

# **Application of Corrective Tools to Obtain Marketable Title**

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## **A. Adhering to Title Examination Standards**

### **1. What Are the “Minnesota Title Standards”?**

The Minnesota Title Standards is a book published by the Real Property Law Section of the Minnesota State Bar Association. It is divided into three (3) parts. Part one is the Title Standards, also known as the “green pages” because they are printed on green paper. Part two is an index of curative acts (discussed more fully in Section B below), known as the “yellow pages” because they are printed on yellow paper. Part three is referred to as the “white pages”, so named because, of course, they are printed on white paper.

The Title Standards are drafted by attorneys who specialize in real estate law.<sup>1</sup> They have been used consistently and almost universally adhered to by the title examiners.<sup>2</sup> The purpose of the Title Standards is to state in concise language how the real estate bar would view various title problems within the state and indicate how the majority of Minnesota, experienced, title lawyers would probably deal with such problems as they came up from time to time.<sup>3</sup>

It should be noted that observance of the Title Standards is not compulsory, and it has always been intended that should a particular Title Standard need revision or not be practical, revision or repeal would be taken care of with promptness.<sup>4</sup>

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<sup>1</sup> Preface, *Minnesota Title Standards*.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## **2. How Are the Title Standards Used?**

As of the date of these materials there are 118 Title Standards published in the green pages. They are based on statutory and case law as well as major treatises. In some cases, however, there is no written source for a particular standard and only the consensus of the real estate bar forms the basis for the standard.

Following are just some examples of some commonly-used standards:

### **a. Name Issues**

#### **STANDARD No. 1<sup>5</sup>**

**Amended June 22, 2001**

#### ***NAMES SOUNDING THE SAME***

Names of individuals which sound the same should be presumed identical, unless there is evidence to the contrary.

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<sup>5</sup> Title Standard No. 1, Minnesota Title Standards.

## **STANDARD No. 2<sup>6</sup>**

### ***OMISSION OF MIDDLE NAME OR INITIAL***

Title shall not be considered defective because of the insertion or omission in successive instruments in the chain of title of a middle name or a middle initial, the words or abbreviations Junior or Senior other merely descriptive designations.

So, as an example, assume that John Doe transfers real property to Jane M. Doe in 1980. In 2005, Jane M. Doe transfers the same property to James Smith. The deed of transfer, however, recites “Jane Doe” as grantor while the 1980 deed recites “Jane M. Doe.” Title Standard No. 2 in essence “cures” the title issue with the 2005 deed when James Smith goes to transfer the property to another party in 2007.

#### **b. Corporate Names**

Another common title issue arises in the area of corporate names. Title Standard No. 6 addresses this situation:

## **STANDARD No. 6<sup>7</sup>**

**Originally Adopted June 27 and Approved June 28, 1946  
Amended June 29, 1984**

### ***VARIATIONS IN CORPORATE NAMES***

#### **A. BUSINESS CORPORATIONS**

An examiner may disregard as immaterial the alternate use of “Co.” for “Company”, “Inc.” for “Incorporated”, “Corp.” for “Corporation”, “Ltd.” for “Limited”, and the omission or include of the word “The”, which is or is not a part of the corporate name (as the case may be), unless there is evidence of record that the variation has significance. Names of railroad corporations are expressly excepted from this standard.

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<sup>6</sup> Title Standard No. 2, Minnesota Title Standards.

<sup>7</sup> Title Standard No. 6, Minnesota Title Standards.

*Authorities:* MINN. STAT. § 302A.115(b)  
R. Patton & C. Patton, Patton on Land Titles § 225, at 742 n. 159 (1<sup>st</sup> ed. 1938)  
Seiberling v. Miller, 207 ILL. 443, 69 N.E. 800 (1904)  
Seaboard Commercial Corporation v. Leventhal, 120 Conn. 52, 178 A. 922 (1935)  
2 R. Patton & C. Patton, Patton on Land Titles § 403, at 222 n. 60 (2<sup>nd</sup> ed. 1957)

## B. PROFESSIONAL CORPORATIONS

An examiner may disregard the alternate use of “Ltd.” for “Limited” and “P.A.” for “Professional Association”.

*Authority:* MINN. STAT. § 319A.07

## C. FEDERALLY CHARTERED CORPORATIONS

An examiner may disregard the alternate use of “N.A.” for “National Association”, “F.A.” for “Federal Association”, and “F.S.B.” for “Federal Savings Bank”.

### c. Other Standards

Other frequently-consulted standards include the following:

- i. Standard No. 45: Tax Titles
- ii. Standard No. 61: The Marketable Title Act
- iii. Standard No. 91A: Validity of Covenants, Conditions, or Restrictions Thirty or More Years Old
- iv. Standard No. 82: Searches Required With Respect to Judgments, Bankruptcy Filings, and Tax Liens
- v. Standards Nos. 84, 84A, and 92: Real Estate Affected by Marital Dissolution
- vi. Standards Nos. 88 and 94: Planned Communities.<sup>8</sup>

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<sup>8</sup> *How to Use the Title Standards and White Pages*, Paul B. Kilgore, Minnesota CLE (2005).

Additional standards relating specifically to issues of marital interests are referenced within the discussion at Section C herein. The “white pages” are discussed within Section E herein.

**B. Knowing the Options: Major Curative Acts**

**1. Definition of a “Curative Act”**

A curative act is a retrospective law passed in order to validate legal proceedings, the acts of public officers, or private deeds or contracts, which would otherwise be void for defects or irregularities or for want of conformity to existing legal requirements other than jurisdictional defects, irregularities, or requirements.<sup>9</sup> An index of all curative acts is included at Part Two of the Minnesota Title Standards and is commonly known as the “yellow pages”.<sup>10</sup>

**2. Curative Provisions of the Marketable Title Act**

Minnesota Statutes Chapter 541 contains several key statutes of limitations for actions involving real property in Minnesota. These statutes of limitations include, but are not limited to, the following:

- a. Actions for the recovery of real estate, including adverse possession claims: 15 years.<sup>11</sup>
- b. Actions affecting title to real estate: as against a claim of title based upon a source of title which has been of record at least 40 years, no action affecting the possession or title of any real estate shall be commenced to enforce any right, claim, interest, incumbrance or lien founded upon any instrument, event or transaction which was executed or occurred more than 40 years prior to the commencement of such action, unless within 40 years after such execution or occurrence there has been recorded in the office of the county recorder in the county in which the real estate affected

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<sup>9</sup> Minnesota Title Standards, Part Two.

<sup>10</sup> *Id.*

<sup>11</sup> Minn. Stat. § 541.02.

is situated, a notice sworn to by the claimant or the claimant's agent and meeting certain statutory criteria.<sup>12</sup>

- c. Foreclosure of real estate mortgage: 15 years from the maturity of the whole debt.<sup>13</sup>
- d. Judgments: 10 years.<sup>14</sup>
- e. Actions based upon contract or trespass: 6 years.<sup>15</sup>
- f. Actions for damages for defective and unsafe condition of an improvement to real property, where fraud is not involved: 10 years after substantial completion.<sup>16</sup>

## **2. Mechanics Liens**

Minnesota's mechanics lien statute also contains a statute of limitation which is used by title examiners to cure some title defects related to mechanics liens. Section 514.12 provides that no lien shall be enforced in any case unless the holder thereof shall assert the same, either by filing a complaint or answer with the court administrator, within one year after the date of the last item of the claim as set forth in the recorded lien statement.<sup>17</sup>

## **3. Other Curative Acts**

The yellow pages contains an index to various other curative acts.

## **C. Keeping Marital Interests from Working Against Title Clearance**

Conveyances of property owned by married persons can create significant title issues. If the owner of real property is married, no conveyance of the homestead, except a mortgage for purchase money under Minnesota Statutes Section 500.19, Subdivision 4, or a severance of a joint tenancy pursuant to Minnesota Statutes Section 500.19,

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<sup>12</sup> Minn. Stat. § 541.023, Subd. 1.

<sup>13</sup> Minn. Stat. § 541.03.

<sup>14</sup> Minn. Stat. § 541.04.

<sup>15</sup> Minn. Stat. § 541.05.

<sup>16</sup> Minn. Stat. § 541.051.

<sup>17</sup> Minn. Stat. § 514.12.

Subdivision 5, shall be valid without the signatures of both spouses.<sup>18</sup> A spouse's signature may be made by the spouse's duly appointed attorney-in-fact.<sup>19</sup>

A husband and wife, by their joint deed, may convey the real estate of either.<sup>20</sup> A spouse, by separate deed, may convey any real estate owned by that spouse, except the homestead, subject to the rights of the other spouse therein; and either spouse may, by separate conveyance, relinquish all rights in the real estate so conveyed by the other spouse.<sup>21</sup>

Minnesota Statutes Section 519.01 requires an action to be commenced, and a notice of lis pendens filed with the county recorder or registrar of titles in the county where the property is located, within 15 years after the conveyance on which the action is based was recorded with the county recorder or register of titles for (i) an action for the recovery of title to or possession of real property or a right in the property based on a person having a marital interest or estate in dower or curtesy, or a marital interest or estate or statutory interest in lieu of dower or curtesy, or by anyone claiming by, through, or under the person, if the spouse of the person conveyed the real property, or any interest in the property; or (ii) an action for the recovery of title to or possession of real property or a right in real property by a person claiming by reason of the failure of a spouse to join in a conveyance of real property that was the homestead of the grantor at the time of the conveyance.<sup>22</sup>

Furthermore, an inchoate estate or statutory interest in lieu of dower or curtesy in real property in this state that is conveyed in writing by the spouse of the person entitled

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<sup>18</sup> Minn. Stat. §507.02.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Minn. Stat. § 519.101, Subd. 1.



to the inchoate estate or interest is abolished if the conveyance has been recorded with county recorder or registrar of titles of the county where the real property is located for 15 years or longer unless an action is commenced and a notice of lis pendens is filed with the county recorder or registrar of titles in the county where the property is located during the 15-year period.<sup>23</sup>

Title Standard No. 7 synthesizes Sections 507.02 and 519.101 and provides as follows:

**STANDARD No. 7**

**Adopted June 27, 1946.**

**Amended June 20, 1958, June 24, 1966, June 28, 1974,  
June 21, 1985, June 12, 1987 and June 26, 1992**

***NON-JOINDER OF SPOUSE***

After a conveyance has been of record for 15 years, failure of a spouse to join therein shall not be an objection, unless an action in regard thereto is commenced and notice of the same filed during the 15 year period<sup>24</sup>.

PRACTICE POINTER: when transferring non-homestead property owned by one spouse, it is best to request the other spouse's signature on the deed of conveyance in order to avoid later issues with dower and curtesy actions.

**D. Unenforceable Mortgages and Marketable Title**

One of the more common title issues which arises on the proposed conveyance of real property relates to mortgages for which the lender has been repaid in full on the loan but, for whatever reason, no satisfaction of mortgage is recorded. Often times, if a party to the transaction has personal knowledge that the loan has been repaid, it is possible to make contact with the lender and request a satisfaction of mortgage to be filed of record.

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<sup>23</sup> Minn. Stat. § 519.101, Subd. 2.

<sup>24</sup> Title Standard No. 7, Minnesota Title Standards

The lender will review its records and, if the loan has in fact been repaid in full, such lender will almost always comply with the request.

Other times, however, it is not possible to make contact with the lender, or the parties may not have any knowledge as to the status of the underlying debt. Fortunately, Minnesota Title Standard No. 25 was adopted to address this circumstance:

**STANDARD No. 25<sup>25</sup>**

**Adopted June 28, 1946  
Amended June 20, 1958, June 14, 1991, June 25, 1993,  
June 23, 1995, June 21, 1996, June 22, 2001 and June 23, 2006**

***UNSATISFIED MORTGAGES – OLD MORTGAGES  
AND ASSIGNMENTS OF RENT***

1. An examiner may not disregard an unsatisfied mortgage granted to the United States or an agency or instrumentality thereof.

2. An examiner may disregard an unsatisfied mortgage of record granted to a private party when 15 years have elapsed since the maturity date of the debt as stated in the mortgage or determined from information contained in the mortgage or in any recorded extension of the mortgage, unless the United States or an agency or instrumentality thereof became the owner of the mortgage.

If the maturity date of the debt cannot be determined from such a mortgage owned by a private part, or any recorded extension thereof, an examiner may disregard an unsatisfied mortgage of record when 15 years have elapsed since the date of the mortgage.

3. An examiner may disregard an unsatisfied mortgage of record granted to a private party which is subsequently acquired by the United States or an agency or instrumentality thereof after the later of the 15 year period described in Paragraph 2 above or six years after acquisition thereby.

4. An examiner may disregard a recital of the existence of an unrecorded mortgage granted to a private party once five years have elapsed since the date of the instrument containing the recital. If a notice of lis pendens concerning an action to foreclose an

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<sup>25</sup> Title Standard No. 25, Minnesota Title Standards, citing Minn. Stat. §§ 507.332, 541.03 and 559.17; 12 U.S.C. §§ 1787(b)(14) and 12 U.S.C. § 1821(d)(14); 28 U.S.C. § 2415(a); *Polish Union of the United States of North America v. Kruszewski*, 171 Minn. 252, 213 N.W. 913 (1927); *Smith v. FDIC*, 61 F.3d 1552 (11<sup>th</sup> Cir. 1995); *Farmers Home Administration v. Muirhead*, 42 F.3d 964 (5<sup>th</sup> Cir. 1995); *Magnolia Fed. Bank for Sav. v. United States*, 42 F.3d 968 (5<sup>th</sup> Cir. 1995); *United States v. Peoples Household Furnishings, Inc.*, 75 F.3d 252 (7<sup>th</sup> Cir. 1996); *DeSalle v. Gibraltar Title Agency, L.L.C.*, 621 N.W.2d 31 (Minn. Ct. App. 2000).

unrecorded mortgage is recorded during the five year period, then the recital is actual or constructive notice of the unrecorded mortgage.

5. An examiner may disregard an assignment of rents, whether in a mortgage or in a separate instrument, and which assignment is given pursuant to and in accordance with the requirements set forth in Minn. Stat. § 559.17, Subd. 2, when the mortgage may be disregarded as set forth in Paragraphs 2 and 3 above, or if the related mortgage has been satisfied or released.

NOTE: if the real property at issue is registered (Torrens) property, one must refer to Minnesota Statutes Sections 508.48 and 508A.48 with regard to this issue. Section 508.48 requires that

Every conveyance, lien, attachment, order, decree, or judgment, or other instrument or proceeding, which would affect title to unregistered land under existing laws, if recorded, or filed with the county recorder, shall, in a like manner, affect the title to registered land if filed and registered with the registrar in the county where the real estate is situated, and shall be notice to all persons from the time of such registering or filing of the interests therein created. Neither the reference in a registered instrument to an unregistered instrument or interest nor the joinder in a registered instrument by a party or parties with no registered interest shall constitute notice, either actual or constructive, of an unregistered interest.

Minn. Stat. § 508.48; see also Minn. Stat. § 508A.48 (same language referenced in statutes relating to proceedings subsequent to initial registration).

## **E. Other Helpful Curative Acts and Standards**

### **1. Yellow Pages.**

As reference above, the yellow pages included in the Minnesota Title Standards comprise an index of other less noteworthy curative acts passed by the Minnesota Legislature.<sup>26</sup>

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<sup>26</sup> Minnesota Title Standards, Part Two.

**2. White Pages.**

Part Three of the Minnesota Title Standards consists of what is commonly known as the White Pages. The White Pages are a supplement to the Title Standards and are “intended to inform and be a guide as to the real estate lawyer in the transactional context.”<sup>27</sup> They are something of a “best practices” guide for real estate lawyers.

The White Pages consist of three chapters:

- a. Chapter I: Instruments Required to Transfer Title to Real Property
- b. Chapter II: Instruments Required to Remove Encumbrances
- c. Chapter III: Methods Suggested for Clearing Objections to Title

**3. Excerpts From the White Pages.**

**a. Section I-A(1).**

CHAPTER I

INSTRUMENTS REQUIRED TO TRANSFER TITLE TO REAL PROPERTY IN  
MINNESOTA

A. Statutory Requirements Applicable to All Deeds and Contracts for Deed.

1. Execution and Acknowledgement.

Deeds and contracts for deed must be executed and acknowledged by the parties and the acknowledgment certified as required by law. MINN. STAT. §§386.39 and 507.24. For the authority for and form of the acknowledgment, see the uniform law on notarial acts. MINN. STAT. §§358.41 to 358.49. The instrument must contain the original signatures of the parties and of the notary public or other officer taking the acknowledgment unless otherwise provided by law. MINN. STAT. §507.24.

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<sup>27</sup> Part Three, Minnesota Title Standards.

**b. Section II-A.**

CHAPTER II

INSTRUMENTS REQUIRED TO REMOVE ENCUMBRANCES

A. MORTGAGE WHEN THERE HAS BEEN NO FORECLOSURE SALE.

Require:

Satisfaction or release executed and acknowledged by the mortgagor, the mortgagee's personal representative, or assignee.

NOTE: If one or more assignments of the mortgage have not been recorded or filed, see Minn. Title Standard No. 113.

For satisfaction or release of re-recorded and corrective mortgages, see Minn. Title Standard No. 58.

For satisfaction or release by less than all mortgages, see Minn. Title Standard No. 41.

OR

Quit claim deed from mortgagee. Gille v. Hunt. 35 Minn. 357; 29 N.W. 2 (1886).

NOTE: If mortgagee has acquired fee title by conveyance, see Minn. Title Standard No. 34.

OR

Certificate of Release by an officer or duly appointed agent of a title insurance company. MINN. STAT. § 507.401.

NOTE: An unrevoked power of appointment must be of record if the Certificate of Release is executed by an agent of a title insurance company.

**c. Chapter III.** Chapter III differs slightly from Chapters I and II. Rather than setting forth best practices on a number of different topics, Chapter III is entitled "Methods Suggested for Clearing Objections to Title" and sets forth a four-step process as well as a separate process for cancelling contracts for deed.

The four-step process is as follows:

1. Correct the Recorded Instrument and Re-Record It.
2. Obtain and Record a Corrective Instrument.
3. Use Additional Words of Identification of Parties in Subsequent Instruments.
4. Obtain and Record Affidavit.