



Louisiana Uniform Title Standards



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Louisiana Uniform Title Standards

**A Project of the
Louisiana State Bar Association
Uniform Title Standards Committee**



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STATEMENT OF INTENT



Any attorney can paraphrase the standard which has been developed by the Louisiana courts pertaining to merchantability of title. It provides that a merchantable title is one which does not suggest that the purchaser will be exposed to a real or serious threat of litigation. This reasonable rule frequently is obscured by the many details involved in title examination. Often in practice, deadlines are pressing and constant, and clients consider the title examining attorney's work to be a perfunctory, irritating and expensive part of the real estate transaction. Examining attorneys know all too well the judgment calls that must be made which induce clients to expend or to lend substantial amounts of money in connection with real estate transactions. These standards are intended to provide a source upon which an examining attorney may rely in establishing uniformity of opinion regarding many title matters and to address the demands made by others. These standards are not absolute rules but are a framework within which examining attorneys may practice.

More than any other area in the practice of law, the real estate attorney is often influenced not only by his own judgment or opinion based upon law and jurisprudence, but also by the uncertainty of the next attorney's judgment or opinion. Every examining attorney may be certain that his work, his decisions and his judgment eventually will be reviewed by someone else and that his client's ability to sell or refinance property will hang in the balance of this subsequent review. Disagreements, even over trivial matters, can be financially devastating for the client. It is intended that these uniform standards will help



alleviate unreasonable demands by those who cannot or will not distinguish between a situation which exposes the client to a real or serious threat of litigation and one which does not. In so doing, the cycle of making requirements for documents or curative suits, simply because a later title examiner might so require, may be broken.

Over time some local or community guidelines have developed which have afforded examining attorneys a level of comfort with respect to certain aspects involved in the examination process; for example, the length of the period of search, the treatment of unenforceable encumbrances and the like. Some local bar associations have established committees to assist examining attorneys in developing local guidelines and identifying concerns. Against this background, lenders, business persons, home buyers and other clients are now dealing statewide. Attorneys are examining titles throughout the state, not just in their own parishes, and are encountering varying local guidelines.

In an attempt to address this situation, the Louisiana State Bar Association established this Uniform Title Standards Committee composed of experienced real estate lawyers throughout the state. The committee was charged with reviewing title practices, suggesting whether standards would be helpful or necessary, and drafting such standards. Standards are not a new concept. Other state bar associations have adopted written and uniform standards, some as early as the 1930s, and report that their standards serve a useful function.

In adopting and promulgating this report, the committee recognizes that this document is not a statute. However, applicable statutes, jurisprudence and custom have been considered. If an examining attorney follows the standards herein, the purchaser or lender should have merchantable title — one which does not expose the client to unreasonable risks of litigation.

The standards in this report recognize that a title may be imperfect for reasons which would never be reflected by any abstract, such as adverse possession, lack of capacity of a grantor, forgery or indexing error. One can never escape all the risks. Nevertheless, these standards are intended to be an educational tool for the lawyers and courts of this state, a consensus of what is required of a reasonable and prudent examining attorney and, to that extent, what constitutes merchantability.

Included in this report on Louisiana Uniform Title Standards are various background notes which seek to explain a particular standard, the committee's thought processes or reasoning for the standard or to give reference to jurisprudence pertaining to that standard. In some instances, this jurisprudence may even indicate legal decisions which are in disagreement with the standard



promulgated. The fact that a standard was adopted which appears in contrast to references in the background notes is a reflection that the committee believed the references to be incorrectly based.

One final note about the committee's work is necessary. The task originally undertaken has turned out to be much larger than anticipated by the committee members. Some effort had to be made to curtail the scope of the work, and this was done in order to reach a point where the committee's work could be disseminated. Therefore, not all areas of law applying to title examination could be explored and the work of the committee does not constitute a complete restatement of the law involving title examinations. Omission of an area or a theory is not to imply a lack of importance in that omitted area.

These standards are promulgated as a common sense approach based upon applicable statutes, jurisprudence and custom as these relate to the examination and approval of merchantable titles.

The diligence and efforts of all committee members are greatly appreciated.

— Malcolm A. Meyer
Chairman,
On Behalf of the
Louisiana State Bar Association
Uniform Title Standards Committee



ARTICLE I

THE TITLE EXAMINER

■ Standard 1.1 Marketability of Title

The purpose of an examination is to determine whether the title to immovable property is marketable as shown by the public records over the period of search. A title which does not expose the client to the unreasonable risk of serious litigation is marketable. To be marketable, a title need not be free from every technical defect, from all suspicion or all possibilities of litigation, but rather the title must be free of rational and substantial doubt to the extent that a purchaser may reasonably assume that he can hold the property in peace without the probability of litigation and with reasonable assurance that the property will be readily saleable on the open market. Objections and requirements should be made by the examining attorney only when the unremedied defects would render title unmarketable.

Background Notes

The word “merchantability” and the word “marketability” are considered interchangeable and to have the same meaning.

See, Young v. Stevens, 252 La. 69, 209 So. 2d 25 (1967); *Doll v. Meyer*, 214 La. 444, 38 So. 2d 69, 71 (1948), *cert. denied*, 336 U.S. 967, 69 S.Ct. 938 (1949).

■ Standard 1.2 Adoption of Standards

The Uniform Title Standards Committee recommends that the following provision be included in contracts for the sale of immovable property:



“It is mutually understood and agreed that title will be considered marketable for the purposes of this Agreement if it would be so construed under the Louisiana Uniform Title Standards as promulgated by the Louisiana State Bar Association’s Committee on Title Standards.”

Background Notes

One of the stated goals of the committee was to adopt uniform standards which, when followed through the state, would reduce costly litigation. The use of these standards, therefore, should be encouraged.

**Standard 1.3 Professionalism —
The Opportunity for Discussion**

When the examining attorney discovers a defect in title which in his or her opinion would render title unmarketable and has knowledge that another examining attorney previously approved the title as marketable, the examining attorney should communicate, if feasible, with the other examining attorney and afford an opportunity for discussion.

Background Notes

Common courtesy and professionalism are essential elements in the practice of law and ought to be included in the real estate attorney’s repertoire.

Standard 1.4 Validity of Statutes

All statutes are presumed valid, constitutional and effective from the effective date of the statute.

Background Notes

Too often philosophical debates jeopardize the stability of titles. It is not the normal role of an individual examiner to call into question the clearly enunciated acts of legislative bodies. However, sound practice and Standard 1.1 suggest that serious ongoing debate upon the efficacy or constitutionality of a particular statute may suggest litigation.



■ Standard 1.5 **Validity of Final Judgments**

All judgments recorded in the public records are presumed to have been rendered by a court of competent jurisdiction and to be valid and effective from the date the judgment becomes final.

Background Notes

The Uniform Title Standards Committee much debated the extent of the public records and whether these included all supportive pleadings not filed in conveyance or mortgage records. The requirements and customs of looking into such pleadings has been inconsistent, but recently adopted statutes, such as La. R.S. 35:11, suggest it is on the wane.

■ Standard 1.6 **Application of Standards**

These standards shall apply to all interests in immovable property to the extent their application is compatible with the nature of such interests, except as provided in Article XXIII hereafter.

Background Notes

Article XXIII excepts matters governed by the Louisiana Mineral Code from these standards.

■ Standard 1.7 **Interpretation**

These standards are to be interpreted in reference to each other when on the same subject matter; when on different subjects, they may be applied by analogy should such application lead to an interpretation which fosters merchantability. The several standards should be considered *in pari materia*. Listings are by way of example, not by limitation, unless otherwise noted.



ARTICLE II

THE RECORD

■ **Standard 2.1 Period of Search**

The marketability of title shall be determined based upon a search and examination of the public records in the names of the record owners of the subject property for a period of 35 years or such longer period of time as may be necessary to commence the examination with a conveyance for consideration.

Background Notes

The Uniform Title Standards Committee recognized that the 35-year period may constitute a shorter period than has customarily been used in many localities. In the interest of establishing a standard, the committee agreed to rely upon the principle that prescription, including 30-year acquisitive prescription, generally runs against all persons absent any applicable exception. *See*, La. Civ.C. art. 3468. The period of 35 years was selected as a compromise. It does not address the issue of whether there was a patent properly signed or some other non-prescriptive claim. This standard therefore suggests a minimum time period.

■ **Standard 2.2 Public Records**

As used in these standards, the public records shall include all instruments, including actual attachments thereto, which are recorded in the mortgage and conveyance records maintained by the clerk of court of the parish in which the property is situated.



Background Notes

The term “clerk of court” in these standards shall be deemed to include the “register of conveyances,” “recorder of mortgages” and the Notarial Archives, in Orleans Parish. The examining attorney shall not be required to examine other governmental records except as specifically provided in these standards.

Standard 2.3 Chain of Title

As used in these standards, the chain of title is defined as that group of instruments affecting the subject property which are recorded and properly indexed in the names of the record owners of the subject property during the period of their record ownership in the conveyance records maintained by the clerk of court of the parish in which the property is situated. The following instruments are outside the chain of title:

- a. an instrument executed by a person in the chain of title recorded after the date of recording of another instrument by the same person purporting to convey the same interest;
- b. an instrument executed by a person in the chain of title recorded prior to the date of recording of the act of acquisition of the same person;
- c. an instrument executed by a person who is a stranger to the chain of title;
- d. a recorded instrument affecting the interest of a person in the chain of title in which his name is spelled so differently than in the act of acquisition of that person that the person may be presumed to be a stranger to the chain of title;
- e. title to and encumbrances affecting leasehold interests, mineral interests or other interests and encumbrances granted by a person in the chain of title, provided the client has approved the outstanding interest as an exception to title and provided the interest or encumbrance is not the subject of the title examination; and
- f. an instrument recorded but improperly indexed so as to be undiscoverable by a review of the clerk’s index.



Background Notes

An examining attorney may rely on an instrument outside the chain of title to cure a title defect but should reference the document in some fashion to make it part of the chain of title. *See*, Standard 2.5, *infra*. While it is necessary to run the name of the owner of property for the period of time that he owned the property, it is customary abstracting procedure to run the name of the owner for a short period (*e.g.*, six months) prior to acquisition in order to pick up a mortgage he may have placed on the property and which would attach under the doctrine of after-acquired title. Similarly, it is customary to run the name of an owner for a period of three years past sell-out in order to pick up tax sales which may be made in a prior owner's name subsequent to his sell-out. *See*, Article III for identities, name variations and presumptions relating thereto.

Standard 2.4 Scope of Examination

The examining attorney is entitled to restrict his examination of the conveyance records to the instruments in the chain of title.

Background Notes

Recorded instruments outside the chain of title not indexed at all or erroneously indexed may affect a title, but the examining attorney is not required to search all recorded instruments. She is entitled to limit her search to the clerk's index system.

Standard 2.5 References to Other Instruments

The following references in recorded instruments shall not adversely affect marketability:

- a. any reference to an instrument which is not recorded;
- b. any reference to an interest which is not created or transferred by a recorded instrument;
- c. any reference to a recorded instrument which is not in the chain of title if such reference does not specifically identify the full names of the parties to the instrument, the recordation information of the instrument or such other information as may be required to readily locate the instrument;



- d. assumptions, assignments, modifications and corrections of encumbrances which have been canceled; and
- e. requests for notice of seizure.

A recorded instrument otherwise outside the chain of title to which reference is made in a recorded instrument in the chain of title shall be deemed to be included in the chain of title provided such reference specifically identifies the full names of the parties to the instrument, the recordation of the instrument or such other information as may be required to readily locate the instrument.

■ Standard 2.6 Expired Agreements

The following shall not adversely affect marketability:

- a. a recorded lease when the term, as and if extended by express and recorded exercise of any extension or renewal periods, has expired;
- b. a recorded executory contract for the purchase and sale of the property in the chain of title or any other executory contract affecting any interest in the property provided 10 years (or such shorter period of time if the rights thereunder are clearly terminated by the contract) have elapsed after the date provided in the contract for the passage of the act of sale of the property or act affecting an interest therein and provided a notice of *lis pendens* has not been recorded evidencing the filing of a suit to enforce the recorded executory contract; and
- c. a recorded option to purchase the property in the chain of title, provided 10 years (or such shorter period of time if the rights thereunder are clearly terminated by the contract) have elapsed from the last day on which the option was exercisable and provided no conveyance, contract or other instrument has been recorded evidencing that the option has been exercised.

Background Notes

Since there are conflicting cases regarding the necessity to record the exercise of an option to renew a lease, it may still be necessary to wait the lengthy period of 10 years that one has to bring a personal action before approving a title that contains an option to purchase which has not been exercised of record. See, *Avenue Plaza, L.L.C. v. Falgoust*, 654 So. 2d 838 (La. App. 4th Cir. 1995); *Thomas v. Lewis*, 475 So. 2d 52 (La. App. 2nd Cir. 1985); La. Civ.C. art. 3499. For instance, if an examiner is faced



with an expired lease that contains an option to purchase, he may not know whether or not the lessee attempted to exercise the option and was denied the right by the lessor and would, therefore, have a 10-year period in which to enforce this right. It is suggested that legislation be enacted that would require a *lis pendens* to be filed within one year of the expiration of the right to exercise the option and that purchase agreements contain self-destruct clauses that would state that they are no longer effective after a certain date, if a *lis pendens* is not filed by that date.

Standard 2.7 Use of Abstractors, Indices and Copies

The examining attorney is entitled to rely upon an abstract composed of photocopies or extracts of instruments from the public records prepared by an abstractor and the certification thereon. An abstract shall not be considered inadequate simply because the preparer of the abstract is not bonded or otherwise insured unless required by law. The examining attorney is entitled to rely upon a clerk's indexing system.



ARTICLE III

IDENTITY AND NAME VARIANCES

■ **Standard 3.1 Presumption of Ownership**

A person may be presumed to alienate or encumber only what he owns and not that which he does not own.

■ **Standard 3.2 Identity**

A recital of identity contained in a recorded instrument apparently executed by the person whose identity is recited shall be presumed correct.

Background Notes

A distinction should be made concerning the role and function of the notary and the role of the title examiner and the presumptions each should make concerning the correct identity of the party(ies) executing an instrument. La. R.S. 35:11, 35:12 and 35:17 are those applicable statutes relating to functions and duties of notaries and are considered directory rather than mandatory. The failure by the notary to comply with these statutes may subject the notary to a penalty; however, the failure will not affect the validity of documents where notarial omissions have occurred. This uniform title standard allows the title examiner to rely on a recital correct on its face unless the chain of title indicates otherwise. If the chain of title indicates an error with respect to correct identity, the title examiner must not close her eyes to those obvious defects and errors. *See, Aladdin Oil Co. v. Marque*, 157 So. 2d 368 (La. App. 4th Cir.), *writ refused*, 245 La. 463, 158 So. 2d 613 (La. 1963). When a person has more than one name, and the examiner knows them, a search in all names and a reference to all names is necessary.



Standard 3.3 Name Variations

Differently spelled names in instruments shall be presumed to identify the same person when they sound alike or when their sounds cannot be easily distinguished or when common usage by corruption or abbreviation has made their pronunciation identical.

Background Notes

Louisiana law provides a method to distinguish judgments affecting individuals with similar names. An affidavit of distinction must be properly executed and recorded in accordance with La. R.S. 9:5501 and La. R.S. 9:5503. In accordance with the Opinion of the Attorney General, No. 87-631, Dec. 9, 1987, a mortgage certificate run to determine if an immovable is burdened with any encumbrance shall include a search of the public records for a variation by middle name or initial of the owner's recorded name and also requires that the doctrine of *idem sonans* be applied to a variation of a name or initial in that the variation should, when pronounced, sound practically identical with the correct name. For example, Sean and Shawn are *idem sonans*. The title examiner must be concerned about "reasonable name variations" as that terminology is employed in La. R.S. 9:2728 which addresses the performance standard to be used by the clerk of court in preparing mortgage certificates. In light of the 4th Circuit decision in *Voekel v. Harrison*, 572 So. 2d 724 (La. App. 4th Cir. 1990), *writ denied*, 575 So. 2d 391 (La. 1991), and, more particularly, on the issue of sufficiency of notice of recorded instruments to third parties, the "similar names" dilemma continues to be a source of consternation to Louisiana title examiners. This statement holds true even though La. R.S. 9:2728 was declared to be a remedial statute. "Francis" and "Frances" are examples of *idem sonans*, whereas "Nicholas" and "Nickols" are not. See, *Miller v. Brugier*, 176 La. 106, 145 So. 282 (1932), for the rationale. Nonetheless, a judgment against a proven stranger to the chain of title cannot encumber the title, even in the case of identical names.



■ **Standard 3.4 Abbreviations and Nicknames**

The same person shall be presumed to be identified where common abbreviations, derivatives or nicknames are used in instruments instead of the full given and/or middle name.

Background Notes

The notary public before whom the act is executed is required to insert the “Christian” names of the parties in full and not their initial alone. La. R.S. 35:12. However, this provision is directory only and the failure of the notary public to do so does not affect the validity of the mortgage. *American Bank & Trust Co. v. Michael*, 244 So. 2d 882 (La. App. 1st Cir.), writ not considered, 258 La. 368, 246 So. 2d 685 (1971).

■ **Standard 3.5 Initials and Middle Names**

The same person shall be presumed to be identified despite the use in one instrument and non-use in another instrument necessary to complete the chain of title of an initial or of a middle name.

Background Notes

In accordance with La. R.S. 13:901, the clerks of court, including the recorder of mortgages and the register of conveyances in Orleans Parish, are required to index acts including the Christian name, initials and family name. Further, if a woman is a party to the act, it must be indexed in her married name as well. La. Civ.C. art. 100 provides that marriage does not change the name of either spouse and a married person may use the surname of either of both spouses as a surname.

■ **Standard 3.6 Name Suffixes**

The use of a suffix such as “Jr.” or “II” in one recorded instrument in the chain of title and non-use in another shall be presumed to identify different persons. The same person shall be presumed to be identified despite the use in one instrument and the non-use in another instrument in the chain of title of the suffix “Sr.”



Background Notes

La. R.S. 9:2728 provides that a search by the clerk of court should include a search of the public records for a variation by middle name or initial of the owner's recorded name. La. R.S. 9:2728 must be considered with *First Financial Bank, F.S.B. v. Johnson*, 477 So. 2d 1267 (La. App. 4th Cir. 1985), and *Dixie Savings and Loan Ass'n v. Sharp*, 505 So. 2d 157 (App. 4th Cir.), *writ denied*, 506 So. 2d 1225 (La. 1987), in which conventional mortgages were held to be invalid because of discrepancies or omissions with regard to middle initials in the owner's name in the act of mortgage when compared to the act of acquisition. However, in *Voelkel v. Harrison*, 572 So. 2d 724 (La. App. 4th Cir. 1990), *writ denied*, 575 So. 2d 391 (1991), the court held that a mortgage recorded in the name of the mortgagor with a middle initial was valid although the owner's name in the acquisition did not include his middle initial. This standard does not address the custom in some areas in which John Doe, Jr. ceases use of "Jr." after the death of the person for whom he was named.

Standard 3.7 Signature Variations

Variations between the name typed by the signature on an instrument and the name recited in an instrument in the chain of title which would identify the same person under the preceding rules shall not adversely affect marketability. In instances where the variations would otherwise be sufficient to rebut the presumption of identity, the appearance clause in the recorded instrument necessary to complete the chain of title shall control over the signature.

Background Notes

The name in the substantive portion of the notarial act controls if it is different than the typed name under the signature line on the act. *Agurs v. Belcher & Creswell*, 111 La. 378, 35 So. 607 (1903). If the signature itself is so clearly different that an ordinary person would presume the person who signed is not the person in the appearance clause, a suggestion of litigation would arise. It may be possible for this matter to be resolved by the notary's explanation in an act of correction.



■ **Standard 3.8 Gender Variations**

The use of improper personal pronouns in recorded instruments in the chain of title referring to the sex of a person shall be disregarded by the examining attorney.

Background Notes

Pronouns shall be considered as convenient references but are not to be construed as binding or absolute.

■ **Standard 3.9 Identification by Marital Status, Marital History or Social Security Number**

Recitations of marital status, marital history or Social Security number in instruments necessary to complete the chain of title shall be used to confirm the identity of persons.

Background Notes

La. R.S. 44:135 forbids the recordation of deeds and mortgages by the recorder which fail to contain a full statement of marital status of each party. This directory rather than mandatory provision arises from those provisions of the revised statutes related to the function and duties of recorders of public records. The notary in her preparation of the notarial act should always recite the marital status of each party to the act as mandated by La. R.S. 35:11. The absence of marital status in a notarial act could be construed to render the title unmerchantable. *Rivet v. Dugas*, 377 So. 2d 489 (La. App. 4th Cir. 1979); *Bossier v. Shell Oil Co.*, 430 So. 2d 771 (La. App. 5th Cir. 1983). La. R.S. 35:17 and 9:5141(c) direct notaries to provide the Social Security number of all appearers.

■ **Standard 3.10 Correctness of Status**

The incorporation of marital data in an instrument creates a rebuttable presumption of its correctness.

Background Notes

See, Taylor v. Turner, 45 So. 2d 107 (La. App. 2nd Cir. 1950); La. R.S. 35:11.



ARTICLE IV

FORMS OF INSTRUMENTS

■ Standard 4.1 Form: In General

Except as otherwise provided or required by special statutes, recorded instruments necessary to complete the chain of title shall be deemed by an examining attorney to be in acceptable form if in a form which would allow their introduction into evidence in a court proceeding as prima facie proof of their contents.

Background Notes

This uniform title standard sets forth the general rule that authentic acts and acts under private signature duly acknowledged are prima facie proof of their contents. La. Civ.C. art. 1836 also provides that an act under private signature duly acknowledged is not the equivalent of the authentic act but shall be admissible in evidence as prima facie genuine. This form is defined as an act acknowledged by a party to that act which recognizes the signature of the executing party as his own and does so before a court, a notary public or other authorized officer to perform the function as a notary public and furthermore in the presence of two witnesses. This is perhaps the most common type of acknowledgment. This latter method provides that one of the attesting witnesses may acknowledge by affidavit that the act was signed by the executing party(ies) in the presence of the affiant. Certified copies are now more widely accepted because of the precepts of the new Evidence Code and La. Civ.C. art. 1840. The Uniform Title Standards Committee suggests that certified copies are acceptable where there is an indication in the chain of title that these are the “best evidence” available.



Standard 4.2 Form: Exceptions

Marketability shall not be adversely affected if instruments such as the following necessary to complete the chain of title are not in the form provided in Standard 4.1:

- a. articles of formation of partnerships, joint venture, limited liability companies or corporations;
- b. a consent of the shareholders of a corporation as provided in La. R.S. 12:76;
- c. copies of corporate resolutions certified as correct by the corporate secretary or any assistant secretary;
- d. resolutions of limited liability companies;
- e. corrections in compliance with La. R.S. 13:4104;
- f. acts under private signature recorded for a period in excess of 19 years;
- g. judicial documents such as the originals or the certified copies of judgments, court orders and letters testamentary;
- h. dedications and servitudes made or depicted on plats or maps which are signed by the owners of the property shown on the plat or map;
- i. leases;
- j. instruments such as affidavits which are not translative of title; and
- k. other instruments customarily accepted by examining attorneys.

Background Notes

Custom and practicality have established the rationale that a “marketable title” is not suggestive of litigation even if many instruments and curative documents in the chain of title are not the self-proving authentic acts and acts under private signature duly acknowledged. (*See*, Standard 4.2, *supra*.) For example, articles of partnership or articles of incorporation in this uniform title standard must conform only to the Public Records Doctrine, *i.e.*, that instruments must be recorded to affect third persons. Stated another way, a written instrument involving immovable property has effect against third persons when it is filed for record in the parish where the immovable is located. This requirement for recordation in the public records deals with the effect of the transaction on third persons, not with the concept of evidentiary self-provability and not with respect to whether the instrument is *prima facie* evidence of the recitals contained therein. Instruments and curative documents not enumerated in this uniform title



standard may be relied upon by the title examiner but may not be used by the title examiner for the purpose of establishing “merchantable title” unless jurisprudence or custom have supported such reliance. A “resolution” of the board of trustees of a national trust or the photocopy of the appointment of the Secretary of Housing and Urban Development may be appropriate examples.

Standard 4.3 Errors in Execution or Date

Omissions, errors or inconsistencies in the date of execution or acknowledgment of an instrument necessary to complete the chain of title shall not adversely affect marketability, unless the correct date is relevant to some issue of title.

Background Notes

The underlying reason behind this uniform title standard has been partially addressed by the Legislature in the enactment of La. R.S. 35:2.1 concerning the notary public’s authority to correct his or her own errors, omissions or inconsistencies. Sub-part B provides inter alia: “The act of correction shall not alter the true agreement and intent of the parties.” If the true agreement of the parties has been preserved in the act of correction, the marketability of title is not thereby adversely affected. The title examiner should also be aware of the provisions set forth in La. R.S. 13:4104 which deals with situations where there is a variance between the note and the mortgage date due to a clerical error. The notary public can make a correction to conform one instrument to the other and at the same time preserve the clear intention of the parties thereto, which can also facilitate the proceeding for the purpose of executory process. La. R.S. 13:4104 is very useful when either the mortgage or the note shows the wrong date and a correction is necessary to ensure the date of the note coincides with the date recited in the mortgage.



■ Standard 4.4 Delay in Recordation

A delay in the recordation of an instrument necessary to complete the chain of title shall not, of itself, impair marketability.

Background Notes

A notary has a duty to promptly record, and failure to do so may be a ministerial fault. *See* La. Civ.C. art. 3370; La. R.S. 9:2741 and La. R.S. 9:2745. Failure to record is a tort. *Anderson v. Hinrichs*, 457 So. 2d 225 (La. App. 4th Cir. 1984).

■ Standard 4.5 Parties Necessary to Correct

Except as otherwise provided by La. R.S. 13:4104 or by other special statutes, recorded instruments necessary to complete the chain of title shall be deemed by an examining attorney as corrected or amended through a recorded instrument in proper form if executed by the parties to the original instrument whose title to the property being examined would be prejudiced if the correction or amendment is given effect.

Background Notes

See, comments and background notes under Standard 4.3, *supra*. When an act of correction is to be executed by a party, the party whose rights are being transferred is the party who must execute the correction.



ARTICLE V

AFFIDAVITS, RECITALS AND JUDGMENTS

■ Standard 5.1 Affidavits and Recitals

Recorded affidavits and recitals in recorded instruments may be relied upon by the title examiner to establish necessary facts not otherwise of record, including without limitation the following:

- a. the death, domicile and heirship of a person in the chain of title;
- b. the marital status of a person in the chain of title;
- c. the history of possession of or natural or artificial boundaries of immovable property;
- d. the identity of a person, corporation, partnership or other entity;
- e. Social Security numbers or other information usable to identify parties;
- f. the establishment of estoppel against the person making the affidavit;
- g. the explanation of ambiguous recitals in other instruments of record;
- h. the distinguishment of a judgment debtor from another person with a similar name in conformity with statutory law, local custom or these standards;
- i. the correcting of clerical errors in a prior notarial or authentic act by an authorized notary;
- j. the abandonment of use or possession; and
- k. when otherwise authorized by any statute.

Background Notes

The Public Records Doctrine has been viewed as a negative doctrine in that what is *not* recorded is *not* effective except between parties, and a third party in purchasing or otherwise dealing with immovable property is entitled to rely on the absence from public records of any unrecorded



interest in the property. *See, High Plains Fuel Corp. v. Carto Int'l Trading*, 93-1275 (La. App. 1st Cir. 5/20/94), 640 So. 2d 609, *writ denied*, 94-2362 (La. 11/29/94). This negative aspect of the Public Records Doctrine affecting immovables and the applicability of such rules to third parties is universally accepted. The general rule is that, where one is put on inquiry as to title, availing one's self of facilities at hand requires examination of any necessary public records but not a wide ranging search of unrecorded documents. La. R.S. 9:2721. The jurisprudence generally has held that unrecorded acts will have no legal effect on a third person even where the third person has actual knowledge of the unrecorded acts. The Uniform Title Standards Committee strongly supports this jurisprudence.

The title examiner must examine any public records but is not compelled under this uniform title standard to search a wide range of documents outside the chain of title.

■ **Standard 5.2 Basis of Affidavits and Recitals**

Affidavits and recitals should be made by persons competent to testify in court, state facts rather than conclusions and disclose the basis of the maker's knowledge. The affidavit or recital shall not be rendered unacceptable by the fact that the maker has an interest in the title or the subject matter of the affidavit or recital.

■ **Standard 5.3 Judgments Establishing Ownership**

The validity and effectiveness of a final judgment rendered by a Louisiana or a federal court recognizing or establishing a person's ownership of or interest in property shall be presumed by the examining attorney. The fact that the adverse party in the proceeding was represented by a properly appointed attorney *ad hoc* does not dispel this presumption.

Background Notes

See also, comments under Standard 1.5. "Final judgment" is meant a judgment for which all appeal periods have passed. The existence of a devolutive appeal is still suggestive of litigation.



■ Standard 5.4 Effect of Affidavits and Recitals

An examining attorney may rely on recorded affidavits and recitals of facts in other recorded instruments to clarify, correct or establish facts otherwise not of record in the chain of title unless judicial proceedings are required by law, or unless the examining attorney has actual knowledge of facts, claims or recitals contradicting the affidavit or recital.

Background Notes

This uniform title standard allows the title examiner in her quest for a merchantable title to rely on facts contained in affidavits and recitals in various duly recorded instruments as a means to clarify, correct or establish facts otherwise not available concerning the title itself. Those affidavits and recitals shown in Standard 5.1 can be a matter of public record but are typically not in the chain of title, *per se*. These should be incorporated into the chain of title for future reference.



ARTICLE VI

DESCRIPTIONS

■ **Standard 6.1 Errors, Omissions and Irregularities**

Errors, omissions, irregularities, deficiencies and small variations in measurement in property descriptions in instruments necessary to complete the chain of title shall not adversely affect marketability unless, after all evidence of record is considered, a substantial uncertainty exists as to the identity of the property or of the interest intended to be conveyed. Lapse of time, prior or subsequent conveyances, the manifest or typographical nature of errors and accepted rules of construction and interpretation may be relied upon by the examining attorney to approve marginally sufficient or questionable descriptions.

Background Notes

Deciphering the intent of the parties is the key. *See, Clark v. Lee*, 221 So. 2d 562 (La. App. 2nd Cir. 1969).

■ **Standard 6.2 Description Versus Plat or Survey**

In the event of a discrepancy between the verbal description of property contained in a recorded instrument and the description in a recorded plat or survey attached to or referred to in a recorded instrument, in the absence of circumstances indicating otherwise, the examining attorney shall rely on the plat or survey as correct and controlling, with the older survey prevailing.



Background Notes

See, Millikin v. Minnis, 12 La. 539 (1838); *Gibson v. Johnson*, 244 So. 2d 713 (App. 2nd Cir. 1971), *writ refused*, 258 La. 347, 246 So. 2d 197 (La. 1971).

Standard 6.3 Priority

An examining attorney shall rely on the following order of priority to decipher a description which is internally inconsistent:

- a. natural monuments;
- b. artificial monuments;
- c. distances;
- d. courses; and, lastly,
- e. quantity.

Background Notes

See, Arms v. Boy Scouts of America, 522 So. 2d 668 (App. 5th Cir.), *writ denied*, 523 So. 2d 1340 (La. 1988).

Standard 6.4 Presumption Against Excluded Portions

An examining attorney may presume that small strips or gores lying between the property described and public roads, streets or property owned by others are intended by the parties to an instrument to be included within the description.

Standard 6.5 Error in Referenced Survey

If property is described in an act by reference to a recorded map or plat, incorrect or omitted recordation information in the act or incorrect or omitted lot, block, unit or unit designations in the act shall not adversely affect marketability if there is no reasonable doubt as to the intent of the parties.



Background Notes

If the subject property is described by reference to more than one plat, which themselves conflict, the oldest plat shall prevail unless the newer plat clearly was intended to correct the older plat with regard to the particular conflict considered. In determining intent, the examining attorney shall consider whether there are other subdivisions with the same or similar name, whether the grantor owned other property with a similar description at the time of execution or recordation of the instrument, whether there is a possibility of a different lot, block or other unit designation being intended based upon the designation scheme for the subdivision and other subdivisions with similar names, the municipal addresses contained in the instrument and such other relevant facts as may be apparent from the public records. *See*, Standard 6.1; *Gretna Fin. Co. v. Camp*, 212 So. 2d 857 (La. App. 4th Cir. 1968).



ARTICLE VII

CAPACITY

■ Standard 7.1 Capacity

The examining attorney shall assume that persons appearing in instruments are of the age of majority and mentally competent to transfer, alienate or encumber property both at the time of the execution of the instrument and at the time of its filing, in the absence of a judgment or other evidence to the contrary in the chain of title.

Background Notes

This presumption of competency parallels the presumption against disability in succession law.

■ Standard 7.2 Form of Signature

The examining attorney shall assume that any mark on an instrument which is indicative of or represented to be a signature of a party, witness or notary public shall constitute a signature and evidence of consent to that instrument and it shall not be necessary for said party, witness or notary public to write legibly or to correctly spell out his name.

Background Notes

This guideline is not intended to provide any prescription of an appropriate signature where the signature appears to be that of the wrong party; for example, John Smith is supposed to be vendor in an act of sale and the signature reads Bob Roberts. *See, Agurs v. Belcher & Creswell*, 111 La. 378, 35 So. 607 (1903).



■ Standard 7.3 Capacity of Fiduciary

The examining attorney shall assume that a final judgment or order of a court of proper jurisdiction authorizing the representative of a minor's, a decedent's or an interdict's estate to transfer, alienate or encumber property is valid and effective.

Background Notes

The judgments and orders referenced in this standard may be unrecorded. Some attorneys may require recordation. *See, State v. Sacred Heart Orphan Asylum*, 154 La. 883, 98 So. 406 (1923), as one case which establishes this presumption of correctness.

■ Standard 7.4 Notarial Seal

A Louisiana notary is not required to use a seal on her acts, although the practice is recommended.

Background Notes

See, Meyer's Manual on Louisiana Real Estate, 26 (Claitor's 1992). Seals have no legal significance in Louisiana, although other states require seals under their laws.



ARTICLE VIII

MANDATES AND PROCURATIONS

■ Standard 8.1 Presumption of Validity

The examining attorney may assume that a recorded mandate or procuration granting express authority to a mandatary is valid at the time of filing of the instrument in which the agent represented the principal unless:

- a. the mandate or procuration had expired or terminated by its terms;
- b. an express revocation of the mandate or procuration appears between the date of the mandate or procuration and the date of filing of the instrument in the public records; or
- c. an affidavit or other document evidencing the death or the qualification of a curator for the principal, or the interdiction of the mandatary, appears in the public records subsequent to the execution of the mandate or procuration and prior to the filing of the instrument.

Background Notes

Old art. 3030, providing that a later recorded power of attorney revokes a prior one, was not carried forward in the revisions and is repealed by implication.

■ Standard 8.2 Express Power

A recorded mandate or procuration expressly authorizing an agent to purchase, sell, mortgage or otherwise alienate or encumber property shall be sufficient even though the property is not specifically described, nor its location by parish or state provided, nor the specific terms of the transaction provided.



Background Notes

See, La. Civ.C. art. 2997; Tensas Delta Land Co. v. Fleischer, 132 La. 1021, 62 So. 129 (1912).

Standard 8.3 Lack of Power of Attorney

A defect, discrepancy or complete absence of a mandate or procuration to a transaction recorded in the public records in excess of 10 years shall not adversely affect merchantability, and the agent's authority to act shall be conclusively presumed.

Background Notes

La. R.S. 9:5682.



ARTICLE IX

CORPORATIONS

■ Standard 9.1 Name

Corporations in the chain of title are sufficiently identified although their exact names are not used in recorded instruments necessary to complete chain of title and variations exist from one recorded instrument to another if, from the names used and other evidence in the public records, the identity of the corporation is established with reasonable certainty. Among other variances, the addition or omission of the word “The” preceding the name, the use or non-use of the symbol “&” for the word “and,” and the use, non-use or alternate use of abbreviations for “company,” “limited,” “corporation” or “incorporated” shall be disregarded by the title examiner. Affidavits, recitals of identity and references to Secretary of State’s records may be used and relied upon where variations are too substantial or too significant to be ignored.

■ Standard 9.2 Signature of Agent

The signature of the agent of a corporation in an act necessary to complete the chain of title shall be sufficient notwithstanding the omission of the corporate name or of reference to the agent’s office over the signature of the agent, if the corporation is otherwise named in the body of the instrument or in the acknowledgment as a party and as represented by that agent.

■ Standard 9.3 Presumption of Existence

When an instrument executed by any corporation, whether foreign or domestic, appears in the chain of title, the examiner may assume that the corporation was legally in existence at the time the instrument was executed, filed and took effect.



■ Standard 9.4 Presumption of Corporate Authority

The authority of a corporation under its articles to acquire, alienate or encumber property may be presumed, in the absence of contrary evidence in the chain of title as an entity.

Background Notes

The Uniform Title Standards Committee notes that in 1998 many national lenders began requiring single-purpose limitations on corporate borrowers. The violation of such a restriction may result in an *ultra vires* act, but title to the property acquired in violation of the articles would still vest in the corporation as an entity.

■ Standard 9.5 Resolution

An examiner shall rely upon instruments executed by a corporation necessary to complete the chain of title when accompanied by or when evoking the authority of a recorded resolution if the resolution:

- a. authorizes the action of the corporation in express terms;
- b. authorizes the signatory who did in fact sign; and
- c. was attested to as a true and correct resolution by any officer of the corporation.

It is neither necessary to describe the immovable property in the resolution nor to provide the name of the authorized agent if the authority is given to a holder of a particular office and any officer of the corporation other than the agent signing the instrument certifies that the signor is the holder of that office. It is not necessary that a resolution be attested to by a different officer from the one who is the signor of the instrument.

Background Notes

La. R.S. 12:82 (A) requires that the board of directors elect a president, secretary and treasurer. Only two offices may be combined in one person. La. R.S. 12:81(A) requires a minimum of three directors, unless all outstanding shares are held by fewer than three shareholders. Some



attorneys believe that, under these statutes, even if a corporation has one shareholder, it must have two officers. Nonetheless, the Uniform Title Standards Committee finds no requirement, jurisprudential or otherwise, that the attestation must be executed by one who is not being authorized. Prudence in business practice, but not the Public Records Doctrine, suggests two signatures are better than one.

■ **Standard 9.6 Lack of Resolution**

A defect, discrepancy or the complete absence of a resolution to a transaction recorded in the public records in excess of 10 years shall not adversely affect merchantability, and the agent's authority to act for the corporation shall be conclusively presumed.

■ **Standard 9.7 Subsequent Formation**

When the acquisition of property is in a corporate name and the corporation did not exist at the time of acquisition, a correction by due incorporation will vest title in the corporation without a separate act of transfer to complete the chain of title.

■ **Standard 9.8 Improper Formation**

An improperly formed corporation must complete its formation prior to its transferring, conveying or encumbering of property to which it has title.



■ **Standard 9.9 Dissolution and Liquidation**

A corporation's voluntary liquidator shall be assumed to have full authority to act for the corporation either when the public records evidence such authority by:

- a. a copy of minutes or resolution certified by any corporate officer of a shareholders' meeting authorizing liquidation and appointing the named liquidator;
- b. a certificate of the Secretary of State authorizing liquidation recorded in the mortgage records of the parish of the corporation's domicile; or
- c. after a period of 10 years from the date the liquidator's actions were filed of record if the above evidence is lacking.

■ **Standard 9.10 Post-Liquidation Title**

Title to a corporation's assets remains in the corporation subsequent to its liquidation until transferred by a separate instrument.

■ **Standard 9.11 Merger and Consolidation**

The examining attorney shall assume that the transfer of ownership of an immovable in the chain of title from a corporation which has merged into, or has been consolidated with, a second corporation or other juridical entity to have been validly consummated to the second corporation or other juridical entity without the need of an act of transfer or of a separate property description for each immovable.

■ **Standard 9.12 Receivership**

The examining attorney shall consider the transfer of an immovable in the chain of title by a corporation's receiver as properly authorized if the exercise of authority to act for the corporation is evidenced by a certified copy of a court order.



Standard 9.13 Sole Asset

An examining attorney need not review books and records of a corporation to determine whether the sale of an immovable is the corporation's only asset.

Standard 9.14 Good Standing

The examining attorney shall consider the title to an immovable to be marketable even if a foreign corporation is not authorized to do business in the state of Louisiana or a domestic corporation is not in good standing or has had its charter revoked.

Standard 9.15 Applicability of Chapter

The standards of this article apply equally to foreign and domestic corporations, and to profit and not-for-profit corporations, unless otherwise indicated.



ARTICLE X

LIMITED LIABILITY COMPANIES

■ Standard 10.1 Names

The examining attorney may assume that a limited liability company (company) in the chain of title is sufficiently identified although its exact name is not used in recorded instruments necessary to complete the chain of title and variations exist from one recorded instrument to another if, from the names used and other evidence in the public records, the identity of the company is established with reasonable certainty. The examining attorney may rely on affidavits, recitals of identity and references to Secretary of State's records where variations are too substantial or too significant to be ignored.

Background Notes

This is a corollary of Standard 9.1 applicable to corporations and Standard 11.6 applicable to partnerships.

■ Standard 10.2 Signature of Agent

The examining attorney may assume that the signature of an agent of the company in an act necessary to complete the chain of title shall be sufficient notwithstanding the omission of the company name or of reference to the agent's position or office if the company is otherwise named in the body of the instrument or in the acknowledgment as a party and as represented by that agent.

Background Notes

This is a corollary of Standard 9.2 applicable to corporations and Standard 11.5 applicable to partnerships.



■ **Standard 10.3 Presumption of Existence**

The examining attorney may assume, when an instrument naming a company appears in the chain of title, that the company was legally in existence at the time the instrument was filed and took effect.

Background Notes

This is a corollary of Standard 9.3 applicable to corporations. A Louisiana limited liability company is duly organized, and separate existence begins, as of the time of filing of the articles of organization with the Secretary of State, unless filed within five days of acknowledgment of the articles or execution of the articles as an authentic act, in which case the company is duly organized, and separate organization begins, as of the time of such acknowledgment or execution. There is no requirement that copies of the articles or other evidence of organization be filed with any clerk of court.

■ **Standard 10.4 Separate and Distinct Entity and Transaction Involving Membership Interests**

The examining attorney shall assume that the company is a juridical person, separate and distinct from its members, and that the members of the company do not have any interest in company property. The examining attorney shall assume that the spouse of a member is not required to execute any instrument (including, without limitation, the company's articles or any operating agreement) to authorize the member spouse to take any action with respect to the company, company property or any membership interest, including, without limitation, execution of instruments authorizing the member spouse or others to act for and on behalf of the company.

Background Notes

This standard incorporates the provisions of La. R.S. 12:1329 with respect to the nature of a membership interest in a limited liability company, and La. Civ.C. art. 2352 with respect to the exclusive right of a member spouse to manage, alienate, encumber or lease the limited liability company interest.



■ **Standard 10.5 Presumption of Company Authority**

The examining attorney may assume the authority of a company to acquire, alienate or encumber property, in the absence of contrary evidence in the chain of title.

Background Notes

This is a corollary of Standard 9.4 applicable to corporations.

■ **Standard 10.6 Evidence of Agent Authority**

The examining attorney may rely upon instruments necessary to complete the chain of title executed by an agent acting for or on behalf of a limited liability company when the authority of the agent to act for or on behalf of the company is evidenced by a written instrument in (or made a part of) the chain of title, if the authorization instrument:

- a. authorized the action of the company in express terms;
- b. granted the authority to the agent who did, in fact, execute the instrument, or authorized the agent to delegate the authority to a person who did, in fact, execute the instrument;
- c. contains a certification that the authorization was granted by all or the required number or percentage of members and the certification is executed by (i) the company member(s), (ii) any certifying official named in the articles of organization and empowered to certify the authority of any person to act on behalf of the company, or (iii) if no certifying official is designated in the articles and not otherwise prohibited by the articles, any manager or member; and
- d. the authorization instrument was not revoked or rescinded by an instrument in the chain of title prior to the recordation of the instrument relied upon.

It is neither necessary to describe the immovable property in the authorization instrument nor to provide the name of the authorized agent if the authority is given to the holder of a particular position or office and written certification that the agent holds the required position or office is in the chain of title (or made a part thereof) by the company member(s), the certifying official des-



igned in the articles or, if no certifying official is designated in the articles, any manager or member. If the authorized agent is the sole member of the company or a certifying official identified in the articles of the company, it is not necessary that any person, other than the authorized agent, execute the authorization instrument.

Background Notes

This is a corollary of Standard 9.5 applicable to corporations; however, it also incorporates the concept of reliance on authorization certifications of certifying officials of a limited liability company named in the articles and authorization certifications of managers and members where no certifying official is named in the articles. *See*, La. R.S. 12:1305(C)(5) and 12:1317(C). Each member, if management is reserved to the members, and each manager, if management is vested in one or more managers, is a mandatary of the company for all matters in the ordinary course of business; however, this mandate does not extend to the alienation, lease or encumbrance of immovable property of the company. La. R.S. 12:1317(A).

Standard 10.7 Lack of Evidence of Agent Authority

The examining attorney shall assume the authority of an agent (including a liquidator) to act on behalf of a company in any instrument where the instrument has been recorded in the appropriate public records for more than 10 years.

Background Notes

This is a corollary of Standard 9.6 applicable to corporations and is based on the prescriptive period established in La. R.S. 9:5681.



■ Standard 10.8 Subsequent Formation

The examining attorney shall assume that immovable property acquired in the name of a company prior to the time the company is duly organized, and its separate existence begins, is owned by the members and, to complete the chain of title, all of the members (as established by the certifying official designated in the articles or, if no certifying official is designated in the articles, any manager or member) and any persons acting on behalf of the company in the acquisition instrument (and their spouses, as may be required) must transfer the property to the company after the company is duly organized and its separate existence begins.

Background Notes

This is a corollary of Standard 11.2 applicable to partnerships. No corollary to Standard 9.7 is applicable to limited liability companies since La. R.S. 12:25.1 is limited to corporations.

■ Standard 10.9 Merger and Consolidation

The examining attorney shall assume that immovable property of a company merged into or consolidated with another juridical entity is owned by the surviving entity without the need of an act of transfer or a separate property description for each item of immovable property.

Background Notes

This is a corollary of Standard 9.11 applicable to corporations. The merger of limited liability companies with other legal entities is provided for under La. R.S. 12:1357, *et seq.*

■ Standard 10.10 Revocation of Articles

The examining attorney shall assume that the revocation of a company's articles by the Secretary of State does not affect the authority of the company to acquire, alienate or encumber its immovable property.



Background Notes

This standard incorporates the spirit of La. R.S. 12:1363(F), although that provision only allows a limited liability company to “sell” its property as if the revocation had not occurred.

Standard 10.11 Dissolution and Liquidation

The examining attorney may assume that one or more liquidators appointed to wind up the affairs of a dissolved company have full and complete authority to act for the company (including, without limitation, the authority to acquire, alienate or encumber property of the company) when articles of dissolution and the dissolution authorization notice affidavit required by law have been filed with the Secretary of State.

Background Notes

This standard incorporates the substance of La. R.S. 13:1336(A) with respect to appointment of liquidators for dissolved limited liability companies.

Standard 10.12 Property Omitted from Liquidation

The examining attorney may assume that, after a certificate of dissolution is issued for a company by the Secretary of State, immovable property omitted from the liquidation still is vested in the entity and that member(s) conducting the liquidation or the appointed liquidator(s) shall continue to have full and complete authority to alienate or encumber the immovable property.

Background Notes

This standard incorporates the substance of La. R.S. 13:1340(D) and 13:1340(E) with respect to property omitted from the liquidation of a dissolved company and the concept of a *de facto* separate existence of the company after issuance of a certificate of dissolution by the Secretary of State provided for in La. R.S. 12:1340(C).



■ **Standard 10.13 Applicability of Chapter**

The standards in this article apply equally to domestic and foreign limited liability companies unless otherwise indicated.

Background Notes

This is a corollary of Standard 9.15 applicable to corporations and Standard 11.7 applicable to partnerships.



ARTICLE XI

PARTNERSHIPS

■ Standard 11.1 Formation

To complete the chain of title, conveyances of immovables to a named partnership created after 1980 shall be titled in the partnership as a separate entity if a written partnership agreement existed at the time of acquisition. However, as to third parties, the individual partners shall at all times be deemed record owners until the written partnership agreement is filed with the Secretary of State. Neither the partners nor the spouses of partners have any interest in any immovable conveyed to a partnership with written articles.

Background Notes

It is not the purpose of this standard to dispel the “entity theory” of partnership prior to 1980. A “universal partnership” could own property but a “commercial partnership” could not. Written articles were not the sole test.

■ Standard 11.2 Lack of Writing

If no written agreement of partnership existed at the time of a conveyance to a named partnership, the immovable shall be owned by the individual partners, and, to complete the chain of title, the partners as record owners (and their spouses, as may be required) must subsequently transfer the property.

■ Standard 11.3 Authority of Partners

If a written and recorded agreement of partnership does not provide otherwise, then each and every partner must authorize the execution of any documents pertaining to the sale, mortgages, lease or other alienation or encumbrance of immovable property owned by the partnership.



■ Standard 11.4 Spouses of Partners

Execution of a transaction involving partnership property by spouses of partners is not necessary.

Background Notes

See, La. Civ.C. art. 2352.

■ Standard 11.5 Signature of Partners

A partner's signature shall be considered valid whether or not the word "partner" appears after the signature.

■ Standard 11.6 Name of Partnership

A partnership may adopt a name with or without the inclusion of the names of any of the partners. If no name is adopted, the name of the partnership is the name of all the partners, with the added notation: "a Louisiana Partnership." The examiner may consider intrinsic evidence in the chain of title, such as reference to books and folios or to the Secretary of State's records for clarification of incorrectly referenced partnership names, or extrinsic evidence to be filed in the chain of title, such as an affidavit executed by all partners stating that an immovable, titled in a partnership name reasonably similar to a partnership on file with the Secretary of State, to establish the fact that both name variations refer to the same partnership entity.

■ Standard 11.7 Applicability of Chapter

The standards of this article apply to the general partners of and to limited partnerships, unless otherwise mandated by the Civil Code or its ancillaries.



ARTICLE XII

UNINCORPORATED ASSOCIATIONS

■ **Standard 12.1 Formation**

Conveyances of immovables to unincorporated associations in the chain of title shall be considered as title in the name of the unincorporated association if a written association agreement or articles exist at the time of the conveyance. Otherwise, the immovable will be considered as titled in all of the association's members or shareholders. If the association has no members or shareholders, the immovable will be considered as titled in the name of the individual appearing in the act.

■ **Standard 12.2 Presumption of Authority**

An unincorporated association may alienate or encumber immovable property if such alienation or encumbrance is made pursuant to charter, constitution, bylaws, rules or regulations under which association is organized and governed. Authority of the unincorporated association approving the action is proved by a copy of the minutes of the meeting certified as true or correct by any officer of the association.



ARTICLE XIII

TRUSTS

■ Standard 13.1 Form and Recordation

The trust instrument or the extract thereof in the chain of title of a trust formed in Louisiana must be by authentic act, by act under private signature in the presence of two witnesses or, in the case of *mortis causa* trusts, in a form satisfactory for a last will and testament.

Background Notes

See, La. R.S. 9:1751-52 and La. R.S. 9:2051. The words “in the chain of title” recognize the requirement of La. R.S. 9:2092 that, whenever the trust property includes immovable property, the trust instrument or an extract thereof must be filed in each parish in which the property is located.

■ Standard 13.2 Lack of Formation

When the word “trustee” follows the name of a party to an instrument, and neither the instrument nor any document referenced in the chain of title sets forth the identities of the beneficiaries, a title from such person may be approved as if that person owned the property free and clear of any trust, and the word “trustee” may be considered mere surplus.

Background Notes

In such a case, any restraints or encumbrances upon that party in his or her individual capacity shall apply against the immovable. *Also see*, La. R.S. 9:1751-52. The words “in the chain of title” recognize the requirement of La. R.S. 9:2092 that, whenever the trust property includes immovable



property, the trust or an extract thereof must be filed in each parish in which the property is located.

■ **Standard 13.3 Change of Trustee**

Proof of the change of a trustee in the chain of title must be in a form sufficient to establish a trust, or as otherwise provided by the trust instrument or judicial decision.

Background Notes

La. R.S. 9:1785 provides that a successor trustee may “be chosen by the use of a method provided in the trust instrument.” If the trust instrument does not so provide, “the proper court shall appoint one or more trustees.” However, change of a trustee by means of an instrument in a form sufficient to establish a trust would operate as a modification of the trust which is valid in form. La. R.S. 9:2051.

■ **Standard 13.4 Charges Against Trustee**

Restraints or encumbrances against a trustee in his or her individual capacity shall not apply against property owned by the trustee in his or her capacity under a properly formed and recorded trust.

■ **Standard 13.5 Authority**

The trustee of a trust is presumed to have the power to sell, grant, convey, lease, encumber and otherwise alienate immovables owned or to be acquired by the trust, in the absence of language in the trust instrument to the contrary. However, a trustee cannot sell to itself, himself or herself without either express trust authority or competent court authority.



Background Notes

This standard recognizes the fiduciary capacity of a trustee. La. R.S. 9:1781. Unless otherwise provided in the trust instrument, a trustee has the power to sell, to lease and mortgage or pledge trust property. La. R.S. 9:2119, 9:2118 and 9:2120. A trustee cannot sell or buy trust property to or from itself without express trust authority or competent court authority to do so. La. R.S. 9:2085. Most pension and profit-sharing trusts provide for a board of trustees which is vested with the authority to act for the trust, similar to a board of directors for a corporation. This must include only acts of administration since title to trust property vests in the trustee(s) under La. R.S. 9:1781. A trust is not a separate entity, but is a relationship that is created when property is transferred to a person to be administered by him for the benefit of another. *See*, La. R.S. 9:1731. Because of this, it would appear that it would be necessary to have each individual trustee member of the board convey real property held in trust, unless there is clear language in the trust that indicates that the board of trustees is vested with the authority to act for each and every individual trustee when real estate is involved. This would have the effect of each trustee designating the board of trustees as his agent. There is also the problem of having to determine the identity of successor trustees if the original trustees on the board of trustees have changed. The Trust Committee of the Louisiana Law Institute should study this problem and propose a resolution. *See*, La. Civ.C. arts. 5, 2031-32.

Standard 13.6 Relative Nullity

A conveyance by a trustee to himself without necessary authority is a relative nullity and cannot be set aside after five years have passed since the recordation of such conveyance.

Standard 13.7 Termination

A separate act of transfer from the trustee to the beneficiary of a trust at the time such trust terminates by its terms is not necessary to complete the chain of title if the trust instrument clearly identifies the property, the transferee and the dispositive provisions provide that the transfer to be self-executing without the need for additional documentation.



Background Notes

La. R.S. 9:2029 provides that “[a] termination of a trust caused the dispositive provisions of the trust to achieve their ultimate effect.” Therefore, if the trust provisions clearly set forth the dispositive provisions, no separate act of transfer should be required.

■ **Standard 13.8 Application of Chapter**

The standards established in this article shall be liberally construed in accordance with the policy of the Louisiana Trust Code in favor of the free disposition of property.

Background Notes

La. R.S. 9:1724 provides that “[t]he provisions of [the Louisiana Trust] Code shall be accorded a liberal construction in favor of freedom of disposition.”

■ **Standard 13.9 Foreign Trust**

A foreign trust in the chain of title is valid in form either if established in a form valid under Louisiana law or if valid under the law of the state of formation.

Background Notes

The Uniform Title Standards Committee recognized that many examining attorneys’ narrow position is that a foreign trust is valid in form only if in a form valid under Louisiana law. La. R.S. 9:1751-52. Foreign partnerships, corporations and limited liability companies are specifically recognized under Louisiana law, but foreign trusts are not. La. R.S. 9:3421-27, 9:3447, 12:301-21 and 9:1342-56. However, La. R.S. 9:1724 states that “[t]he provisions of [the Louisiana Trust] Code shall be accorded a liberal construction in favor of freedom of disposition. Whenever this Code is silent, resort shall be had to the Civil Code or other laws. . . .”



The committee's position is that the "justified expectations of parties" are that a foreign trust would be recognized in Louisiana. La. Civ.C. art. 3515. As is stated in the Revision Comments to La. Civ.C. art. 3515:

"All other factors being equal, the parties should not be subjected to the law of a state that they had no reason to anticipate would be applied to their case. In some instances, however, the parties may have had, or should have had, reason to anticipate the application of the law of a certain state, but they may have had no way of complying with that law. For example, a corporation may have reason to anticipate that the laws of states in which it does business may be applicable to some aspects of its internal organization, but that corporation might have no way of complying with the law of all those states, short of reincorporating in each such state. *See, Order of Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 675 S.Ct. 1355 (1947). In these and similar instances, the court should try to 'minimiz[e] the adverse consequences that might follow from subjecting a party to the law of more than one state.'"

La. Civ.C. art. 3518 reinforces the committee's position in stating that:

"A juridical person may be treated as a domiciliary of either the state of its principal place of business, whichever is most pertinent to the particular issue." The state of formation would be "most pertinent to" validity of form.



ARTICLE XIV

STATE AND POLITICAL SUBDIVISIONS

■ Standard 14.1 Acquisition of Ownership Interest

The state or a political subdivision may acquire ownership of property by any of the following ways:

- a. a conventional grant, sale, donation, exchange or other act translative of title; or
- b. a statutory dedication;
- c. other provisions of federal or state law whereby things are declared publicly owned by the state or a subdivision of the state; or
- d. expropriation.

Background Notes

La. R.S. 33:5051; La. Const. art. IX, §§ 2, 4; La. R.S. 41:1212(D), (G), (H), 41:1215.2, 41:1223; *Lake Terrace Property Owners Ass'n v. New Orleans*, 556 So. 2d 111 (App. 4th Cir.), *writ granted*, 559 So. 2d 1382, *rev'd*, 567 So. 2d 69 (La. 1990).

■ Standard 14.2 Need for Public Purpose

Unless acquired by a conventional grant, sale, donation, exchange or other act translative of title, the governing body owning the property must declare it no longer needed for public purposes prior to sale or alienation. Absent facts in the chain of title indicating otherwise, a title examiner may accept as properly adopted a resolution certified by the secretary of the governing body which owns the property to that effect.



■ Standard 14.3 Servitude Interest

The state or a political subdivision does not acquire an ownership interest but a servitude interest *only* if the acquisition is by any of the following methods:

- a. conventional conveyance of a servitude interest only;
- b. implied dedication, sometimes referred to as “common law” dedication;
or
- c. public maintenance of a road for three years under La. R.S. 48:491.

■ Standard 14.4 General Limitation on Transfer

Public property may not be alienated by a public body except under specific statutes.

Background Notes

For example, roads, streets and alleys dedicated to the public pursuant to La. R.S. 33:5051 in parishes with a population of less than 325,000, except St. Tammany Parish, may not be sold, leased or alienated, but only revoked pursuant to La. R.S. 48:701. Roads, streets and alleys in parishes with a population of 325,000 or more, St. Tammany Parish and Slidell may be sold, leased or alienated pursuant to La. R.S. 33:4711, *et seq.* or other proper procedure. *See also, Coliseum Square Ass’n v. New Orleans*, 544 So. 2d 351 (La. 1989); *Walker v. Coleman*, 540 So. 2d 983 (La. App. 2nd Cir. 1989).

■ Standard 14.5 Abandonment and Revocation

If the state or a political subdivision has only a servitude interest in a street or alley, abandonment results in extinguishment of the servitude. Revocation of a street owned by the state or a political subdivision vests title one-half in each adjoining owner. Except in Orleans Parish, revocation of parks, public squares or plots dedicated to the public vests title in the donors or their heirs, successors or assigns.



Background Notes

La. R.S. 48:701 and 33:4718.

Standard 14.6 Procedures for Conveyance or Alienation

Local governments may exchange one street for another one.

Background Notes

La. R.S. 48:702. Parishes with populations more than 325,000, as well as St. Tammany Parish and Slidell, may sell or exchange streets and roads. La. R.S. 48:711, *et seq.*

Standard 14.7 Exchange with Another Government Entity

Local governments may sell or exchange immovables to another government agency.

Background Notes

See, the procedures set forth in La. R.S. 33:4717, *et seq.* Local governments may convey properties as part of a joint endeavor with other governmental bodies. La. Const. art. 7, §14.



ARTICLE XV

SUCCESSIONS

■ Standard 15.1 Effect of Judgment of Possession

A recorded judgment of possession is prima facie evidence of the relationship to the deceased of the parties recognized therein, as heir, legatee, surviving spouse in community or usufructuary, as the case may be, and of their right to possession of the estate of the deceased. An examining attorney shall presume that an heir not named in a judgment of possession may not upset title to a third party after two years have passed from the date of the judgment of possession.

Background Notes

It is customary for a title examiner to examine succession proceedings to insure compliance with the facts as stated in the affidavit of death and heirship and with the applicable Louisiana law. Because of the two-year prescriptive period in La. R.S. 9:5630 for attacks on a judgment of possession by an heir who has been omitted, the Uniform Title Standards Committee feels that the examination of the succession record should be performed for a period of at least two years from the date of recordation of the judgment of possession.

■ Standard 15.2 Description in Succession

A judgment of possession which omits a description of succession property inherited by an heir or universal legatee nonetheless transfers the property to the heir or legatee.



■ **Standard 15.3 Effect of Judgments Against Heirs**

A judicial mortgage resulting from a judgment against an heir attaches to the heir's interest in succession property. However, where immovable property of the succession is sold by the succession representative pursuant to court order or homologation, a judgment against an heir does not constitute a lien on the property sold under succession administration and the recorded judgment against the heir does not render title unmarketable.

■ **Standard 15.4 Requirements for Public and Private Sale**

The examining attorney may presume that judgment of homologation of an application to sell immovable property of a succession at public or private sale was rendered after due publication of notice of the sale in the manner provided by law.

Background Notes

This standard is intended to allow the examining attorney to rely on judgments authorizing the sale of succession property in the chain of title. This standard is not intended to suggest that less than full compliance with all procedural requirements should be allowed in connection with the passing of a sale of succession property. However any such failure to comply would not affect third parties. *See*, Standard 1.5.

■ **Standard 15.5 State Inheritance Tax Lien**

No lien or privilege for unpaid inheritance taxes exists against immovable property of a succession after the signing of the judgment of possession.



ARTICLE XVI

MARITAL INTEREST

■ Standard 16.1 Presumption of Marital Status

The examining attorney shall presume the marital status and/or history status declared by each vendor and vendee in each act in the chain of title is correct without requiring proof thereof by way of acts, judgments or decrees outside the acts in the chain of title.

A declaration of marital status shall be deemed sufficient if it states that the appearer is either married, divorced, single or unmarried, or a widow(er). If married or a widow(er), the given and family name of the spouse shall be provided. No recitation need include the number of times the appearer was married, or reference to divorce decree information, or dates any former spouse(s) died.

Background Notes

This standard is consistent with rules governing recitation of marital status imposed upon notaries in La. R.S. 35:11 (A). It also allows the examining attorney to rely on the marital status given in a party's acquisition. The persons acting in good faith who rely on this recitation are protected under La. R.S. 35:11 (B) and (C). The New Orleans custom of requiring marital history is specifically rejected by the Uniform Title Standards Committee as an unnecessary provincial practice.

■ Standard 16.2 Use of Other Acts as Evidence of Status

If an act in the chain of title omits a marital status declaration, it may be supplied and shall be deemed sufficient if later provided by:



- a. an affidavit of that party, the notary public before whom the act was passed or a person of competent age who declares that he has personal knowledge of the marital status so omitted. This affidavit shall be placed of record as an attachment to the most current act or link in the chain of title, or recorded separately, making reference to the party(ies) name(s) as an indexing request; or
- b. recitation of the marital status which appears from any other public record or evidence admissible under the Rules of Evidence, or in such form as prescribed under Article IV herein, item 4.1, and such evidence shall be placed of record as an attachment to title, or recorded separately with an act of deposit making reference to the party(ies) name(s) as an indexing request.

Background Notes

This standard recites that other acts or affidavits may be used to supply evidence to establish marital status.

Standard 16.3 Unmarried Acquirer

If the act of acquisition recites the acquiring party to be in an unmarried state, the marital status of that party in the act of divestiture is not necessary and title derived through such divestiture shall not be deemed unmerchantable on such basis.

Standard 16.4 Continued Status

If, since the acquisition of a party's interest, the chain of title reveals no evidence of any change in marital status and there is no marital status recited in a subsequent act, then it may be presumed that the marital status of that party has not changed between the original acquisition and the date of that subsequent act.



■ Standard 16.5 Presumption of Community and Declaration of Separate Property

Property acquired by onerous title in which the acquiring party is declared to be married is presumed to vest title in the presumed community between the acquiring party and spouse, absent a recorded separate property agreement or a declaration of separate property in the public record which provides otherwise.

An examining attorney may presume that property acquired by onerous title in which the acquiring party is declared to be married is presumed to vest title in that party as separate property if the acquiring party specifically recites that the property is separate property and acquired with separate funds.

Property acquired by gratuitous title is presumed to be the separate property of the donee regardless of the recitation of marital status therein.

Background Notes

Things acquired during a marriage are presumed to be community property. La. Civ.C. arts. 2338 and 2440. If the spouse's acquisitions contains a declaration that the acquired property is the separate property of the spouse, an encumbrance or alienation by onerous title cannot be set aside on the ground of the falsity of the declaration. La. Civ.C. art. 2342.

■ Standard 16.6 The Concept of Acquisition

The separate property of a party is not presumed to become community property by virtue of a simultaneous sale and resale as a financing transaction, or by virtue of an exchange of separate immovable property for other immovable property of equal or lesser value, a partition, or the first sell out between co-heirs regardless of the marital status of the party as recited therein.

Background Notes

Where separate property is given in exchange for other real estate, the property received in exchange is separate property. La. Civ.C. art. 2341; *Succ'n of Sonnier v. LeBleu*, 208 So. 2d 562 (La. App. 3rd Cir. 1968); *Kittredge v. Grau*, 158 La. 154, 103 So. 723 (1922).



A sale and resale transaction for purposes of creating a vendor's lien and privilege does not change the status of the property. *Mayne v. Pierson*, 171 La. 1077, 133 So. 163 (La. 1931); *Robinson v. Allen*, 88 So. 2d 64 (La. App. Orleans 1956).

Also see, La. Civ.C. art. 2341 to the effect that property received from the partition of separate property continues to be separate property. *See, Meyer's Manual on Louisiana Real Estate*, 98 (Claitor's 1992).

■ Standard 16.7 Effective Dates

Divestiture of property in the husband's name alone, executed prior to Dec. 13, 1979, by the husband alone is presumed to transfer the community interest, absent a declaration in the public records that the property constituted the family home. Divestiture of property in the wife's name alone requires only her signature. Divestiture of property specifically titled in the names of both husband and wife, executed after Aug. 1, 1962, requires both signatures.

Divestitures of property presumed to be community after Dec. 13, 1979, require the signature of both husband and wife.

Background Notes

This standard tracks the evolution of community property law from the time when the husband was the "head and master" of the community to the present day principal of equal management of community property. *Kirchberg v. Feenstra*, 450 U.S. 455, 101 S.Ct. 1195 (1981).



ARTICLE XVII

MORTGAGES

■ Standard 17.1 Period of Search

The title examiner is entitled to limit his search of conventional mortgages to those appearing in the public records during the period of ownership of each owner in the chain of title.

■ Standard 17.2 Name Variances

The title examiner is entitled to limit his search to conventional mortgages under the spelling of the given, married and family name of each owner in the chain of title as that name appears in the chain of title and any common variation of the given name.

■ Standard 17.3 Cancellation of Inscriptions

A cancellation of an inscription in the mortgage records is sufficient, notwithstanding errors in dates, amounts, recording information, property descriptions, names and position of parties and other information, if, considering all circumstances of record, sufficient data are given to identify with reasonable certainty the inscription sought to be canceled.



■ **Standard 17.4 Reliance on Clerk’s Notation of Cancellation**

The examining attorney may rely upon the clerk of court’s notation on the public records that an inscription is canceled as conclusive evidence that the inscription is canceled, in those parishes in which the clerk cancels inscriptions.

If a cancellation of an inscription attaches a paid note or notes which cannot be identified to a reasonable certainty with the mortgage sought to be canceled, the examining attorney may rely upon the following to determine the status of the note or notes sought to be canceled:

- a. production of the correct paid note;
- b. the affidavit of the notary public pursuant to La. R.S. 9:5167 E; or
- c. an affidavit in compliance with La. R.S. 9:5168; or
- d. a mandamus proceeding pursuant to La. Civ.C. art. 3337.

■ **Standard 17.5 Lost Note**

The examining attorney may rely on affidavits prepared in compliance with La. R.S. 9:5167 and/or affidavits prepared in compliance with La. R.S. 9:5168 attached to an act of cancellation to effect the cancellation of a mortgage.

■ **Standard 17.6 Assignment or Assumption of Mortgage**

The assignment, correction, modification, amendment or assumption of a mortgage does not affect merchantability if the original mortgage has been validly canceled of record. The examining attorney need not require the cancellation of assignments, corrections, modifications, amendments or assumptions.



■ **Standard 17.7 Partial Release**

The examining attorney shall assume that a party executing a partial release is authorized by the owner of the note referred to therein, or by secured party of record, provided that the release states that the note is paraphed for identification with the release if the partial release so states.

The title examiner may rely upon the clerk of court's notation on the public records that a mortgage has been partially released as conclusive evidence that the property noted on the face of the public records has been partially released from the mortgage.

■ **Standard 17.8 Mortgage Certificates**

The title examiner may rely on mortgage certificates obtained in connection with a sale that are attached to an act in the chain of title or are in the possession of the title examiner which are in the correct names of the mortgagors appearing in the chain of title.

Background Notes

Since it is not discussed elsewhere, it is appropriate to note that the examiner may also rely on conveyance certificates, tax researches and other certificates.

■ **Standard 17.9 Release of Assignment of Rents**

Failure to release an assignment of rents does not impair marketability if, from the public records, it can be determined or inferred with reasonable certainty that the assignment was given as additional security for an obligation or for future advances secured by a mortgage which has been canceled of record or which is prescribed.



ARTICLE XVIII

MONEY JUDGMENTS

■ Standard 18.1 Name Variances

A title is not made unmerchantable by a money judgment against a person not in the chain of title even though the judgment is against a person with the same or a similar name.

■ Standard 18.2 Identity

A person's identity is governed by the following presumptions:

- a. Names recited in acquisitions or conveyances are presumed to be a person's proper name or initial and are not presumed to be a nickname.
- b. Social Security or tax identification numbers recited in acquisitions or conveyances are presumed to be correct.
- c. Persons are presumed to be different if either name has a different first name or initial, middle name or initial or a different last name.
- d. Initials are not presumed to represent nicknames.
- e. Initials must be presumed to represent all of the names starting with that letter. However, if a person's name is shown with only one initial and last name, with no other name indicated, the initial is presumed to represent the initial of that person's first name.
- f. The name of a person in a notarial act is presumed to be spelled correctly.

Background Notes

For example, a money judgment against Harold J. Smith shall be presumed to be against a different person from one shown in an acquisition or conveyance as Howard J. Smith, or Harold G. Smith or J. Harold Smith.



For example, a money judgment against B. Ashmore shall be presumed to be against a different person from one shown in an acquisition or conveyance as William Ashmore or Robert Ashmore.

For example, a money judgment against A. Boudreaux shall be presumed to be against a person shown in an acquisition or conveyance as Alphonse Boudreaux or Alan S. Boudreaux, but not the same person as S. Alphonse Boudreaux.

For example, a person whose last name is recited in an acquisition or conveyance as Smyth is presumed to be a different person than one whose last name is shown in a money judgment as Smith. Other examples would be Boudreaux as compared with Boudreau, or Guidry as compared with Guidrey. When the application of the rules in this standard conflict as to the identity of a person, the examiner shall resolve the conflict by obtaining and recording such additional evidence as required. *See, Meyer's Manual on Louisiana Real Estate*, 44 (Claitor's 1992).

Standard 18.3 Identification or Distinguishing Documents

A judgment debtor is presumed to be a different person than a person with the same name in the chain of title, if:

- a. a document of record or attached to a recorded document distinguishing the judgment debtor from the person in the chain of title is signed by the judgment creditor, one purporting to act for a judgment creditor which is a corporation, trust, partnership, unincorporated association or governmental agency; or if signed by the attorney or firm of record for the judgment creditor in the proceeding in which the judgment was obtained. Such document need not meet the requirements of La. R.S. 9:5501, although an affidavit acknowledged by the judgment creditor substantially complying with that statute will suffice. Such document need not be notarized, if executed by the attorney or firm of record for the judgment creditor in the proceeding in which the judgment was obtained;
- b. the judgment has been canceled or distinguished by the clerk of court or a deputy clerk of court by a notation in the mortgage records in the parish in which the property is located; or



- c. a “null and void” notation has been made by the recorder of mortgages for Orleans Parish or his deputy as to property located in Orleans Parish, or by the clerk of court or a deputy clerk of court for the parish in which the property is located, if outside Orleans Parish, on a mortgage certificate in the chain of title or recorded in the mortgage records.

Standard 18.4 Release or Cancellation

An examining attorney may disregard a money judgment although against a person with the same name as a person in the chain of title if the judgment has been canceled or released, insofar as the person or the property in the chain of title is concerned, by the clerk of court or deputy clerk of court for the parish in which the property is located, or by a document signed by the judgment creditor, one purporting to act for a judgment creditor which is a corporation, trust, partnership, unincorporated association or governmental agency, or by the attorney or firm of record for the judgment creditor in the proceeding in which the judgment was obtained. Such document need not be in notarial form if executed by the attorney or firm of record for the judgment creditor in the proceeding in which the judgment was obtained.



ARTICLE XIX

LIENS

■ **Standard 19.1 Effect of Recording Contracts and Acceptance**

If no notice of contract is filed in the manner provided by La. R.S. 9:4811 and the owner has properly filed a notice of termination of the work, any liens filed after 70 days from the filing of the notice of termination of the work shall be disregarded.

If a notice of contract is filed and the owner has properly filed a notice of termination of the work:

- a. any liens filed by the general contractor more than 70 days from the filing of the notice of termination of the work may be disregarded.
- b. any liens filed by persons described in La. R.S. 9:4802 more than 30 days from the filing of the notice of termination of the work may be disregarded.

■ **Standard 19.2 Failure to Record Notice of *Lis Pendens***

A lien shall be disregarded if the claimant or holder of the lien fails to institute an action against the owner for enforcement of the claim or privilege within one year after the expiration of the time given by law for filing the lien.

A lien shall be disregarded as to third persons unless a notice of *lis pendens* identifying the suit required to be filed is filed in the appropriate mortgage records within one year after the date the lien was filed.



Background Notes

See, La. R.S. 9:4822-23.

Standard 19.3 Prescribed Judgment

An examining attorney may disregard a money judgment which has prescribed.

Standard 19.4 Laborer's and Materialman's Liens

An examining attorney may disregard any privilege for labor or materials supplied on immovable property after a lapse of time within which a suit must be filed, unless proceedings have previously been commenced with *lis pendens* recorded, and need not require any cancellation release.

Background Notes

La. R.S. 9:4823.

Standard 19.5 Environmental Cleanup Privilege

Pursuant to La. R.S. 30:2281. An examining attorney shall make an appropriate exception to any lien filed regarding immovable property for cleanup of hazardous substances appearing in the chain of title.

Background Notes

See, La. R.S. 30:2281.



■ **Standard 19.6 Federal Judgment — Duration**

An examining attorney may disregard without the need for a separate cancellation a federal tax lien appearing in the chain of title if it has expired under applicable law.

Background Notes

Int. Rev. Code 6321 and 6502. The period of time was changed from 10 to 20 years by the Federal Debt Procedures Act, 28 U.S.C. 3601, for judgments and liens recorded on June 1, 1981, and thereafter; re-inscription may extend this date.

■ **Standard 19.7 Federal Estate Tax Liens — Applicability**

The examining attorney may disregard the issue of whether federal estate taxes are due when the succession records indicate the gross estate to be less than the amount provided in applicable law. However, if the examining attorney believes an estate appears to be subject to a federal estate tax, whether due to assets under probate or assets not under probate, the examining attorney should obtain a release of the federal estate tax lien.

Background Notes

See, 26 U.S.C.A. § 2002.

■ **Standard 19.8 Federal Estate Tax Lien — Duration**

The examining attorney may disregard the inchoate federal estate tax lien 10 years after date of death.

Background Notes

See, 26 U.S.C.A. § 6502.



ARTICLE XX

PUBLIC SALES IN EXECUTION OF WRITS

■ Standard 20.1 Scope of Article

The standards adopted in this article apply to public sales conducted by parish sheriffs, city marshals and federal marshals in satisfaction of writs of *feri facias*, writs of seizure and sale, and writs of execution issued by city, parish, state and federal courts, as evidenced by a recorded execution sale deed.

Background Notes

Louisiana clerks of court are authorized to issue writs of *feri facias* in execution of money judgments and writs of seizure and sale in execution process proceedings. La. C.C.P. arts. 2253, 2291 and 2638. Federal courts are authorized to issue writs of execution and the federal marshal is directed to conduct execution proceedings in accordance with the practice and procedure of the state. Fed. R. Civ. Proc. 69.

■ Standard 20.2 Jurisdiction

The examining attorney shall assume that a recorded execution sale deed has been issued pursuant to execution properly ordered by a court of competent jurisdiction.

Background Notes

(a) This standard is consistent with other standards by which the examining attorney assumes the validity and effectiveness of judgments in the chain of title. Courts which are otherwise competent under Louisiana law have jurisdiction to enforce a right in, to or against property located in



Louisiana, even if owned by a non-resident not subject personally to the jurisdiction of the court. La. C.C.P. art. 8.

(b) Since the court issuing the execution has assumed jurisdiction, the examining attorney shall assume that no special legislation imposing limits or prerequisites on the exercise of jurisdiction is applicable or prohibits the exercise of jurisdiction assumed by the court issuing the execution, *e.g.*, the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A. § 501, *et seq.*

■ **Standard 20.3 Conveyance Effected by Recorded Execution Sale Deed**

The examining attorney shall assume that a recorded execution sale deed issued as the result of a validly conducted execution sale proceeding, free from defects in form, procedure and substance, conveys the interest of the debtor seized by the seizing creditor named in the execution sale deed.

The examining attorney shall also assume that a recorded execution sale deed issued as the result of a validly conducted execution sale proceeding, free from defects in form, procedure and substance, conveys the interests of all persons who acquired an interest in the same property through a conveyance from the debtor of the seizing creditor named in the execution sale deed, provided that such conveyance was filed for record subsequent to the date on which the security interest of the seizing creditor was filed for record.

Background Notes

(a) The adjudication at the execution sale transfers to the purchaser all of the rights the seizing creditor's debtor had in the property as completely as if the debtor had sold the property directly to the purchaser. La. C.C.P. art. 2371. Once the purchaser has accepted title and paid the purchase price, then the effect of the execution sale deed relates back "to the moment of adjudication." *Heath v. Suburban Bldg. & Loan Ass'n*, 163 So. 546 (La. App. Orleans 1935); *Good v. Citizens Homestead Ass'n*, 148 So. 2d 433 (La. App. 4th Cir. 1963).

(b) A sale to enforce a mortgage established prior to establishment of servitude on the mortgaged property is made free and clear of all such



servitudes. La. Civ.C. art. 721; *Campbell v. Louisiana Intrastate Gas Corp.*, 528 So. 2d 626 (La. App. 2nd Cir. 1988).

(c) A mortgage (legal, judicial or conventional) has the effect that the mortgagee cannot “sell, engage or mortgage” the mortgaged property to the prejudice of the mortgagee and the mortgagee can follow the mortgaged property in the hands of another. La. Civ.C. arts. 3307 and 3309. A legal, judicial or conventional mortgage may be enforced without reference to any alienation or transfer of the mortgaged property by the original debtor. La. C.C.P. art. 3741. However, in the enforcement of a legal or judicial mortgage, the seizing creditor must cause notices of seizure to be served on both the original debtor and the present owner. La. C.C.P. art. 3742. These provisions of Louisiana law notwithstanding, the “due process” notice required by *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983), must be given.

(d) Whether an execution sale deed has been issued as the result of a validly conducted execution sale proceeding, free from defects in form, procedure and substance, is dealt with in Standards 20.5 and 20.6.

Standard 20.4 Release of Security Interests Effected by Execution Sale

The examining attorney shall assume that the form and the procedure employed by a sheriff or a marshal to effect the release, insofar as the property is concerned, of the security interest of the seizing creditor and all security interests inferior to the security interest of the seizing creditor in an execution sale are sufficient. It is not necessary that the release be contained in the execution sale deed or that the security interests released be identified with particularity.

Background Notes

Under La. C.C.P. art. 2376, the sheriff is required to give the execution sale purchaser a release from the security interest, mortgage, lien or privilege of the seizing creditor and *all* inferior security interests, mortgages, liens or privileges. Generally, the release is effected by a notation by the recorder on the margin of the record of the act creating a security interest, mortgage, lien or privilege released. This standard requires the



examining attorney to rely on the procedure employed by the sheriff in each particular parish to effect the release the sheriff is required to give the execution sale purchaser.

Standard 20.5 Reliance on Execution Sale Deed Recorded for Five Years

The examining attorney shall assume that an execution sale deed recorded for at least five years has been issued as the result of a validly conducted execution sale proceeding, free from defects in form, procedure and substance.

The examining attorney shall also assume that, where an execution sale deed has been recorded at least five years, releases of the security interests of the seizing creditor and all security interests inferior to the security interest of the seizing creditor effected by the execution sale proceeding are valid and enforceable.

Where an execution sale deed has been recorded at least five years, actual defects in form, substance or procedure in any execution sale proceeding itself or the releases of security interests effected thereby shall not affect merchantability.

Where the execution sale deed has been recorded for less than five years, the examining attorney may rely on other presumptions of regularity established by these standards.

Background Notes

(a) Upon payment of the sales price (but not before 15 days after the adjudication), the sheriff is required to pass an execution sale deed containing the recitals required by La. R.S. 13:4353 and to deliver the deed to the clerk of court for recordation. A copy of the deed is full proof of all of the recitals of the original act. La. R.S. 13:4355-56. The deed adds nothing to the force and effect of the adjudication, but is only intended to afford proof of the adjudication and the recitals contained in the deed. La. C.C.P. 2342. If the sheriff omits any of the formalities required by La. R.S. 13:4353, this does not affect the validity of the sale. La. R.S. 13:4354. The sheriff's deed does not affect third parties until recorded. La. R.S. 9:2755-56. Nevertheless, the adjudication is effective to transfer title from the debtor to the purchaser from the time the bidding process is concluded and the successful bidder determined.



(b)La. R.S. 9:5642 provides that actions to set aside sheriff's deeds are prescribed by five years from their date. However, this prescription applies only where the owner knew of the proceeding, and the purchaser went into possession and has remained in actual, open and peaceable possession as owner for five years, and where the purchaser has paid the bid amount to the sheriff. This prescription provision does not apply to minors and interdicts.

(c)The liberative prescription provided in the Civil Code for actions to annul a relatively null contract is five years from the time the ground for nullity ceased or a fraud was discovered. La. Civ.C. art. 2032.

(d)These liberative prescription articles should supplement the prohibition against prescription contained in La. Civ.C. art. 2032 for actions that are absolute nullities, if available, and allow liberative prescription of what would otherwise be imprescriptible actions.

(e)La. C.C.P. art. 2376 requires the sheriff to give the execution sale purchaser a release from all security interests, mortgages, liens or privileges inferior to the security interest, mortgage, lien or privilege of the seizing creditor.

Standard 20.6 Reliance on Execution Sale Deed Recorded for Less Than Five Years

The examining attorney shall assume that an execution sale deed which has been recorded for less than five years has been issued as the result of a validly conducted execution sale proceeding, free from defects in form, procedure and substance, if:

- a. notice of the execution sale proceeding was given, prior to the execution sale, to the owner of the property at the time of the sale; and
- b. notice of seizure was properly served on all parties as required by the Louisiana Code of Civil Procedure.

Excluding certain federal tax liens and security interests in favor of Federal Deposit Insurance Corp. (FDIC) or Resolution Trust Corp. (RTC) (Standards 20.9, 20.10 and 20.11), the examining attorney shall also assume that the releases of the security interest of the seizing creditor and all security interests



inferior to the security interest of the seizing creditor effected by the execution sale proceeding, where the execution sale deed has been recorded for less than five years, are valid and enforceable if (i) notice of the execution sale proceeding was given, prior to the execution sale, to the owner of the security interest released, or (ii) the owner of the security interest released was not entitled to notice of the execution sale proceeding.

Where an execution sale deed has been recorded for less than five years, but the requirements of this standard are satisfied, actual defects in form, substance or procedure in any execution sale proceeding itself or the releases of security interests effected thereby shall not affect merchantability.

Background Notes

(a) La. R.S. 13:4112 provides that the judicial sale of immovable property *by executory process* is not subject to an action to set aside or annul the sale by reason of any objection as to form or procedure, or by reason of the lack of authentic evidence, once the sheriff has filed the *procès verbal* of the sale (the return of the writ) or filed the sale for recordation in the conveyance records of the parish. There is no corollary statute for sales conducted under writs of *feri facias*, presumably because the debtor has been granted his opportunity to raise all defenses prior to the time judgment has been rendered.

(b) La. R.S. 9:5622 provides, “all informalities of legal procedure connected with or growing out of any sale at public auction . . . shall be prescribed against those claiming under such sale after the lapse of two years from the time of the making of said sale.” This provision also states that there is an expanded five-year liberative prescriptive period which applies to minors or interdicted persons.

(c) Although La. C.C.P. art. 2376 requires the sheriff to give the execution sale purchaser a release from all inferior security interests, mortgages, liens or privileges, because the release granted is a “state action,” the procedure resulting in the release must satisfy the due process requirements of the 14th Amendment of the United States Constitution (no state may “deprive any person of life, liberty or property without due process of law”). *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652 (1950), was the first important case to subject a state civil law procedure to scrutiny under the due process provisions of the 14th Amendment. *Mullane* dealt with a New York statute allowing a trustee to settle a common trust



fund with notice to the trust beneficiaries by newspaper publication. The court held that the New York statutory scheme of notice by publication was sufficient as it affected the rights of beneficiaries whose interests or addresses were unknown to the trustee. However, the court found that the procedure violated due process as to known present beneficiaries whose addresses were in the files of the trustee. The court refused to require personal service of notice in all circumstances but reiterated that, at a minimum, the 14th Amendment requires that deprivation of life, liberty or property by adjudication must be preceded by “notice and opportunity for hearing appropriate to the nature of the case.” In *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706 (1983), the Supreme Court struck down Indiana’s procedure for conducting tax sales. Under Indiana’s procedure (similar to Louisiana’s), the tax sale had the effect of canceling inferior mortgages, which were property rights under Indiana law. The only statutory procedure for notifying non-owners of the tax sale was by publication. The court, relying extensively on *Mullane*, found that the constructive notice of the tax sale resulting in the mortgage cancellation given by publication was not sufficient to meet due process where “the mortgagee is identified in a mortgage that is publicly recorded.” The court required that constructive notice by publication in such an instance “must be supplemented by notice mailed to the mortgagees last known available address or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.” The court also noted that “personal service or mailed notice is required even though sophisticated creditors have means at their disposal to discover whether property taxes have not been paid or whether tax sale proceedings are therefore likely to be initiated.” In conclusion, the court states that “notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interest of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.” (Emphasis supplied by the court.) This case extends *Mullane* by requiring a search for names and addresses of property interest owners. In *Mullane*, the court required more than publication notice only for those whose names and addresses were known to the trustee. Also, the court in *Mennonite* retreats from the flexible notice standard in *Mullane* to require notice by mail or other certain notice.

(d) In 1982, La. R.S. 13:3886 was enacted, providing a method by which any person desiring to be notified of the seizure of any specific immovable property could file a request for such notice. The purpose of this statute



was to shift the burden of notice, from the sheriff or the creditor provoking a sale, to the property interest owner. However, in *Small Engine Shop v. Cascio*, 878 F.2d 883 (5th Cir. 1989), the 5th Circuit directly held that the Louisiana execution sale process, as supplemented by La. R.S. 13:3886, did not satisfy the due process requirements of the 14th Amendment to the extent property interests inferior to the interest of a seizing creditor were released.

(e) In *Davis Oil Co. v. Mills*, 873 F.2d 774 (5th Cir.), *cert. denied*, 493 U.S. 937, 110 S.Ct. 331 (1989), the 5th Circuit upheld the cancellation of an overriding mineral royalty interest (acquired from a mineral lessee) where the property subject to the royalty interest was foreclosed upon by a creditor with a superior mortgage interest. The mineral interest owner received no notice of the sale other than constructive notice by publication. The court found that to require notice to mineral lessees was beyond what should prudently be expected in foreclosure sales.

(f) Because special federal statutes (which pre-empt state law) govern the release of inferior federal tax liens and property rights of FDIC and RTC, Standards 20.9, 20.10 and 20.11 set forth the particular requirements which must be satisfied for releases of certain inferior federal tax liens and encumbrances in favor of FDIC or RTC to be for an execution sale proceeding to be valid and enforceable.

(g) Standard 20.5 requires the examining attorney to assume the validity of all releases of inferior security interests, mortgages, liens and encumbrances effected by an execution sale proceeding where the execution sale deed has been recorded for five years, or longer.

■ **Standard 20.7 Persons Not Entitled to Notice**

The examining attorney shall assume that the owners of the following claims or interests affected by a validly conducted execution sale proceeding, free from defects in form, procedure and substance, are not entitled to notice of an execution sale proceeding:

- a. claims, security interests in favor of the United States except (i) federal tax liens and (ii) security interests in favor of Federal Deposit Insurance Corp. (FDIC) or Resolution Trust Corp. (RTC) if the execution sale proceeding is based on a non-consensual security interest;



- b. federal tax liens filed after commencement of an action which results in a judgment, seizure and execution sale pursuant to a writ of *feri facias* (*i.e.*, a sale in an ordinary process proceeding);
- c. claims or security interests in favor of the state, any state agency or any political subdivision of the state; and
- d. claims or security interests in favor of persons whose names and addresses are not reasonably ascertainable.

Background Notes

(a) Since notice outside of that required by the Louisiana Code of Civil Procedure is not required by state law, but only to comply with the due process requirements of the 14th Amendment of the United States Constitution, only those persons entitled to due process protection are entitled to notice of the execution sale. The United States is not entitled to due process protection. *United States v. Jackson, Miss.*, 318 F.2d 1 (5th Cir. 1963). The individual states are not entitled to due process protection. *South Carolina v. Katzenbach*, 383 U.S. 301, 86 S.Ct. 803 (1966). Political subdivisions of the individual states are not entitled to due process protection. *South Macomb Disposal Authority v. Washington Township*, 790 F.2d 500 (6th Cir. 1986); *Delta Special School District No. 5 v. Arkansas Board of Education*, 745 F.2d 532 (8th Cir. 1984).

(b) Although not a due process requirement by federal statutes, prior notice or consent must be given or obtained to effect certain classes of encumbrances. Certain inferior federal tax liens cannot be released without notice. 26 U.S.C.A. § 7425. Security interests in favor of FDIC or RTC cannot be released without their consent. 12 U.S.C.A. § 1825(b). FDIC and RTC have, by adoption of policies, granted their consent as to any foreclosure by the holder of a consensual security interest. 27 F.R. 29491-01 (FDIC); 57 F.R. 19651-03 (RTC). Unlike the FDIC policy, the RTC policy does not contain a clear provision which grants consent for foreclosure of a junior *judicial mortgage* interest held by RTC. However, the thrust of the policy evidences an intent to apply the consent by policy to all consensual lien foreclosures, no matter what the source of the RTC interest.

(c) The Supreme Court in *Mennonite* requires notice to a party affected by the execution sale proceeding only “if its name and address are reasonably ascertainable.”



Standard 20.8 Evidence of Notice

Where “notice” of a sale proceeding is required in any standard in this article, the examining attorney shall rely upon any of the following (located in the chain of title or the record of the execution sale proceeding) as evidence of proper and sufficient notice:

- a. an affidavit of the attorney for the seizing creditor listing the names of persons notified of the sale proceeding prior to the execution sale; or
- b. copies of notification letters addressed to the persons notified of the sale proceeding prior to the execution sale; or
- c. any other evidence establishing that a person has been notified of the sale proceeding prior to the execution sale.

The examining attorney shall assume that the persons notified are the owners, or authorized representatives of the owners of the claims or interests for which notice was given.

Background Notes

(a) There is no prescribed form for providing notice sufficient to meet the requirements of due process of law. *Mullane* stands for the proposition that the notice must be “reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.” The content of the notice must be such as to reasonably convey the required information and afford a reasonable time for those interested to make their appearance. The practicalities and peculiarities of the case will dictate whether or not the constitutional requirements are satisfied. The notice must be more than “a mere gesture.” The court, in *Mullane*, further stated that the means employed in providing notice “must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.” The court specifically stated that personal service would not always be required and refused to establish any particular means by which notice must be given in all cases. The court, however, in *Mennonite*, deviated from the flexible standards of *Mullane* (see the *Mennonite* dissent) and stated “notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interest of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.” The *Mennonite* court, therefore, established a more objective standard in that it appears that at least the mail service of notice will be required.



(b) There is no requirement that the notice be given by certified mail. Regular mailing is all that is required under *Mennonite*. If the address of a judgment creditor is not readily available, a “due process” notice may be mailed to the attorney who obtained the judgment for the judgment creditor.

(c) No evidence of notice is required where the execution sale deed has been recorded for five years, or longer, since Standard 20.5 requires the examining attorney to assume the validity and enforceability of all releases of inferior security interests effected by an execution sale proceeding.

■ **Standard 20.9 Release of Inferior Federal Tax Liens — Executory Process Proceedings**

In connection with an execution sale conducted pursuant to a writ of seizure and sale issued in an executory process proceeding, where the execution sale deed has been recorded for less than five years, the examining attorney shall assume that releases of federal tax liens filed more than 30 days prior to the date of the sheriff’s sale are valid and enforceable if the chain of title or the record of the sale proceeding contains:

- a. a copy of a letter addressed to the Internal Revenue Service which complies with the requirements of 26 U.S.C.A. § 7425(c) with evidence that the letter was received by the Internal Revenue Service at least 25 days before the sale; or
- b. a copy of a letter from the Internal Revenue Service acknowledging receipt of adequate notice.

Background Notes

(a) An executory process sale proceeding is an “other sale” governed by the 25-day notice requirements of 26 U.S.C.A. § 7425(b).

(b) No notice is required for federal tax liens filed less than 30 days prior to the execution sale date.

(c) Standard 20.5 requires the examining attorney to assume the validity and enforceability of all releases of inferior security interests, mortgages, liens and encumbrances effected by an execution sale proceeding where the execution sale deed has been recorded for five years, or longer.



Standard 20.10 Release of Inferior Federal Tax Liens — Ordinary Process Proceedings

In connection with an execution sale conducted pursuant to a writ of *facias*, where the execution sale deed has been recorded for less than five years, the examining attorney shall assume that releases of federal tax liens filed before the commencement date of the ordinary process proceeding resulting in the execution sale are valid and enforceable if (i) the Internal Revenue Service was made a party to the action and (ii) a judgment was rendered in the proceeding, prior to the execution sale, that the execution sale would effect a release of the property from the federal tax lien.

The ordinary process proceeding resulting in the execution sale shall be deemed commenced on the date it was originally filed if originally filed as an ordinary proceeding. If originally filed as an executory proceeding and later converted to an ordinary proceeding, the commencement date shall be deemed to be the date on which the pleading converting the action to an ordinary process proceeding was filed.

Background Notes

(a) An ordinary process sale proceeding is a “judicial sale” governed by the requirements of 26 U.S.C.A. § 7425(a) that the United States must be made a party to the proceeding in order to effect a release of an inferior federal tax lien.

(b) The United States need not be made a party to the proceeding if the inferior federal tax lien to be released is filed after commencement of the proceeding in which the execution sale is conducted.

(c) Standard 20.5 requires the examining attorney to assume the validity and enforceability of all releases of inferior security interests, mortgages, liens and encumbrances effected by an execution sale proceeding where the execution sale deed has been recorded for five years, or longer.



Standard 20.11 Release of Inferior Security Interests in Favor of FDIC/RTC

In connection with an execution sale, where the execution sale deed has been recorded for less than five years, the examining attorney shall assume that releases of security interests in favor of the Federal Deposit Insurance Corp. (FDIC) or Resolution Trust Corp. (RTC), inferior to the security interest of the seizing creditor, are valid and enforceable unless the execution sale proceeding is based on a non-consensual lien in favor of the seizing creditor. A judgment recognizing a consensual security interest shall not be considered a non-consensual lien. If the execution sale proceeding is based on a non-consensual lien in favor of the seizing creditor, then the examining attorney shall assume that releases of security interests in favor of FDIC or RTC, inferior to the security interest of the seizing creditor, are valid and enforceable, if FDIC or RTC has executed a consent to the release and the consent is in the chain of title or a part of the record of the execution sale proceeding.

The examining attorney shall not assume that a security interest released by a sheriff or marshal in connection with an execution sale is a security interest in favor of FDIC or RTC, unless the act creating the security interest states that it is created for the benefit of FDIC or RTC, or some other recorded instrument in the chain of title references the act creating the security interest and recites that the security interest is for the benefit of or has been assigned to the FDIC or RTC.

Background Notes

Under the provisions 12 U.S.C.A. § 1825(b)(2), when FDIC or RTC acts as a receiver, its property is not subject to “levy, attachment, garnishment, foreclosure or sale” without its consent. Since, under the *Mullane* and *Mennonite* analysis, an inferior security interest in property of another qualifies as “property” which cannot be lost by state action without due process, inferior security interests, mortgages, liens and privileges in favor of FDIC or RTC acting as receiver qualify as “property” not subject to foreclosure without consent. The effect of the release granted by the sheriff from an inferior security interest, mortgage, lien or privilege is to “foreclose” the inferior property right in that it cannot be asserted against the property affected. However, FDIC and RTC have adopted policies that act as consents as to any foreclosure by the holder of a consensual security interest. 27 F.R. 29491-01 (FDIC); 57 F.R. 19651-03 (RTC). *See also*, discussion of policies, Background Note (b) to Standard 20.7.



Standard 20.12 Fraudulent Conveyances and Revocatory Actions

The examining attorney shall assume that the price paid at a validly conducted execution sale proceeding is “reasonably equivalent value” for the property seized and sold and that a validly conducted execution sale proceeding has not caused or increased the insolvency of the debtor.

Background Notes

(a) In *BFP v. RTC*, 511 U.S. 938, 114 S.Ct. 1757 (1994), the United States Supreme Court held that the price received at a non-collusive execution sale conducted pursuant to state law was “reasonably equivalent value” for purposes of 11 U.S.C.A. § 548. This decision overruled the 5th Circuit decision in *Durrett v. Washington National Insurance Co.*, 621 F.2d 201 (5th Cir. 1980), which was relied on for years to establish 70 percent of fair market value as “reasonably equivalent value” low water mark.

(b) A revocatory action can be brought under Louisiana law if the execution sale causes or increases the debtor’s insolvency. La. Civ.C. art. 2036; Louisiana State Law Institute Comment (d); *Swain v. Kirkpatrick Lumber Co.*, 143 La. 30, 78 So. 140 (1918). There is no “reasonably equivalent value” protection under Louisiana law and the purchaser’s lack of knowledge that the debtor’s insolvency was created or increased by the transfer (which is not a defense but only affects the rights of the purchaser to recover what was given) is presumed only when the price paid is 80 percent of the value of the property transferred. However, the revocatory action has a prescriptive period of one year after the creditor learns of the act and a pre-emptive period of three years from the date of the act to bring any action. La. Civ.C. art. 2041.

(c) An execution sale is not subject to a lesion attack by the debtor. La. Civ.C. art. 2594; *Tuttle v. Tuttle*, 430 So. 2d 269 (La. App. 5th Cir. 1983), *aff’d*, 462 So. 2d 175 (La. 1985).



Standard 20.13 Rights of Redemption

As a general rule, the examining attorney shall assume that no right of redemption of the property sold is created in favor of any person or entity as a result of an execution sale.

If the examining attorney relies upon an authority to cancel a federal tax lien, inferior to the security interest of the seizing creditor, after an execution sale, the attorney shall assume that a right of redemption exists in favor of the Internal Revenue Service (IRS) for a period of 120 days from the date of the execution sale. Thereafter, no right of redemption exists.

If the examining attorney relies upon an authority to cancel a security interest, inferior to the security interest of the seizing creditor, in favor of the United States, excluding the Federal Deposit Insurance Corp. (FDIC) and the Resolution Trust Corp. (RTC), the attorney shall assume that a right of redemption exists in favor of the United States for a period of one year from the date of the execution sale. Thereafter, no right of redemption exists. The examining attorney shall not assume that a security interest released by a sheriff or marshal in connection with an execution sale is a security interest in favor of the United States, unless the act creating the security interest states that it is created for the benefit of the United States or some other recorded instrument in the chain of title before recordation of the execution sale deed references the act creating the security interest and the fact that the security interest is for the benefit of the United States.

The examining attorney shall assume that no right of redemption is created in favor of FDIC or Resolution Trust Corp. RTC.

Background Notes

(a) Under Louisiana law, the debtor has no right to redeem the property once sold. The sale is complete upon adjudication and the debtor is divested of all interests thereafter. Although a good and well-conducted sheriff's sale may have precluded the rights of the debtor to reclaim the property, the IRS and the United States government have a right to redeem the property if the sale has resulted in a release of a security interest, mortgage, lien or privilege in favor of the United States. 26 U.S.C.A. § 7425(d) (IRS); 28 U.S.C.A. § 2410(c) (U.S.). The amounts to be paid for redemptions by the IRS and the United States are both governed by 28 U.S.C.A. § 2410(d). Under 26 U.S.C.A. § 7425(d) and 28 U.S.C.A. §



2410(c), the IRS is allowed 120 days after the sale to redeem the property. Under 28 U.S.C.A. § 2410(c), the United States and its agencies (except the IRS) are granted a period of one year from the date of the sale within which to redeem.

(b)FDIC and RTC adopted policies which simply state that neither will exercise any rights under 28 U.S.C.A. § 2410(c). *See*, Paragraph 5 of the FDIC Policy Statement, 27 F.R. 29491-01, and Paragraph 5 of the RTC Interim Policy Statement, 57 F.R. 19651-03.



ARTICLE XXI

BANKRUPTCY

■ **Standard 21.1 Search Requirement**

The examining attorney shall not be required to search for a notice of bankruptcy affecting any owner in the chain of title except for any such notices which are recorded and properly indexed in the mortgage and conveyance records maintained by the clerk of court and/or recorder of mortgages of the parish in which the property is situated.

■ **Standard 21.2 Sale by Trustee**

Where title to immovable property is held by a debtor at the time of the commencement of bankruptcy proceedings and the property is sold by the bankruptcy trustee, the authority of the trustee shall be established by the following instruments:

- a. an order by the bankruptcy court approving the sale; and
- b. a copy of the conveyance by the trustee, which should be recorded with the clerk of court in the parish where the property is situated.

■ **Standard 21.3 Prior Liens, Judgments and Mortgages Against the Debtor**

Liens, judgments and mortgages which affected the debtor's property prior to his bankruptcy are not released merely by virtue of a discharge of liability granted in bankruptcy proceedings, but by provisions to such effect in a confirmed bankruptcy plan.



■ **Standard 21.4 Property Acquired After Bankruptcy**

The examining attorney may consider that liens and judgments discharged by bankruptcy shall not apply to property acquired by the debtor subsequent to commencement of the bankruptcy case.

■ **Standard 21.5 Abandonment by Trustee**

The examining attorney may presume that property is abandoned by the bankruptcy trustee when provided with the following instruments:

- a. a copy of the notice by the trustee of his intention to abandon the property and satisfactory evidence that no objections to such abandonment have been filed within the time allowed by such notice in accordance with the rules of bankruptcy procedure and/or local court rules;
- b. if the abandonment is pursuant to a request of a party and interest, a copy of the bankruptcy court order authorizing or directing such abandonment after such notice and hearing as required by the bankruptcy court, by the bankruptcy rules and/or by local court rules; or
- c. abandonment by the trustee setting forth the description of the property.

With respect to a bankruptcy commenced prior to Oct. 1, 1979, where the trustee has made application to disclaim the property, the examining attorney should be furnished with and review the application by the trustee and the order granting the application and the disclaimer by the trustee setting forth the description of the property.



ARTICLE XXII

FINANCIAL INSTITUTIONS IN CONSERVATORSHIP OR RECEIVERSHIP

■ **Standard 22.1 Appointment of FDIC or RTC as Conservator or Receiver**

The examining attorney shall assume that an appointment of the Federal Deposit Insurance Corp. (FDIC) or the Resolution Trust Corp. (RTC) as conservator or receiver of any bank or savings association is proper, valid and effective from the date of acceptance of the appointment if one or more instruments appear in the chain of title which evidence that the appointment was made by a federal or state agency and that the appointment was accepted. No particular form for evidence of the appointment, the acceptance of the appointment or the authority for the appointment or its acceptance shall be required.

Background Notes

(a) FDIC and RTC are federally created corporations. *See*, 12 U.S.C.A. § 1811 (FDIC); 12 U.S.C.A. § 1441a(b) (RTC). Federal law also establishes the powers and duties of FDIC and RTC when acting as conservator or receiver of banks and savings associations. 12 U.S.C.A. § 1821(d); 12 U.S.C.A. § 1464(d)(2)(H); *see also*, 12 U.S.C.A. 1813(a)(1) and (b)(1).

(b) Under this standard, the examining attorney is to assume that the appointment and its acceptance are proper without any examination of the grounds or any authority for the appointment or its acceptance.



■ Standard 22.2 Effect of Appointment

The examining attorney shall assume that the Federal Deposit Insurance Corp. (FDIC) and the Resolution Trust Corp. (RTC), when acting as conservator or receiver of a bank or savings association, have the right to transfer all or any part of the property of the bank or savings association under conservatorship or receivership.

Background Notes

As conservators or receivers of banks and savings associations, the FDIC and the RTC “succeed to all rights, titles, powers and privileges” of banks and savings associations under their conservatorship or receivership and have the power to transfer any asset of such an institution “without any approval, assignment or consent with respect to such transfer.” 12 U.S.C.A. § 1821(d)(2)(A)(i) and (d)(2)(G)(i)(II).

■ Standard 22.3 Purchase and Assumption Agreements

The examining attorney shall assume that a transfer of assets of a bank or savings association under conservatorship or receivership to a new national bank, a bridge bank or a new federal savings association, organized by the Federal Deposit Insurance Corp. (FDIC) or the Resolution Trust Corp. (RTC), is a valid transfer even if the property affected is not specifically described. The examining attorney shall also assume that such a transfer does not create any vendor’s lien or privilege, resolatory condition or stipulation *pour autrui* affecting title to any property affected by such a transfer even if one or more of the terms and conditions of the transfer is the assumption of obligations by the transferee or the transferor.

Background Notes

Under 12 U.S.C.A. § 1821(d)(2)(F), FDIC and RTC are allowed to organize new institutions and transfer assets and/or liabilities from failed institutions to these new institutions.



■ **Standard 22.4 Authority to Represent FDIC or RTC**

The examining attorney shall assume that a power of attorney purportedly granted by the Resolution Trust Corp. (RTC) or the Federal Deposit Insurance Corp. (FDIC) which appears in the chain of title duly authorizes the agent named to perform, on behalf of and in the name of FDIC or RTC, each and every act mentioned in the power of attorney. The examining attorney shall assume that the power of attorney is in proper form. The examining attorney shall not require that the power of attorney be an authentic act or be made or executed in any other particular form and shall not require any evidence of the authority of the representative granting the power of attorney for FDIC or RTC.

■ **Standard 22.5 FDIC and RTC as Successors to FSLIC**

The examining attorney shall assume that the Federal Deposit Insurance Corp. (FDIC) has succeeded the Federal Savings and Loan Insurance Corp. (FSLIC) as conservator or receiver for any savings association for which FSLIC was appointed conservator or receiver prior to Jan. 1, 1989. The examining attorney shall assume that the Resolution Trust Corp. (RTC) has succeeded FSLIC as conservator or receiver for any savings association for which FSLIC was appointed conservator or receiver on or after Jan. 1, 1989.

Background Notes

Under 12 U.S.C.A. § 1441a(b)(6), RTC succeeds to FSLIC appointments which occurred on or after Jan. 1, 1989, and FDIC replaces FSLIC as conservator or receiver of institutions placed into conservatorship or receivership prior to Jan. 1, 1989. *FDIC v. Gillard*, 740 F. Supp. 427 (N.D. Tex. 1990); *Castlegen, Inc. v. Commonwealth Savings Ass'n*, 728 F. Supp. 656 (D. Utah 1989), *aff'd*, 984 F.2d 1571 (10th Cir. 1993).



ARTICLE XXIII

MINERAL RIGHTS

■ Standard 23.1 Inapplicability

The standards set forth herein shall not apply to the alienation or encumbrance of mineral rights.

Background Notes

(a) Examination of title to mineral rights has traditionally involved different standards than examination of title to surface rights because a determination of marketability is not the typical purpose of the mineral rights examination. Although increasingly mineral titles are being examined for sale purposes, it is more common that they be examined because of planned operations or in order to pay royalties. The investment in a drilling program and the value of production may be so much greater than the value of the surface rights as a particular property that a higher degree of certainty would be required before a mineral title will be approved by an examining attorney.

(b) Mineral titles are governed by their own rules, the Louisiana Mineral Code (Title 31 of the Revised Statutes). As stated in the Comment to Article 2 of the Mineral Code, although the mineral law of Louisiana sprang from the Civil Code, the Mineral Code is a specialized extension of the Civil Code not applicable to other areas. The Mineral Code recognizes the needs of the mineral industry and embodies principles and risks that require standards of title examination different from the standards set out herein.



■ **Standard 23.2 Prior Severance of Mineral Rights**

An examining attorney may assume in a residential transaction that a prior severance of mineral rights in the chain of title shall not adversely affect the marketability of the property from which the mineral rights are severed, if the owner of the separate mineral right may not use the surface of the property in the exercise of the mineral right.

Background Notes

The Uniform Title Standards Committee intends to include a mineral lease within the concept of “a severance of mineral rights” under this standard. Of course, the severance should be noted as an exception to the title.



ARTICLE XXIV

MISCELLANEOUS TRANSFERS

■ **Standard 24.1 Dation En Paiement (Giving in Payment)**

Marketability of title is not impaired by an uncanceled mortgage or judgment where an unqualified conveyance has been made by the record owner of the property to the record holder of the mortgage or judgment encumbering the property.

The examining attorney shall presume that the consideration for the giving in payment is full and sufficient, the debtor-transferor was not insolvent at the time of the transfer and that delivery of the property has been properly completed.

Background Notes

The concept of extinguishment by merger would not apply to a mortgage payable to “bearer.”

■ **Standard 24.2 Bond for Deed and a Contract to Sell**

A bond for deed or a contract to sell are merely agreements to sell the property at a later date upon the fulfillment of certain conditions. These are not conveyances or transfers which pass title to the property.

Marketability of title is not impaired by the existence of a bond for deed or any other contract or agreement to sell in the chain of title if (i) there has been a subsequent transfer of the properties between the parties, (ii) it has been canceled by the mutual consent of the parties, or (iii) it has been otherwise



canceled in accordance with law. The examining attorney shall presume the validity of a cancellation of a bond for deed which is filed for record in the conveyance records along with appropriate evidence of notice to the buyer according to law.

■ **Standard 24.3 Donations**

A donation of immovable property must be made by authentic act and must be accepted by authentic act.

Background Notes

La. Civ.C. art. 1536. The examining attorney is protected if the act of donation is authentic on its face. A donee must accept the donation in precise terms, and, therefore, must use express and unconditional language. The acceptance must also be by authentic act. La. Civ.C. art. 1540.

■ **Standard 24.4 Acceptance of Donation**

An acceptance need not be simultaneous with the donation and may be made by a subsequent instrument, but will have effect only from the day the donor is notified of the act of acceptance. Recordation of the acceptance prior to the donor's death satisfies this requirement.

Background Notes

La. Civ.C. art. 1540.

■ **Standard 24.5 Value of Donation**

Failure to include an estimation of the value of the property will not invalidate the donation.



■ Standard 24.6 Donor's Reservations

The examining attorney may assume that there are no rights reserved to the donor unless expressed in the act of donation. For donations subsequent to Jan. 1, 1974, the fact that the donor may have reserved a usufruct on the property donated does not vitiate the transfer of title from the donor.

Background Notes

La. Civ.C. arts. 1568 and 1533.

■ Standard 24.7 Presumption Against *Omnium Bonorum*

The examining attorney may assume that a donation does not divest the donor of all his property.

Background Notes

La. Civ.C. art. 1497. There is a presumption against a gift *omnium bonorum*.

■ Standard 24.8 Presumption Against Rescission

The examining attorney shall assume that a transfer by onerous title from a donee is not subject to any claims for revocation or rescission by anyone, including by way of example but not by way of limitation, the donor, forced heirs and creditors of the donor.

Background Notes

La. Civ.C. art. 1518; *see also*, *Frazier v. Frazier*, 499 So. 2d 229 (App. 2nd Cir. 1986), *writ denied*, 500 So. 2d 412 (La. 1987), in which the Public Records Doctrine was held to overrule a claim of invalidity due to lack of form.



■ Standard 24.9 Partitions

The examining attorney shall assume that each party to a voluntary partition is presumed to have received property that is adequate in value.

When a thing held in indivision is partitioned in kind or by licitation, whether judicially or extra judicially, a real right burdening the thing is not affected.

An agreement among co-owners that there shall never be a partition of co-owned property is null and of no effect. However, co-owners may agree that there shall not be a partition of property held in common for a specific period of time, not to exceed 15 years.

Background Notes

La. Civ.C. arts. 812 and 807.



ARTICLE XXV

WATER BOTTOMS AND BODIES

■ **Standard 25.1 Notice of Existence of Water Bodies**

In the absence of (a) a reference in the chain of title to the subject property as bounded by, traversed by or comprised of, in whole or in part, a body of water such as a river, stream, bayou, lake, bay or the Gulf of Mexico (water body) or (b) the presence of such a water body in any unrecorded map, plat or survey attached to the proposed sale or specifically furnished to the examining attorney in connection therewith, the examining attorney shall assume that no claim of ownership by the state of Louisiana exists with regard to the subject property by virtue of the state's inherent sovereignty over navigable water bottoms.

Background Notes

See, La. Civ.C. arts. 450-51. If the examiner has not been placed on notice regarding the existence of a water body bounding, traversing or comprising the subject property, the examiner shall be entitled to rely on the absence of such notice and shall not be required to review extraneous sources in order to determine that no claim of ownership by the state exists.

■ **Standard 25.2 Boundary Between Water Body and Subject Property**

If the examiner is placed on notice under (a) or (b) in Standard 25.1 that the subject property is bounded or traversed by a water body, the examiner shall be entitled to rely upon the determination of a licensed civil engineer regarding the boundary between the subject property and such water body.



Background Notes

If the water body is non-navigable, the boundary between it and the subject property is fixed by the rules governing landed areas. If the water body is a navigable river or stream, the boundary under La. Civ.C. art. 456 is the ordinary low-water mark or the location of a levee if same is determined to be “in proximity” to the bank. If the water body is classified as a navigable lake, the ordinary high-water mark constitutes the boundary between state-owned and private acreage. If the water body is comprised of the Gulf of Mexico or an arm of the sea, whether navigable or non-navigable, state ownership includes the seashore under La. Civ.C. art. 451 and privately owned acreage is limited to that above or inland of the point at which the waters reach in the highest tide during the winter season.

Standard 25.3 Artificial Water Bodies

If the examiner has notice under (a) or (b) in Standard 25.1 that the subject property is traversed by or comprised of, in whole or in part, a water-covered area and the following is not self-evident from the chain of title, the examiner shall be entitled to rely upon the following matters in negating any claim of ownership by the state of Louisiana:

- a. an affidavit by a licensed civil engineer that the water body is not natural but was constructed by the removal of dirt, dredging or other “works of man;” or
- b. if the water body or any part thereof is or was natural prior to any works of man, an affidavit by a licensed civil engineer that the natural water body was not navigable in 1812 or at any time prior to its alteration.

Background Notes

Artificial changes in the nature of a water body such as the dredging of a canal, although resulting in navigability in fact, do not cause a change of ownership under *State v. Cockrell*, 162 So. 2d 361 (App. 1st Cir.), *writ refused*, 246 La. 343, 164 So. 2d 350 (1964); *Olin Gas Transmission Corp. v. Harrison*, 132 So. 2d 721 (La. App. 1st Cir. 1961); *National Audubon Society v. White*, 302 So. 2d 660 (App. 3rd Cir. 1974), *writ denied*, 305 So. 2d 542 (La. 1975). Though the state “gains” title if a water body becomes navigable through natural causes, absent a specific alienation, it does not “lose” title in the event a navigable water body ceases to become navigable, unless the change also results in the formation of accretion or dereliction as contemplated by La. Civ.C. art. 499.



Standard 25.4 Former Water Bodies

In the event the chain of title or survey referenced in Standard 25.1 indicates that the subject property is comprised, in whole or in part, of acreage which was formerly water-covered, but which has subsequently become landed, the examiner shall be entitled to rely upon the following matters in negating any claim of ownership by the state of Louisiana:

- a. an affidavit by a licensed civil engineer that such water body was not navigable in 1812 or at any time subsequent thereto; or
- b. an affidavit by a licensed civil engineer that the water body, if navigable, was classified as a river or stream and the conversion to landed area was accomplished by the natural processes of accretion or dereliction.

Standard 25.5 Private Natural Water Bodies

If the chain of title or the survey reflect that the subject property is wholly or partially comprised of water-covered areas, the examiner shall be entitled to rely upon the following matters in negating any claim of ownership by the state of Louisiana:

- a. an affidavit by a licensed civil engineer that the water-covered area was formerly landed or, even though formerly water-covered, was not navigable in 1812 or subsequently, until such time as it was dredged or otherwise rendered navigable in fact by works of man; and
- b. either (i) such acreage is not subject to the ebb and flow of the tide, or (ii) if subject to the ebb and flow of the tide, is not comprised of the sea or seashore, provided the examiner is able to confirm that the acreage was severed from the public domain by a pre-statehood grant from a foreign sovereign which was subsequently confirmed by the United States or by patent or transfer from the state of Louisiana.

Background Notes

La. Civ.C. arts. 450-51. The instant finding is designed to meet the requirements of *Miami Corp. v. State*, 186 La. 784, 173 So. 315 (1936); *Gulf Oil Corp. v. State Mineral Board*, 317 So. 2d 576 (La. 1974); *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 108 S. Ct. 791 (1988). The *Miami* and *Gulf Oil* decisions reflect the current state of the law to the effect that, with the exception of acreage specifically held to be



privately owned under the rulings pursuant to *California Co. v. Price*, 225 La. 706, 74 So. 2d 1 (1954), and thus subject to *res adjudicata* status, navigable water bodies are necessarily owned by the state of Louisiana. As recently recognized in the *Phillips* decision, navigable *and* non-navigable tidelands, or acreage subject to the ebb and flow of the tide, were transferred, as sovereignty lands, to the state of Louisiana under the equal footing doctrine, provided that the acreage was not the subject of a pre-statehood private claim from a foreign sovereign confirmed by the United States pursuant to the Treaty of Cession executed in Paris on April 30, 1803 (8 Stat. 200). The court in *Phillips* expressly recognized there is no prohibition of state alienation of sovereignty acreage. Accordingly, provided a state patent exists, any acreage which may be classified as tidelands under federal common law but which is not comprised of the Gulf of Mexico, an arm of the sea, or seashore under La. Civ.C. art. 451 is capable of being privately owned. Even though the tests under Standards 25.4 and 25.5 are not met, the examiner may determine that merchantable rights have been established in accordance with law. See, La. Civ.C. art. 460 authorizing construction of navigation facilities on public lands in certain circumstances.



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