Examiner

Based upon the intended scope of the examination, an examiner should review any documents, records, deeds, abstracts, affidavits, or other reliable materials that are necessary to form a legal opinion as to the status of title to the property. The materials that are examined should be set forth in the title opinion or as an exhibit to the opinion.

Comment:

An examiner's opinion will usually be based upon the entire chain of title starting from the date that the title passed from the sovereign to the present. Occasionally, an examiner may base an opinion upon a chain of title covering a shorter time period. For example, an examiner may limit the examination to instruments in the chain of title that were recorded after the period covered by a prior title opinion that was submitted by the client and prepared by another attorney; however, in this instance, the examiner is well advised to make certain that the client understands that the client assumes the risk of any deficiencies in the prior opinion.

The documents that are available for examination may vary, but they must be sufficient for an examiner to be legally satisfied as to the status of title to the property. Disclosure of the documents examined is necessary to advise the client of the basis for the opinion and to protect an examiner from documents and matters not considered. The examining attorney is usually not responsible for identifying or gathering the documents to be examined, but should assess the acceptability of the methods employed in doing so and should disclose any instance in which the methods employed are not generally considered to be the most reliable.

The scope of an examiner's opinion may be limited at the request of the client or to suit the client's particular purpose or property interest. The nature and scope of the documents examined may be limited accordingly. Under such circumstances, an examiner should carefully set forth the limited scope of the

opinion, and an examiner should be reasonably certain that the opinion is adequate for the client's purpose.

Source:

Title Standards Joint Editorial Board.

History:

Adopted, June 27, 1997.

Standard 1.30. Consultation With Prior Examiner

When an examiner discovers a situation that creates a question regarding the status of title and an examiner has knowledge that another examiner has examined the title, or is familiar with the situation in the context of other property, an examiner may, before preparing the opinion, communicate with the other examiner if such communication is in the best interests of an examiner's client and does not violate the Texas Disciplinary Rules of Professional Conduct.

Comment:

Communication with the prior attorney is a discretionary matter. A prior examiner may not be readily available for consultation, or communication with the prior examiner may not be economically justified.

Caution:

A prior examiner may represent an adverse or potentially adverse party, making such communication inappropriate.

Source:

Oklahoma Title Examination Standards, Std. 1.2.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 2.2 (1960).

History:

Adopted, June 27, 1997.

CHAPTER II

MARKETABLE TITLE

Standard 2.10. Marketable Title Defined

All title examinations should be based on marketability of title. A marketable title is one that is free from reasonable doubt such that a prudent person, with knowledge of all salient facts and circumstances and their legal significance, would be willing to accept it. To be marketable, a title need not be absolutely free from every possible suspicion. The mere possibility of a defect that has no probable basis does not show an unmarketable title.

Comment:

Except as otherwise provided in these standards, if a title examination reveals the need to rely on facts outside of the record, the title is unmarketable. An example would be facts that must be proven by parol evidence or by presumptions of fact that would probably, in the event of suit, become genuine issues of fact. Whether the potential lawsuit would likely be won by the party with apparent record title is immaterial, because threat or probable likelihood of litigation renders the title unmarketable. On the other hand, a title need not be perfect to be marketable. A doubt about title must be a reasonable doubt and be serious enough to affect its value.

Usually, the buyer's attorney examines the title and identifies any title defects. If the examiner prepares a written opinion, any title defects will be listed together with a statement of the necessary requirement(s) to cure each defect. The opinion may also contain comments about the title that are intended to inform the buyer of any concerns about the title that do not affect marketability. Usually in response, the seller's attorney or other agent obtains the curative instruments or takes other necessary action to cure any title defects. Such curative efforts are usually submitted to the buyer's attorney for approval prior to closing. If a title defect cannot be cured prior to closing, the buyer must decide whether to accept the defective title or rescind the transaction.

Caution:

Matters that may make a title unmarketable include:

(1) Land acquired by limitation title, Greer v. International Stock Yards Co., 43 Tex.Civ.App. 370, 96 S.W. 79 (Tex.Civ.App. 1906, writ ref'd).

(2) Land acquired by accretion, Gaines v. Dillard, 545 S.W.2d 845 (Tex.Civ.App.—Fort Worth 1976, writ ref'd n.r.e.).

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(3) Title that is subject to an outstanding oil and gas lease, Roberts & Corley v. McFaddin, Weiss & Kyle, 74 S.W. 105 (Tex.Civ.App. 1903, writ denied).

(4) Title that is subject to an outstanding royalty interest, Sweet v. Berry, 236 S.W. 531 (Tex.Civ. App.—Amarillo 1921, writ dism'd).

(5) Title that is subject to an outstanding covenant, Dupree v. Savage, 154 S.W. 701 (Tex.Civ.App.—Amarillo 1913, writ ref'd).

(6) Title that is subject to an outstanding easement, Shaw v. Morrison, 14 S.W.2d 953 (Tex.Civ.App.—Eastland 1929, no writ).

(7) Title that is subject to a mortgage, judgment lien, or tax lien, Crutcher v. Aiken, 252 S.W. 844 (Tex.Civ.App.—El Paso 1923, no writ).

Source:

Lund v. Emerson, 204 S.W.2d 639 (Tex.Civ.App.—Amarillo 1947, no writ).

Owens v. Jackson, 35 S.W.2d 186 (Tex.Civ.App.—Austin 1931, writ dism'd w.o.j.).

Texas Auto Co. v. Arbetter, 1 S.W.2d 334 (Tex.Civ.App.—San Antonio 1927, writ dism'd w.o.j.).

Austin v. Carter, 296 S.W. 649 (Tex.Civ.App.—Eastland 1927, writ dism'd).

Alling v. Vander Stucken, 194 S.W. 443 (Tex.Civ.App.—San Antonio 1917, writ ref'd).

Adkins v. Gillespie, 189 S.W. 275 (Tex.Civ.App.—Dallas 1916, no writ).

3 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 315 n. 1 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

CHAPTER III

NAME VARIANCES

Standard 3.10. Idem Sonans

An examiner may presume that differently spelled names refer to the same person when the names sound alike or when their sounds cannot be distinguished easily or when common usage by corruption or abbreviation has made their pronunciation identical.

Comment:

This standard expresses the common law rule of "idem sonans." If a name in a legal document is incorrectly spelled but, when commonly pronounced, conveys to the ear a sound practically identical to the correct name as commonly pronounced, then the name thus given can be accepted as sufficient identification. Means v. Protestant Episcopal Church Council, 503 S.W.2d 591, 592 (Tex.Civ.App.—Houston [1st Dist.] 1973, writ ref'd n.r.e.); Dingler v. State, 705 S.W.2d 144, 145 (Tex.Crim. App.1984). Thus, if the grantee in one deed is "John Macomber" and the grantor in the next deed is "John McOmber," these names are presumed to refer to the same person. Or, if the grantee in one deed is "William Conolly" and the grantor in the next deed is "William Conley," the same presumption may be made.

In Cockrell v. Estevez, 737 S.W.2d 138, 139 n.1 (Tex. App.—San Antonio 1987, no writ), the court noted that under the rule of idem sonans, absolute accuracy in the spelling of a name is not required in a legal document. As long as the incorrect spelling sounds practically identical to the correct name (in this instance "Cockrall" and "Cockrell"), there is sufficient identification of the named person. See also Chumney v. Craig, 805 S.W.2d 864 (Tex. App.—Waco 1991, writ denied) ("Damon" and "Damond"); O'Brien v. Cole, 532 S.W.2d 151 (Tex.Civ.App.—Dallas 1976, no writ) ("O'Brian" and "O'Brien"). In Hill v. Foster, 181 S.W.2d 299, 304 (Tex.Civ.App.—Amarillo 1944), aff'd, 186 S.W.2d 343 (Tex.1945), the court applied the rule of idem sonans and held that it is immaterial if a slight discrepancy exists between the name used in the body of the deed and the name signed thereto. The court determined that, through typographical error, the name "Barclay" used in the body of the deed was intended to be "Baxley," but the two names, although spelled differently, sounded enough alike to be idem sonans.

Caution:

Similarity of names is never more than a mere rebuttable presumption of identity. Turner v. Roberts, 513 S.W.2d 957, 959 (Tex.Civ.App.—Fort Worth 1974, no writ).

Texas law is unclear where the difference in spelling regards the first letter of the surname (e.g.,"Pfister" and "Fister," "Pharnsworth" and "Farnsworth"). Because the official title indices in Texas are grantor-grantee and grantee-grantor (in contrast with a tract index), names like "Fister" and "Pfister" would not be indexed in the same portion of the indices.

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.1 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 642 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 3.20. Middle Names Or Initials

Unless otherwise put on inquiry, an examiner may presume that the use of a middle name or initial in one instrument and its nonuse in another instrument does not raise an issue of identity that affects title.

Comment:

Similarity of names is ordinarily sufficient identity in the chain of title. In the absence of evidence casting doubt upon the identity of a party to a conveyance, such similarity is controlling in nearly every instance. Knox v. Gruhlkey, 192 S.W. 334 (Tex.Civ.App.—Amarillo 1917, writ ref'd). The similarity of "H. Percy Forster" to "H. P. Forster" was found to be sufficient evidence of identity in a trespass-to-try title action in Corder v. Foster, 505 S.W.2d 645, 649 (Tex.Civ.App.—Houston [1st Dist.] 1973, writ ref'd n.r.e.).

Caution:

Similarity of names is never more than a mere rebuttable presumption of identity. Turner v. Roberts, 513 S.W.2d 957, 959 (Tex.Civ.App.—Fort Worth 1974, no writ).

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.2 (1960).

History:

Adopted, June 27, 1997.

Standard 3.30. Abbreviations

An examiner may presume that any customary and generally accepted abbreviation of a first or middle name is the equivalent of the full name.

Comment:

A commonly known diminutive or abbreviation is sufficient to identify a person in the absence of evidence indicating that a different person was intended. Salazar v. Tower, 683 S.W.2d 797, 799 (Tex. App.—Corpus Christi 1984, no writ). "Terry" is a sufficient identification of "Terrance." O'Brien v. Cole, 532 S.W.2d 151 (Tex.Civ.App.—Dallas 1976, no writ).

Caution:

Similarity of names is never more than a mere rebuttable presumption of identity. Turner v. Roberts, 513 S.W.2d 957, 959 (Tex.Civ.App.—Fort Worth 1974, no writ).

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.3 (1960).

History:

Adopted, June 27, 1997.

Standard 3.40. Recitals Of Identity

An examiner may rely upon a recital of identity contained in a conveyance executed by the party whose identity is recited, unless the examiner has a reasonable basis for questioning the recital.

If title is held in a name that appears to be a business name, an examiner may rely on a recital of identity that incorporates the words "doing business as" ("dba") or similar words (e.g., "John Smith, dba Wholesome Grocery Store"), unless the form of name or other facts appearing from the materials examined raise a contrary inference.

Comment:

An examiner often encounters conveyances in which the grantor's name is not the same as that of the record owner, but which recite the identity between the two. Frequent examples include instruments using words such as "also known as" ("aka") ("Robert T. Jones, Jr., aka Bobby Jones"); "formerly" or "formerly known as" ("fka") ("Mary Smith, formerly Mary Jones"); and "nee," which means "born as" ("Mary Lincoln, nee Todd"). Even though these instruments are usually executed only by the person whose identity is recited and might technically be regarded as self-serving, such recitals are, practically universally, accepted as fact to complete the chain of title.

Standard 3.40

The rule here expressed is grounded in the notion that similarity of names is sufficient to establish identity of persons when there is no evidence to the contrary. See Chamblee v. Tarbox, 27 Tex. 139, 144–45 (1863). Cf., Dittman v. Cornelius, 234 S.W. 880 (Tex. Comm'n App. 1921, judgm't adopted) (holding that proof of identity need not be conclusive). In Haney v. Gartin, 113 S.W. 166 (Tex. Civ. App. 1908, writ denied), the objection was made that "Mary E. Kurtz," one of the grantors, was not shown to have a connection with the title, although the deed contained a recital that "Mary E. Kurtz" was "formerly Mary E. Newlin." This recital was sufficient, said the court, to show that "Mary E. Kurtz," who signed the deed, was the same person as "Mary E. Newlin," to whom the land had been devised. Recitals of identity were likewise deemed sufficient to explain discrepancies between the names of grantors and the record owners in Auerbach v. Wylie, 19 S.W. 856 (Tex. 1892) and Russell v. Oliver, 14 S.W. 264 (Tex. 1890).

With some exceptions, the Assumed Business or Professional Name Act, Tex. Bus. & Com. Code Ann. Ch. 36, requires persons and entities doing business under an assumed name to file a certificate thereof in specified offices, but one merely owning or holding property under an assumed name is not necessarily required to file a certificate. See Tex. Bus. & Com. Code Ann. § 36.10 comment of bar committee. Failure to file the required certificate does not void or impair transactions by the offending party. Paragon Oil Syndicate v. Rhoades Drilling Co., 277 S.W. 1036 (Tex. 1925). Reference to a county's assumed name certificate records may be helpful in resolving identity questions and may be relied upon in the absence of inconsistent information.

As to the use of recitals generally, see Standard 13.40. For guidance generally concerning conveyances involving business entities, see Chapters VI and VII, infra.

Caution:

On occasion an examiner may be presented with names which, although recited to be alternative names of the same person, are entirely dissimilar. Under such circumstances the examiner must bear in mind the presumption that names that are not the same refer to different persons. See Fox v. Grand Union Tea Co., 236 S.W.2d 561, 563 (Tex. Civ. App.—Austin 1951, no writ). Unless the instrument recites some further explanation or qualifies as an ancient document (see Comment to Standard 13.40), or supporting facts otherwise appear in the record, an examiner should require further inquiry.

Although recitals of identity may be relied upon for business entities in the chain of title as well as for individuals, authority for reliance may be weaker in the case of business entities. See Texas Co. v. Lee, 157 S.W.2d 628, 630–31 (Tex. 1941). Prudence dictates the exercise of greater care in considering recitals of the identity of business entities, particularly when it is practical to obtain documentation. See Standard 6.70.

The name of a business entity may raise an inference contrary to a recital of identity. For example, appellations such as "Inc." or "Corporation," ordinarily denoting a particular form of organization, would contradict a recital that the entity is an individual, or a different kind of entity, doing business under the corporate name. If a business entity's name tends to contradict a recital of identity, a requirement of further investigation and proof of identity is warranted. Other examples of words and abbreviations that connote a particular kind of entity are "L.L.C.," "L.C.," or "Ltd. Co." for a limited liability company, "Ltd." or "L.P." for a limited partnership; and "L.L.P." for a limited liability partnership. On the other hand, the word "Company" or "Co." in the name of a business entity is widely used in many different forms of business and should not be regarded as signifying any particular one. (The examiner should bear in mind that words and abbreviations occurring in the names of entities incorporated or registered in other jurisdictions might have connotations different from those that would apply to Texas entities.)

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.4 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 642 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997; amended, June 15, 2001.

This amendment was primarily adopted for the purpose of accommodating a new chapter on affidavits and recitals. (Chapter XIII). Prior to amendment, the original standard provided: "Absent actual or constructive notice that a recital of identity may be untrue, an examiner may rely upon a recital of identity contained in a conveyance executed by the person whose identity is recited. A recital of a statement of fact, marital status or identity of heirship is prima facie evidence of the truth of the recital if the document containing such statement has been of record in the deed records of the applicable county for at least five years. A recital in an 'ancient document' is admissible as evidence of the recited facts."

Standard 3.50. Suffixes

Although identity of a name raises a presumption of identity of a person, an examiner should take note of the addition of a suffix, such as "Jr." or "II," to the name of a subsequent grantor because such a suffix may rebut the presumption of identity with the prior grantee.

Comment:

Ordinarily a suffix is not considered a part of the name. Thus, where the grantee in one instrument is "John Doe, M.D." and the grantor in the next instrument is merely "John Doe," it would be presumed that they are the same person. However, if the grantee in one instrument is "John Doe, Sr." and the grantor in the next instrument is "John Doe, Jr.," the presumption that they are the same person would be rebutted. Or, if the grantee in one instrument is "John Doe," and in another instrument the grantor is "John Doe, Jr.," the presumption of identity may be rebutted.

The Texas Supreme Court, in a case concerning service of process, reversed a court of appeals' decision that had held that the addition or omission of the suffix "Sr." or "Jr." was immaterial. Uvalde Country Club v. Martin Linen Supply Co., 690 S.W.2d 884 (Tex.1985). The issue in the case was whether a citation that had been issued in the name of "Henry Bunting" satisfied the rules of civil procedure where the registered agent was listed as "Henry Bunting, Jr." Without elaborating, the Texas Supreme Court held that the discrepancy in names invalidated the service of process under the rules of civil procedure.

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.5 (1960).

History:

Adopted, June 27, 1997.

Standard 3.60. Variance In Name Within An Instrument

Where a grantor's signature differs from the grantor's name as it appears in the body of the deed, but the name given in the acknowledgment agrees with either the signature or the name as it appears in the body of the deed, an examiner should accept the certificate of acknowledgment as providing adequate identification.

Comment:

An officer may not take an acknowledgment unless the officer knows or has satisfactory evidence that the acknowledging person is in fact the person who executed the instrument. Tex. Civ. Prac. & Rem. Code Ann. § 121.005. This requirement is sufficient to create a presumption of identity when the signature differs from the body of the deed but the acknowledgment agrees with one or the other. Numerous cases have held that a certificate of acknowledgment is considered prima facie evidence of all facts therein recited and that the recitals are conclusive unless fraud or duress is shown.

Caution:

This general rule should not be extended beyond relatively minor variances, such as the use of a full given name in one place and initials in another, or a variance between a middle initial used in the body of the deed and a different one in the signature. A deed purporting to be from Robert Jones but signed by John Smith certainly should not be passed.

Source:

Bell v. Sharif–Munir–Davidson Dev. Corp., 738 S.W.2d 326 (Tex. App.—Dallas 1987, writ denied).

Stout v. Oliveira, 153 S.W.2d 590 (Tex.Civ.App.—El Paso 1941, writ ref'd w.o.m.).

Oklahoma Title Examination Standards, Std. 5.2.

Lewis A. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.6 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 642 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 3.70. Variances In Name Of Spouse

If a grantee spouse in one instrument of conveyance is identified only by a title and last name (e.g., "John Smith and Mrs. John Smith, grantees") and such spouse is apparently identified in a succeeding instrument in the chain of title by both a given and last name (e.g., "John Smith and Mary Smith, grantors"), an examiner should require further evidence showing that such spouse (e.g., Mrs. John Smith) in the first instrument is the same person as the spouse (e.g., Mary Smith) in the second instrument. The same requirement should be made if these succeeding forms of identification are reversed (e.g., the grantees in the first instrument are "John Smith and Mary Smith" and the grantors in a succeeding instrument in the chain of title are "John Smith and Mrs. John Smith").

Comment:

This standard conforms to the practice of Texas title examiners.

Caution:

Although this standard conforms to title examination practice, no Texas cases are directly on point.

Standard 3.70

Source:

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 5.8 (1960).

History:

Adopted, June 27, 1997.

CHAPTER IV

EXECUTION, ACKNOWLEDGMENT, AND RECORDATION

Standard 4.10. Omissions And Inconsistencies

Omission of the date of execution from an instrument affecting title does not, in itself, impair marketability. An examiner may presume that an undated instrument has been timely executed if the dates of acknowledgment and recordation, and other circumstances of record, support the presumption.

Inconsistencies in recitals or dates (such as among dates of execution, attestation, acknowledgment, or recordation) do not, in themselves, impair marketability, and an examiner may presume that a proper sequence of formalities occurred.

Comment:

The date of execution is not essential to an instrument's validity or delivery. Dunn v. Taylor, 113 S.W. 265, 268 (Tex.1908); Webb v. Huff, 61 Tex. 677, 679 (1884); Owen v. State, 26 S.W.2d 251, 253 (Tex.Crim. App.1930). See generally 4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 694 (Texas Practice 2d ed., 1992). The date on an instrument, like other recitals, is important, if the date is in issue, and the given date is presumptively correct, but subject to rebuttal or explanation. Farrell v. Comer, 84 S.W.2d 300, 303 (Tex.Civ.App.—Fort Worth 1935, no writ); Owens v. Jackson, 35 S.W.2d 186, 188 (Tex.Civ.App.—Austin 1931, writ dism'd w.o.j.); Brown v. Rodgers, 248 S.W. 750 (Tex.Civ.App.—Amarillo 1923, no writ). The same is true of the date of attestation and, generally, of acknowledgment. Wilson v. Curry, 151 S.W.2d 356, 358 (Tex.Civ.App.—Fort Worth 1941, writ dism'd). The critical date—that of delivery—is not normally found in the instrument. See Standard 4.30. Hence, omission of the date from one conveyance in an ordinary series of conveyances may be disregarded. Even though special importance may attach to the date of execution, as in the case of a power of attorney, there is a presumption of timely execution (i.e., in proper sequence in relation to other instruments) if such is supported by other dates and circumstances of record.

Because recitals of dates may be omitted or explained, are notoriously inaccurate, and are more generally in error than are the actual sequences of formalities, inconsistencies in the indicated dates of formalities (e.g., acknowledgment dated prior to execution or execution dated subsequent to indicated date of recordation) should be disregarded. Further, the inconsistency or impossibility of a recited date should not be regarded as vitiating the particular formality involved. Brown v. Rodgers, supra; Wilson v. Curry, supra; Owen v. State, supra; Panhandle Construction Co. v. Flesher, 87 S.W.2d 273, 275 (Tex.Civ.App.—Amarillo 1935, writ dism'd).

Caution:

If, under the circumstances indicated by the record, a date has a particular significance (e.g., for a priority or for an important presumption), an inconsistency or impossibility should not be disregarded.

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 6.2 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 694 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 4.20. Defective Acknowledgments

If a certificate of acknowledgment does not conform to the exact wording of the applicable statute, but shows substantial compliance with the statutory requirements for acknowledgments, an examiner should not require corrective action. If a deed or other instrument contains an acknowledgment in substantial noncompliance with the applicable statute or does not contain any acknowledgment whatever, an examiner should not require that such defects be cured if the instrument has been of record for at least twenty years and no adverse claim appears. Otherwise, the examiner should require a corrected acknowledgment and re-record the instrument, or require and record a new, corrected instrument. A proper jurat may substitute for an acknowledgment for instruments recorded on or after September 1, 1989.

Comment:

In general, an instrument is entitled to be recorded only if acknowledged or proven by witnesses according to law. Tex. Prop. Code Ann. § 12.001. The proper forms for acknowledgments are expressed by statute. Tex. Civ. Prac. & Rem. Code Ann. §§ 121.001—121.015. A jurat may substitute for an acknowledgment in instruments recorded on or after September 1, 1989. Tex. Prop. Code Ann. § 12.001(a).

A jurat is a certificate signed by the officer before whom an instrument was executed, stating that the instrument was subscribed and sworn to before the officer by the person executing the instrument. Carpenter v. State, 218 S.W.2d 207, 208 (Tex.Crim. App.1949); Robertson v. State, 8 S.W. 659 (Tex.Crim. App.1888). Subject to an exception (discussed in the following paragraph), an acknowledgment certificate must include the officer's seal of office, Tex. Civ. Prac. & Rem. Code Ann. § 121.004, and this is also presumably true for a proper jurat, if the officer has a seal. Missouri Pacific Railway Co. v. Brown, 53 S.W. 1019 (Tex.1899). For a listing of the officers who may take acknowledgments or proofs, see Tex. Civ. Prac. & Rem. Code Ann. § 121.001. For a listing of officers who may administer oaths and supply a jurat, see Tex. Gov't Code Ann. §§ 602.002—602.005.

An acknowledgment or jurat which does not include an official seal and which is taken in the United States or its territories is invalid only if the jurisdiction in which the acknowledgment or jurat is taken requires the attachment of an official seal. Tex. Civ. Prac. & Rem. Code Ann. § 121.004. The secretary of state must annually furnish the county clerks with a list of states that require an official seal. Tex. Gov't Code Ann. § 405.019.

An acknowledgment or jurat that does not include an embossed or printed seal is not invalid on an electronically transmitted authenticated document that legibly reproduces the required elements of the seal. Tex. Gov't Code Ann. § 406.013.

An acknowledgment or jurat may be satisfied by the electronic signature of the notary public so long as all required information is attached to or logically associated with the signature or record. Tex. Bus. & Com. Code Ann. § 43.011.

Subject to the **Caution** noted below, the absence or presence of a proper acknowledgment does not affect the validity of a deed or other instrument. Tex. Prop. Code Ann. § 13.001(b); Haile v. Holtzclaw, 414 S.W.2d 916, 928 (Tex.1967). Substantial compliance with the statutory acknowledgment requirements is sufficient. "If the strict compliance with the letter of the law was exacted, we have no doubt that it would destroy and invalidate thousands of records, long since made and believed to have been in accordance with the law." Dorn v. Best, 15 Tex. 62, 66 (1855). Omission of mere formal parts of the acknowledgment certificate, such as the recitation that the instrument was executed "for the consideration and purposes therein stated," will not invalidate it, so long as the material parts are present, though all such parts should be included for the sake of regularity. Monroe v. Arledge, 23 Tex. 478 (1859). No particular form of words is required, so long as the certificate shows on its face that all prerequisites to a valid acknowledgment were in fact complied with. Williams v. Cruse, 130 S.W.2d 908 (Tex.Civ.App.—Beaumont 1939, writ ref'd).

The necessary prerequisites for an acknowledgment are that the signer personally appeared before the officer, that the signer was known to the officer to be the person whose name is subscribed to the instrument, and that the signer acknowledged that the signer executed the same for the purposes and considerations therein stated. Sheldon v. Farinacci, 535 S.W.2d 938, 942 (Tex.Civ.App.—San Antonio 1976, no writ). Since August 31, 1981, these essential elements may be fulfilled by a simple certificate stating that the instrument "was acknowledged" by the signer (and, if other than as an individual, the signer's particular capacity). Tex. Civ. Prac. & Rem. Code Ann. §§ 121.006, 121.008.

An acknowledgment may be considered in connection with the deed to which it is attached to supply some missing ingredient. Thus, where the acknowledgment is made by a corporate officer but fails to state the officer's capacity or that the acknowledgment is that of the corporation, it is nonetheless sufficient if it states that the deed was executed for the purposes therein expressed and the deed purports to be the act of the corporation. Ballard v. Carmichael, 18 S.W. 734 (Tex.1892); Muller v. Boone, 63 Tex. 91 (1885).

If an acknowledgment was made in an individual capacity rather than made in a representative or official capacity or if the instrument fails to show a proper acknowledgment, a person with a right of action to recover real property must bring suit within four years after the recordation of the instrument; however, this limitations period does apply to a forged instrument. Tex. Civ. Prac. & Rem. Code Ann. § 16.033. But see **Caution**, below.

To prove title, an instrument in the chain of title to land may be admitted into evidence as an "ancient document," without further proof of its execution, if it has been in existence for at least twenty years. (See discussion of the "ancient document" rule in the comment to Standard 13.40.) This rule of evidence does not require the instrument to have been acknowledged. A former statute, deemed repealed upon promulgation of the rules of evidence effective September 1, 1983, provided that an instrument without a proper acknowledgment is admissible if it has been of record for at least ten years. There is no similar specific provision in the current rules of evidence. Arguably, the record of an unacknowledged, or improperly acknowledged, instrument which has been of record for at least twenty years is admissible into evidence under the ancient document rule, but this is not certain. See generally 3 Fred A. Lange &

Standard 4.20

Aloysius A. Leopold, Land Titles and Title Examination § 252 (Texas Practice 2d ed. 1992). Even if admissible into evidence to prove title, an instrument improperly acknowledged, although of record for at least twenty years, still cannot be regarded as having been validly recorded so as to impart constructive notice. Of course, one who has examined the instrument or the record of the instrument would have actual notice of it. Where no adverse claim appears from the record after twenty years, marketability would not ordinarily be questioned because the possibility of a successful adverse claim based on a defective acknowledgment is remote.

Caution:

An examiner should exercise caution in relying on the four-year statute of limitations discussed in the Comment. Tex. Civ. Prac. & Rem. Code Ann. § 16.033. This curative statute does not purport to validate the recording of an improperly acknowledged instrument. For example, the period of limitation will not run against persons under disability. Moreover, it is doubtful whether a defectively acknowledged instrument can be proven through a certified copy from the public records, at least until it qualifies as an "ancient document." Tex. R. Evid. 902(4).

An instrument executed by a married woman prior to August 22, 1963, but not "privily and apart" acknowledged in the manner then prescribed by statute, was void as to her. Tex. Rev. Civ. Stat. art. 1299 (repealed by Acts 1963, 58th Leg., p. 1189, ch. 473, § 1); Humble Oil & Refining Co. v. Downey, 183 S.W.2d 426 (Tex.1944); Sun Oil Co. v. Rhodes, 71 S.W.2d 413 (Tex.Civ.App.—Beaumont 1943, writ ref'd). The supreme court declared former Article 1299 to be unconstitutional in Wessely Energy Co. v. Jennings, 736 S.W.2d 624 (Tex.1987) (affirming a married woman's pre-repeal conveyance despite its noncompliance with Article 1299). However, the ruling was made prospective only. 736 S.W.2d at 629. Thus, examiners should still be alert to a deed which: pre-dates August 22, 1963, is executed by a married woman, but is not "privily and apart" acknowledged.

An unacknowledged and unrecorded instrument is void as to creditors and subsequent purchasers for value without notice. Tex. Prop. Code Ann. § 13.001(a). Further, the recordation of an instrument does not impart constructive notice unless the instrument has been properly acknowledged or proved. Hill v. Taylor, 14 S.W. 366 (Tex.1890). Moreover, the acknowledgment of the grantee only, without that of the grantor, is insufficient. Sweeney v. Vasquez, 229 S.W.2d 96, 97 (Tex.Civ.App.—San Antonio 1950, writ ref'd). Of course, an examiner who encounters such an instrument in the course of examining title would gain actual notice of its contents and such notice would likely be imputed to the examiner's client.

Caution should be exercised in determining that an acknowledgment is in substantial, though not literal, compliance. The general rule is that omitted words can be supplied by inference if it is clear what they should be. Sheldon v. Farinacci, 535 S.W.2d 938 (Tex.Civ.App.—San Antonio 1976, no writ). However, an acknowledgment was held insufficient where the certificate recited that the subscribing party, by name, had appeared and "acknowledged that _____ had signed, sealed and delivered" the instrument, omitting only the personal pronoun. Huff v. Webb, 64 Tex. 284 (1885).

A jurat (as distinguished from an acknowledgment) is required for the perfection of certain claims (e.g., a mechanic's lien). Tex. Prop. Code Ann. § 58.004.

Source:

Citations in the Comment.

Oklahoma Title Examination Standards, Stds. 6.1, 6.2.

3 & 3A Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination §§ 252, 629 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 4.30. Delivery; Effective Date; Delay In Recordation

An examiner may presume the delivery of instruments acknowledged and recorded. Delay in recordation, with or without record evidence of the intervening death of the grantor, does not rebut the presumption or create an unmarketable title; however, as an added exceptional protection to the client, an examiner may choose to make an inquiry outside of the record.

Comment:

Delivery is a formality essential to the effectiveness of conveyances, recorded or otherwise. Dikes v. Miller, 24 Tex. 417 (1859). Delivery may be actual or constructive. An example of constructive (or conditional) delivery is the typical situation where a deed is delivered to a closing agent to be subsequently delivered to a buyer upon the satisfaction of all contractual conditions to closing. Delivery is a question of fact focusing on two elements:

(1) was the instrument placed within the control of the grantee by the grantor, and

(2) did the grantor intend that the instrument operate as a conveyance?

Ragland v. Kelner, 221 S.W.2d 357 (Tex.1949); Bell v. Rudd, 191 S.W.2d 841 (Tex.1946); Steffian v. Milmo National Bank, 6 S.W. 823 (Tex.1888).

Unless it provides its own effective date, a deed takes effect from the date of its delivery to the grantee. Possession of a deed raises the presumption of its due delivery. The date affixed to an instrument is prima facie evidence of the date of delivery. If there is a conflict in dates and the evidence only admits of two possibilities, that the instrument was delivered on the date on the instrument or on the date of the acknowledgment, the appellate courts are divided, numerically favoring the date on the instrument. Wilson v. Curry, 151 S.W.2d 356, 358 (Tex.Civ.App.—Fort Worth 1941, writ dism'd). However, parties may by contract make a conveyance effective at any time, either before or after the date on the instrument, the date of the acknowledgment, or the date of actual delivery, if different. Cox v. Payne, 174 S.W. 817 (Tex.1915); Rogers v. Gunn, 545 S.W.2d 861 (Tex.Civ.App.—Amarillo 1976, no writ); Hart v. Rogers, 527 S.W.2d 230 (Tex.Civ.App.—Eastland 1975, writ ref'd n.r.e.).

A conveyance to a person who is deceased on the effective day of the conveyance is void for lack of an existing grantee, and no title passes in that conveyance to the heirs or devisees of such deceased person. Vineyard v. Heard, 167 S.W. 22 (Tex.Civ.App.—San Antonio 1914), aff'd, 212 S.W. 489 (Tex.1919); Sparks v. Humble Oil & Refining Co., 129 S.W.2d 468 (Tex.Civ.App.—Texarkana 1939, writ ref'd). However, a conveyance to a living grantee and the grantee's "heirs and assigns" or to "the estate of" a dead grantee is valid. Haile v. Holtzclaw, 414 S.W.2d 916, 927 (Tex.1967) (holding that a conveyance to the "estate" of a grantee was sufficient because the "estate" or heirs were capable of being ascertained).

Caution:

Neither a delay in recordation nor a post-mortem recordation presumptively impairs marketability; however, if the record reflects either the death of the grantee prior to the recording of the instrument, or a long delay in recording, the examiner should inquire outside the record if the examiner reasonably believes, based upon the facts, that a claim of non-delivery is probable. Burris v. McDougald, 832 S.W.2d 707 (Tex. App.—Corpus Christi 1992, no writ); Perkins v. Damme, 774 S.W.2d 765 (Tex. App.—Corpus Christi 1989, writ denied).

Because recorded instruments raise a prima facie presumption of delivery, an examiner is usually not concerned with evidentiary questions; however, because this presumption may be overcome, an examiner may have a duty to inquire further when an examiner knows, or reasonably should know, of facts or circumstances indicating:

(1) that the deed was delivered or recorded for a different purpose;

(2) that fraud, accident or mistake accompanied the delivery or recording; or,

(3) that the grantor had no intention of divesting title.

Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257, 261–262 (Tex.1974); Thornton v. Rains, 299 S.W.2d 287 (Tex.1957); Vannerberg v. Anderson, 206 S.W.2d 217, 219 (Tex.1947). Moreover, a deed must be accepted by the grantee. Recordation of a deed is also prima facie evidence of acceptance; however, this presumption can also be overcome. Martin v. Uvalde Savings & Loan Ass'n, 773 SW.2d 808 (Tex. App.—San Antonio 1989, no writ).

Source:

Citations in the Comment.

Oklahoma Title Examination Standards, Std. 6.4.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 6.3 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination §§ 644, 691—694, 708 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

CHAPTER V

LAND DESCRIPTIONS

Standard 5.10. When Defective Land Descriptions Do Not Impair Marketability

An examiner may presume that errors, irregularities, deficiencies, and inconsistencies in land descriptions in the chain of title do not impair marketability unless, after considering all circumstances of record, (a) a substantial uncertainty exists as to the land involved or (b) the description falls beneath the minimal requirements of sufficiency and definiteness essential to an effective conveyance. When examining marginally sufficient or questionable descriptions, the examiner should consider all relevant factors, including the lapse of time, subsequent conveyances, the manifest or typographical nature of errors or omissions, and accepted rules of construction.

Comment:

Standard 5.10

A sufficient description affords the means of identifying the land. Morrow v. Shotwell, 477 S.W.2d 538, 539 (Tex.1972), appeal after remand, 498 S.W.2d 432 (Tex.Civ.App.—Eastland 1973, writ ref'd n.r.e.); Wilson v. Fisher, 188 S.W.2d 150, 152 (Tex.1945); Chandler v. Kountze, 130 S.W.2d 327, 331 (Tex.Civ. App.—Galveston 1939, writ ref'd); 4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination §§ 811, 812 (Texas Practice 2d ed. 1992). Considerations of marketability add only the requirements that the means appear of record and that identification be beyond a reasonable doubt or question. Smith v. Sorelle, 87 S.W.2d 703, 705 (Tex.1935); Gates v. Asher, 280 S.W.2d 247 (Tex.1955); Browning v. West, 557 S.W.2d 848, 851 (Tex.Civ.App.—Tyler 1977, writ ref'd n.r.e.).

Theoretically, any existing land description is only as good as the weakest link in the chain of descriptions. Practical considerations, however, fully justify reliance placed upon corrections or improved land descriptions appearing in later conveyances and upon the passage of time in which difficulties have not arisen from the less than perfect land description. Further, all matters of record (e.g., adjoining descriptions, other land owned by the grantor, and the like) become sources of explanation for the dubious description. Pickett v. Bishop, 223 S.W.2d 222, 223 (Tex.1949); Abercrombie v. Bright, 271 S.W.2d 734 (Tex.Civ.App.—Eastland 1954, writ ref'd n.r.e.). Ambiguities and problems that are covered by recognized "constructions," or rules for their resolution, do not create a doubt that impairs marketability. Likewise, typographical mistakes and similar apparent errors and omissions are regularly held not to detract from the obvious intent of instruments. Reserve Petroleum Co. v. Harp, 226 S.W.2d 839, 841 (Tex.1950); Barnard v. Good, 44 Tex. 638 (1876); Rhoden v. Bergman, 75 S.W.2d 993 (Tex.Civ.App.—Beaumont 1934, writ ref'd); Holman v. Houston Oil Co., 152 S.W. 885 (Tex.Civ.App.—Galveston 1912, writ dism'd).

Caution:

An examiner should consider the following:

A defective description of the land intended to be conveyed is one of the most frequent instances of title failure in this State. In general, it is not what was intended to be conveyed that governs, but what is described in the instrument involved, so that if such description cannot be upheld or sustained, the intention is of no benefit in most transactions. In view of this, the attorney ... in examining a land title must be certain that the description in the instruments involved in a chain of title sufficiently describe the land so it can be identified and located on the ground; and if extrinsic evidence is necessary to be relied upon, that the descriptive words in the deed, or deeds, furnish a basis or guide for the admission of such extrinsic evidence.

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 811 (Texas Practice 2d ed. 1992).

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 7.1 (1960).

4 Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination §§ 811–833 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

CHAPTER VI

CORPORATE CONVEYANCES

Standard 6.10. Corporate Existence

Where a corporation is a named party to an instrument in the chain of title, an examiner may presume that the corporation was legally in existence at the time the instrument took effect, if the instrument is executed and acknowledged in the proper form.

Comment:

A corporation may exist in fact without being legally constituted. It is therefore unnecessary, in examining title, to investigate in detail whether all measures have been taken for valid incorporation, so long as the record shows the existence of a corporation de facto. Rufford G. Patton & Carroll G. Patton, Patton on Land Titles § 405 (2d ed. 1957 and Supp. 1997) and Paul E. Basye, Clearing Land Titles §§ 296–301 (2d ed. 1970).

Caution:

This standard conforms to the standard practice of Texas title examiners. No Texas cases are directly on point. However, in Allday v. Drummond, 280 S.W.2d 381 (Tex.Civ.App.—Fort Worth 1955, writ ref'd n.r.e.), the court sustained a conveyance by a foreign corporation at a time when the corporate grantor's charter had been forfeited by the State of Delaware for nonpayment of taxes. A primary basis for the court's holding was that the conveyance in question had been of record more than 10 years.

Source:

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 12.4 (1960).

3A Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 573 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 6.20. Corporate Authority Presumed

In the absence of actual or constructive notice to the contrary, an examiner may presume that the action of the corporation in acquiring or selling the real property affected by an instrument is within its power.

Comment:

Any action taken by a corporation that is beyond the power conferred upon it by its articles of incorporation or by the laws of the state of its incorporation is ultra vires. This may include action contrary to public policy or to some statute expressly prohibiting such action. This excess or abuse of power is ordinarily not within the scope of an examiner to determine or question, without some type of actual or constructive notice.

Source:

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 12.5 (1960).

3A Fred A. Lange & Aloysius A. Leopold, Land Titles and Title Examination § 573 (Texas Practice 2d ed. 1992).

History:

Adopted, June 27, 1997.

Standard 6.30. Foreign Corporations

Where a corporation organized and doing business under the laws of another state is a named party to an instrument in the chain of title, an examiner may presume that the corporation was authorized to do business in this state or authorized to acquire and dispose of the real property affected by the instrument, if the instrument is executed and acknowledged in the proper form.

Comment:

At one time, both foreign and domestic corporations were prohibited from owning land in Texas except under certain narrow circumstances. However, those statutory prohibitions were repealed in 1981. See Historical and Statutory Notes at Misc. Corp. Laws Act, Tex. Rev. Civ. Stat. Ann. arts. 1302–4.01 to 1302–4.07. Even then a foreign corporation without qualifying to do business in Texas could own and convey title unless its right to do so was challenged by the state. Byerly v. Camey, 161 S.W.2d 1105, 1110 (Tex.Civ.App.—Fort Worth 1942, writ ref'd w.o.m.). Under present law, the holding of title in Texas land by a foreign corporation may constitute the doing of business in Texas, but its failure to qualify will not "impair the validity of any contract or act" of the corporation. Tex. Bus. Corp. Act. Ann. art. 8.18.B.

Source:

Citations in the Comment.

Lewis M. Simes & Clarence B. Taylor, Model Title Standards, Std. 12.6 (1960).

History:

Adopted, June 27, 1997.

Standard 6.40. Corporate Seal

An examiner may presume that a corporate seal does not have to appear on an instrument, unless the examiner has actual or constructive notice that the bylaws of the corporation require the seal to have been placed on the instrument.

Comment:

By appropriate resolution of its board of directors, a corporation is permitted to convey land by a deed (with or without the seal of the corporation) which is signed by an officer or attorney in fact of the corporation. Tex. Bus. Corp. Act Ann. art. 5.08 and Tex. Non–Profit Corp. Act, Tex. Rev. Civ. Stat. Ann. art. 1396–5.08.

Source:

Tex. Bus. Corp. Act Ann. art. 5.08.

Tex. Non–Profit Corp. Act, Tex. Rev. Civ. Stat. Ann. art. 1396–5.08.

History:

Adopted, June 27, 1997.