

PROCESS OF TITLE EXAMINATION

Half Moon Seminars
Ohio Real Estate Titles and Title Insurance
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THE ENGINEER'S OFFICE (MAP ROOM)

- Great place to start a title exam.
- County Engineer maintains plats, drawings, field notes, GIS maps and other records.
- Make copies of those maps!

THE RECORDER'S OFFICE

DEEDS

- WARRANTY DEED
- QUIT CLAIM DEED – how does your auditor handle fractional interests?
- FIDUCIARY DEED
- CERTIFICATES OF TRANSFER
- CORPORATION DEED
- SHERIFFS DEED
- AUDITOR'S DEED
- TRANSFER ON DEATH DEEDS/AFFIDAVITS

LEGAL DESCRIPTIONS

- Description by Rectangular Survey
- Lot # and Subdivision
- Condo Units
- Metes and Bounds

CONDOMINIUM INSTRUMENTS

- The first thing to do when establishing a condominium is to file the Declaration of Condominium with the Recorder. By filing this document, the property is submitted to the provisions of ORC chapter 5311. This document creates the terms, conditions, easements, restrictions and other appurtenances of condominium ownership. By taking title to a condo unit, the buyer becomes subject to all the provisions of the Declaration, including the payment of assessments.
- Title examiners need to complete detailed exam of the condo declaration/drawings and all the amendments.
- Expandable vs. Non-expandable condos.

CONDOMINIUM ASSOCIATION LIENS

ORC 5311.18(A) provides that a condo association shall have a lien for payment of common expenses chargeable against the unit that remain unpaid for ten days. Valid for 5 years. Renewable.

LEASES

Examine carefully for option or right of first refusal.

MORTGAGES, AMENDMENTS, SUPPLEMENTS, MODIFICATIONS, ASSIGNMENTS, EXTENSIONS, SUBORDINATIONS

- Mortgage is a lien and affects marketability of title until it is properly released, or until 21 years has run from the scheduled maturity date of the principal debt. If no maturity date is set forth in the mortgage, then the 21 years begins to run as of the date of execution of the mortgage.
- Examine chain of assignments, releases and all documents very carefully.

FINANCING STATEMENTS (UCC)

Effective for 5 years or stated maturity date. May be extended. Collateral is fixtures and other personal property.

ASSIGNMENT OF RENTS

SUBORDINATION/NONDISTURBANCE AGREEMENTS

LAND CONTRACTS

Installment contract. Deed delivered after all payments are made. Must be recorded. See ORC for specific requirements.

EASEMENTS

Sometimes conveyed by separate document. Sometimes found in the body of a deed.

RESTRICTIONS

Sometimes reserved in separate document. Sometimes found in the body of a deed. Sometimes created by plat.

CONDITIONS/COVENANTS/RESTRICTIONS

FEDERAL TAX LIENS

Filed by the IRS for nonpayment of taxes. These liens also attach to after-acquired property, so buyers names should be searched. Valid for 10 years.

PERSONAL PROPERTY TAX LIENS

See ORC section 5719.04. Valid for 6 years.

WORKERS COMPENSATION LIENS

See ORC sections 4123.76 and 4123.78. Valid for 6 years.

UNEMPLOYMENT LIENS

See ORC section 4143.23. Valid for 6 years.

OPTIONS/RIGHTS OF FIRST REFUSAL

OIL/GAS LEASES (MINERAL RIGHTS)

CHILD SUPPORT LIENS

See ORC section 2301.43. Also lien against after-acquired property. Need to search buyer's name also. Valid until paid

VENDOR LIENS

- Buyer gives seller a lien on the real property for unpaid portion of the purchase price. Ineffective against others unless specifically recited in deed or separate document.

- Vendor's Lien can be release 3 ways: (1) the vendor taking a mortgage for any unpaid purchase money on the land conveyed; or (2) execute a release; or (3) the vendor's giving a quit claim deed.

NOTICE OF COMMENCEMENT/MECHANIC'S LIENS

- See Ohio Revised Code Chapter 1311
- Notice of Commencement
- Notice of Furnishing
- Affidavit for Mechanic's Lien
- Notice to Commence Suit
- "Bonding Off" a Mechanic's Lien

LABORER'S LIENS

Allows employees to claim a lien on the real property of their employers for their wages. To be effective, the employee must timely file a statement wit the county recorder in the county where the labor was performed including specific information. The claim becomes a blanket lien on the employer's property for a period of one (1) year.

EXCISE AND FRANCHISE TAX LIENS ON CORPORATIONS

PARTNERSHIPS/AMENDMENTS

- Partnership certificate must be filed when partnership does business under a fictitious name or a name that does not include the names of all the partners. Recorder will stamp deeds with certification before they go to Auditor for transfer.
- If there is a change of partners, must a deed be filed?

POWERS OF ATTORNEY

Need to examine these records any time a power of attorney is used for execution of any recorded document.

PLATS

Plats must be examined if the subject real estate is on subdivided land. Restrictions, building setback lines, easements, conditions, flood information, more.

SUPERSEDEAS BONDS ON APPEAL

Given to stay execution on appeal in civil case, with surety owning real property to which the lien attaches when the lien is recorded.

FENCE PARTITION LIENS

All divisions of partition fences made under the Ohio Fence Law shall be recorded with the Recorder.

BROKER'S LIENS

See ORC section 1311.85.

EXCISE AND FRANCHISE TAX LIENS

See ORC section 5733.18. Lien for unpaid corporate excise or franchise taxes. Valid for 6 years.

RECOGNIZANCE BONDS

ORC sections 1901.21, 2502.13, 2937.24, 2937.25.

An owner of real estate may become a surety on a bond to secure bail in a criminal matter. After the court accepts the recognizance, it must be filed with the Clerk, then the Clerk must file it with the Recorder. Valid for 6 years

AFFIDAVIT OF FACTS RELATING TO TITLE

ORC 5301.252

RELEASE/SATISFACTION DOCUMENTS

TRACT/GEOGRAPHIC INDEX

TRUSTS DOCUMENTS/AFFIDAVIT OF SUCCESSOR TRUSTEES

INSTRUMENTS ENTITLED TO BE RECORDED

- An instrument is entitled to be recorded in the county recorder's office if it meets 3 basic requirements: (1) it is properly executed; (2) it is of a type which is required or authorized to be recorded; and (3) it meets specific statutory requisites, in default of which it must be refused for record. If the document fails to satisfy any of the foregoing requirements, it is not entitled to be recorded and hence does not give constructive notice to others.

INSTRUMENTS THAT MUST/MAY BE REFUSED BY THE COUNTY RECORDER (please see ORC 5301.01, 317.112, 317.11, 317.111, 317.22, 319.202, 319.20, 5301.25, 5301.011, 711.121, 1777.02, 317.08, 1949 OAG 559 and 1962 OAG 2849)

- Not on the list of instrument entitled to be recorded
- Execution is defective
- Copy (not an original)
- Unsuitable for Photostat or microfilm reproduction
- Any signature is illegible, and the name of the signer is not typed, printed or stamped below the signature.
- Name of the person who prepared the instrument is omitted.
- County auditor's stamp (indicating compliance re declaration of value) omitted from deed or conveyance of title.
- County auditor's endorsement ("Transferred" or "Transfer not Necessary") omitted from deed or conveyance of title.
- Grantee's address omitted from deed or conveyance of title.
- Surveyor's name omitted from deed or conveyance of title.
- No reference to deed by which grantor claims title.
- Failure to comply with ORC Ch 711 re plats and subdivisions for a deed or conveyance of title involving subdivided land.
- No certificate of record showing the names of partners on a deed or conveyance of title from a partnership doing business under a fictitious name.
- Date of expiration omitted from an Option to Purchase.

NAME OF PREPARER

The county recorder may not accept any conveyance or encumbrance unless the name of the person who prepared the document is legibly stated at the conclusion.

MISTAKES IN INDEXING

The Ohio Supreme Court held in Green v. Garrington, 16 OS 548, 550-51 (1866), that an index to the record of a conveyance is not necessary to make the record effective as constructive notice to a subsequent purchaser. As a consequence, if a purchaser has been misled, to his injury, by the neglect of the county recorder to make an index as required by ORC 317.18, then the remedy is against the county recorder. In Ohio, the index is not a part of the record.

CERTIFIED COPIES

A copy, certified by the county recorder with its official seal affixed, shall be received in all court as “prima facie evidence of the existence of such instrument, and as conclusive evidence of the existence of such record.” ORC 5301.43

PRIORITY OF DEEDS

ORC 5301.25 applies to deeds, land contracts and all other instruments for the conveyance or encumbrance (except mortgages) of any interest in land. Any such instrument must be properly executed and recorded in the county where the land is situated. Until any such instrument is recorded, it is fraudulent as to any later bona fide purchaser who has no knowledge of the instrument.

PRIORITY OF MORTGAGES

ORC § 5301.23 states:

“(A) All properly executed mortgages shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated and shall take effect at the time they are delivered to the recorder for record. If two or more mortgages pertaining to the same premises are presented for record on the same day, they shall take effect in the order of their presentation. The first mortgage presented shall be the first recorded, and the first mortgage recorded shall have preference.

(B) A mortgage that is presented for record shall contain the then current mailing address of the mortgagee. The omission of this address or the inclusion of an incorrect address shall not affect the validity of the instrument or render it ineffective for purposes of constructive notice...”

UNRECORDED MORTGAGES – these are valid between the mortgagor and mortgagee, but are invalid as to all other persons until the mortgage is presented for record. This is true even as to a subsequent purchaser who has knowledge of the unrecorded mortgage.

MORTGAGE RECORDED AFTER MORTGAGOR CONVEYS TITLE TO SOMEONE ELSE – this mortgage is invalid because, when the mortgage is recorded (the time it supposedly takes effect), the mortgagor has no interest in the property against which a mortgage can be effective.

REGISTERED LAND/"TORRENS" TITLE SYSTEM

- Several things led to the establishment of an alternative process by which real estate is transferred in Ohio. This alternative process is called the "Torrens" title system. It is similar to the process of transferring title to automobiles. It was intended to simplify the transfer process and keep the cost of transfer at reasonable levels. The goal was the creation of a certificate which would describe the subject land and list all the lesser interests on that property, such as easements, restrictions and mortgages.
- The promise of the system was never realized. Several counties have tried to utilize the system, but it never really caught on.
- In 1991, the General Assembly passed legislation that enabled county commissioners to abolish the "Torrens" system for land within that county. In 1992, the Cuyahoga County Commissioners adopted a resolution abolishing the system. On or after the date of abolishment in any given county, registered land will be treated as part of the traditional recording system. The first conveyance thereafter is required to refer to the certificate of title as the prior instrument. ORC 5310.42 preserves the conclusive effect of conveyances and encumbrances noted on the certificate and occurring before the date of abolishment.

EXECUTION OF INSTRUMENTS IN OHIO

ORC § 5301.01 states:

“(A) A deed, mortgage, land contract as referred to in division (B)(2) of section [317.08](#) of the Revised Code, or lease of any interest in real property and a memorandum of trust as described in division (A) of section [5301.255](#) [5301.25.5] of the Revised Code shall be signed by the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or shall be signed by the settlor and trustee in the case of a memorandum of trust. The signing shall be acknowledged by the grantor, mortgagor, vendor, or lessor, or by the settlor and trustee, before a judge or clerk of a court of record in this state, or a county auditor, county engineer, notary public, or mayor, who shall certify the acknowledgement and subscribe the official's name to the certificate of the acknowledgement...”

“...(B)(1) If a deed, mortgage, land contract as referred to in division (B)(2) of section [317.08](#) of the Revised Code, lease of any

interest in real property, or a memorandum of trust as described in division (A) of section [5301.255](#) [5301.25.5] of the Revised Code was executed prior to the effective date of this amendment and was not acknowledged in the presence of, or was not attested by, two witnesses as required by this section prior to that effective date, both of the following apply:

(a) The instrument is deemed properly executed and is presumed to be valid unless the signature of the grantor, mortgagor, vendor, or lessor in the case of a deed, mortgage, land contract, or lease or of the settlor and trustee in the case of a memorandum of trust was obtained by fraud.

(b) The recording of the instrument in the office of the county recorder of the county in which the subject property is situated is constructive notice of the instrument to all persons, including without limitation, a subsequent purchaser in good faith or any other subsequent holder of an interest in the property, regardless of whether the instrument was recorded prior to, on, or after the effective date of this amendment.

(2) Division (B)(1) of this section does not affect any accrued substantive rights or vested rights that came into existence prior to the effective date of this amendment...”

“...SECTION 3. The General Assembly declares its intent that the amendment made by this act to section [5301.01](#) of the Revised Code is retrospective in its operation and is remedial in its application to instruments described in that section that were executed or recorded prior to the effective date of this act, except that the amendment does not affect any substantive rights or vested rights that came into existence prior to the effective date of this act.”

EXECUTION OF DOCUMENTS IN OTHER JURISDICTIONS

ORC § 5301.06 states:

“All deeds, mortgages, powers of attorney, and other instruments of writing for the conveyance or encumbrance of lands, tenements, or hereditaments situated within this state, executed and acknowledged, or proved, in any other state, territory, or country in conformity with the laws of such state, territory, or country, or in conformity with the laws of this state, are as valid as if executed within this state, in conformity with sections [1337.01](#) to [1337.03](#), inclusive, and 5301.01 to 5301.04, inclusive, of the Revised Code.”

CLERK OF COURT’S OFFICE

FORECLOSURE

- Who are all the necessary parties? Owners, lienholders and anybody with an interest in the property!!
- Check service very carefully. Report all service attempts, specific results, addresses, notes on returned envelopes, exact dates of attempts, publication information, etc. Might need to make copies of the service cards.
- If publication service, check other records at the courthouse (example – divorce proceedings) for availability of other addresses.
- Need the following copies. Docket, Complaint, Judgment Entry, Sheriff’s Return on Order of Sale, Confirmation Entry, Assignment of Bid.
- Any evidence of bankruptcy stay?
- Might be other title evidence in the court file (Preliminary Judicial Report, Title Commitment, Title Opinions). See local court rules.
- Liens filed after Confirmation – show them on your title report – let your customer decide.
- Example “Take-Off Sheet.”

FORECLOSURE – TITLE EXAM INFORMATION

CASE #: _____
PROPERTY BEING FORECLOSED: _____
MORTGAGE/LIEN BEING FORECLOSED: _____

COPIES NEEDED: (A) Docket; (B) Complaint (don’t need the exhibits); (C) Judgment Entry (if filed); (D) Sheriff’s Return on Order of Sale (if filed); (E) Confirmation of Sale (if filed)

SERVICE INFORMATION:

For each defendant, report the following information:

- a. Attempted Method of Service (example – certified/personal/ordinary/publication)
- b. What Address?
- c. What Date?
- d. Was attempt successful? If not, what was result? (examples: “unclaimed”/”unable to forward”/any forwarding address?”/”deceased”/any other comments on the envelope?)
- e. If above attempt was unsuccessful, then need all the above information for the next attempt

DIVORCE

- Is the divorce pending or final?
- Need copies: Complaint/Temporary Orders Involving the Real Estate/Final Decree or Judgment Entry/Separation Agreements.
- Who owns the property?
- Who get the property?
- Who has right to possess the property?
- Any need for a QCD?
- Has the court imposed a lien on the property?
- Special division of equity after sale or refinance?
- Alimony issues – ORC 2329.03

LIS PENDENS

- The mere pendency of an action or proceeding affecting title or possession of real property creates an encumbrance affecting marketability.
- Examples of actions: Action to Quiet Title, Foreclosures, Ejectment, Action to Enforce Option/Right of First Refusal, Actions to Enforce Leases or Other Contracts, others.
- Key date is service date.

PENDING CIVIL CASES

Many times you will find that a party to a pending civil case is your seller, buyer or borrower. Always report these pending cases, even if they do not involve the subject real estate. If the case is concluded and reduced to judgment before closing, a lien will be created. [NOTE: You should always report a pending civil case, even if the name you are searching is the Plaintiff. The Defendant may file a counterclaim against the Plaintiff and get a judgment.]

PRE-JUDGMENT ATTACHMENT

Pre-Judgment Attachment is used by creditors against debtors. It is used by plaintiffs in civil actions to seize a defendant's property in order to secure a debt in the event a judgment is ultimately obtained. Strict procedure must be followed, including the posting of a bond by the plaintiff. If procedure is properly followed, the court may issue an Order of Attachment during the pendency of a civil matter.

JUDGMENTS

- ORC 2329.02
- A judgment for money becomes a lien upon real estate from the time a Certificate of Judgment is filed with the Clerk of Courts of the county in which the property is located. This applies to judgments from all state and federal courts. CJs are valid liens for 5 years (unless the creditor is the State of Ohio, in which case the lien is valid for 10 years), unless renewed prior to expiration or last execution.
- REVIVOR: A CJ that has become dormant upon the expiration of 5 or 10 years, or upon the failure to have execution issued or the judgment refilled, may be revived per statute. If you see a judgment that has been revived, you should review the statutory process to make sure the debtor was properly served and all the proper steps were completed.
- RELEASE OF JUDGMENT LIENS: OSBA Title Standard 4.3 says that an attorney of record may execute a release of the judgment if the judgment is paid in full, Only the judgment creditor himself/herself may execute a release upon less than full payment, or release real property from the lien of the judgment, or assign the judgment.

EXECUTION

See ORC section 2329.03. Attempt to enforce a judgment lien.

CRIMINAL FINES

Certain fines from criminal actions become liens. [Examples: Division of Wildlife, Gaming, Illegal Sale of Intoxicating Liquors]

SUPERSADEAS BONDS ON APPEAL

These bonds are bonds required by a party who appeals the judgment of a trial court. It is required to get a stay of execution from the trial court's judgment. When the bond is filed, the Clerk will issue a certificate, which may be filed in the office of the county recorder of any county in which the surety owns land. When filed in this manner, it becomes a lien upon the land of the surety for six (6) years. It may be continued by a Notice of Continuation.

THE AUDITOR'S OFFICE

AUDITOR TRANSFER FEE

The auditor is entitled to a fee of \$.50 for each transfer. If the deed is a deed for land sold for taxes, then the fee is \$5.00.

STATE TRANSFER FEE

\$1.00 per thousand. Fee is calculated on the consideration for the transfer, or the value of the land if no transfer for consideration within previous 6 months. There are 23 exemptions to this fee (see Exempt Conveyance Form).

OPTIONAL COUNTY TRANSFER TAX

Up to maximum of \$3.00 per thousand levied on the grantor.

THE TREASURER'S OFFICE (TAX INFORMATION)

TAX INFORMATION

Need parcel numbers, brief legal description, name issues, values, ½ amounts, uncertified information, board of revision information, delinquency/penalty information.

SPECIAL ASSESSMENTS.

- purpose of assessment (trash removal, sewer, light etc.)
- duration
- which ½ of which year? (example: 2nd ½ of 4th year of 20 year assessment)
- ½ amount
- total balance due
- future assessments?

CAUV/RECOUPMENT INFORMATION

- When land loses its special CAUV status, a portion of the tax savings on such converted land is recouped. This recovery consists of a charge on the land in an amount equal to the tax savings during the 4 tax years immediately preceding the year in which the conversion occurs.
- Important for title examiner to report CAUV status, whether the land has been converted from said status, 4 year recoupment amount, when such amount has been or will be added to the tax duplicate.

PROBATE COURT

EXAMPLE PROBATE "TAKE-OFF SHEET":

PROBATE – TITLE EXAM INFORMATION

CASE #: _____ NAME OF DECEDENT: _____
DATE OF DEATH: _____

IF WILL:

- 1. Administration Docket – get copy
- 2. Will – get copy Power to Sell? _____
- 3.. Heirs/Ages/Relationships: _____

- 4. Will admitted to probate? _____
- 5. Executor: _____
- 6. Service of Notice of Admission of Will to Probate on heirs/devisees and legatees or waivers (specify)?

- 7. Consents to Sale filed by: _____
- 8. Has Inventory been filed? _____ (date) Is subject real estate listed? _____
Value _____
- 9. Ohio Estate Tax Return filed? _____ Is subject real estate listed ? _____
Paid? _____
- 10. Value of Gross Estate: _____
- 11. Certificate of Transfer (get copy)? _____
- 12. Have debts been paid? _____ Final Account Filed? _____ (Date)

IF NO WILL:

- 1. Administration Docket – get copy
- 2. Heirs/Ages/Relationships: _____

- 3. Administrator: _____
- 4. Service on heirs/devisees and legatees or waivers (specify)? _____

- 5. Consents to Sale filed by: _____
- 6. Has Inventory been filed? _____ (date) Is subject real estate listed? _____
Value _____
- 7. Ohio Estate Tax Return filed? _____ Is subject real estate listed ? _____
Paid? _____
- 8. Value of Gross Estate: _____
- 9. Certificate of Transfer (get copy)? _____
- 10. Have debts been paid? _____ Final Account Filed? _____ (Date)

PROBATE ISSUES TITLE EXAMINERS SHOULD BE FAMILIAR WITH:

- Managing the Decedent's Real Estate – ORC 2113.311
- Contracts for the Sale of Land – ORC 2113.48
- Alteration or Cancellation of Contracts – ORC 2113.49
- Completion of a Contract to Purchase Land – ORC 2113.50
- Spousal Election to Take the House – ORC 2106.10
- Remaining in the House for 1 Year – ORC 2106.15
- Purchase the House – ORC 2106.16
- Power to Sell Under the Will – ORC 2113.39
- Consent Sales – ORC 2127.011
- Land Sale Proceedings – ORC 2127.01-2127.43
- Certificates of Transfer – ORC 2113.61
- Ancillary Administration of Ohio Real Estate Owned by Nonresident Decedent – ORC 2129.01, et seq.
- Guardian Land Sales – ORC 2127.01 – 2127.43
- Successor Trustee Affidavits – ORC 5302.171
- Rules of Intestate Succession/Statute of Descent and Distribution – ORC Chapter 2105
- Marriage Information
- Change of Name Cases

TRANSFER ON DEATH ACT:

A sole owner or a tenant in common may create a TOD deed by transferring property to one or more grantees, including to himself/herself, with the designation of a transfer on death beneficiary, identified specifically by name. The operative language in the deed is the following:

- “John Doe, grants to John Doe, whose tax mailing address is..., transfer on death to Jane Doe, beneficiary.” (for normal situation without any contingent beneficiary)
- “John Doe, grants to John Doe, whose tax mailing address is..., transfer on death to Jane Doe, beneficiary, Baby Doe, contingent beneficiary.” (for situation with a contingent beneficiary)

The grantee or present owner on a TOD deed has a present interest as sole owner; the beneficiary has a transfer on death interest.

Upon the death of the grantee/present owner, title is transferred to the transfer on death beneficiaries who have survived. This is accomplished by the TRANSFER ON DEATH AFFIDAVIT (which must be recorded). Attached to the TOD affidavit must be a certified copy of the death certificate of the grantee, and also of any beneficiaries who predecease the grantee.

The beneficiary must be identified in the deed by name. A status alone – e.g., “my wife at the time of my death” – is not sufficient.

If there is more than one named beneficiary living at the time of the grantee’s death, they take in equal shares. No language on the deed can alter this.

The grantee can name contingent transfer on death beneficiaries who will take only if the named transfer on death beneficiary predeceased the grantee.

If all the transfer on death beneficiaries predecease the grantee, and there are not named contingent beneficiaries, then the property will be distributed as part of the grantee’s probate estate.

Any named transfer on death beneficiaries, or contingent transfer on death beneficiaries, have no present interest in the property. They do not have to sign a deed if the present owner is choosing to sell; nor do they have to “release” their interest on any mortgage given by the present owner. If the present owner is foreclosed upon, the transfer on death beneficiary does not have to be a party.

The present owner can revoke or change the beneficiary designation at any time by executing a new deed.

SHERIFF'S FOREIGN EXECUTION DOCKET

See ORC section 2329.03, 2329.57.

US BANKRUPTCY COURT

US DISTRICT COURT

SECRETARY OF STATE

UCC information, Corporations, LLCs, Limited Partnerships, Fictitious Names.

OSBA STANDARDS

WHAT ARE THE OSBA STANDARDS?

Reference tool developed by Real Property Committee of the Ohio State Bar Association. Apply a given fact situation to the standards to see if a title issue is a real defect or a technicality that can be ignored.

Some of the more interesting standards:

- 2.3 Attorney Title Opinions
- 3.1 Acknowledgments
- 3.2 Conveyances – Descriptions
- 3.3 Grantor dies before deed is recorded
- 3.4 Survivorship – Language/Deeds/Affidavits
- 3.5 Partnerships
- 3.6 Conveyances – Recital of Marital Status
- 3.7 Conveyances – Dates: Omissions and Inconsistencies
- 3.8 Conveyances – Variance of Name
- 3.9 Conveyances – Powers of Attorney
- 3.10 Conveyance – By Executor or Other Fiduciary
- 3.11 Conveyances – From Corporation
- 3.12 Conveyance – Right to Purchase
- 3.13 Conveyance – Deed from Stranger
- 3.14 Conveyances – Deeds Subsequent to Mortgage
- 3.15 Quit Claim Deeds
- 3.16 Conveyances – By Heirs or devisees
- 3.17 Conveyances – Unrecorded Disclosed Trusts

- 4.2 Encumbrances – Estate (Inheritance) Tax
- 4.3 Encumbrances – Release by Attorney
- 4.4 Encumbrances – Leases
- 4.5 Encumbrances – Foreclosed Mortgages
- 4.6 Encumbrances – Judgment Against Heirs
- 4.7 Encumbrances – Building and Use Restrictions with Forfeiture Provisions
- 4.9 Encumbrances – Current Agricultural Use Valuations
- 5.1-5.6 Probate Court Proceedings
- 6.1 Process – Services by Publication When Name and Address of Defendant are Unknown.
- 6.2 Service by Publication – Necessity to Identify Real Property
- 9.1 Ohio Rules of Civil Procedure – Return Receipt Under Rule 4
- 9.4 Ohio Rules of Civil Procedure – Domestic Relations Proceedings
- 10.1 Condominiums – Bylaws
- 10.2 Condominiums – Drawings
- 10.3 Condominiums - Declarations

COUNTY STANDARDS

EXAMPLE: CBA STANDARDS FOR FRANKLIN COUNTY

DOWER RIGHTS

- The rule: A spouse who has not relinquished or been barred from it shall have a life estate in one-third (1/3) of the real property which the consort owned at any time during the marriage.
- In plain words – If either spouse owns real estate (acquired either before or during the marriage), Ohio law says the other spouse automatically owns an undivided 1/3 interest (life-estate) in the property.
- This is why the spouse always needs to release dower on deeds and mortgages, even if he/she is not actually in title. If the dower-holding spouse does not release dower, then the grantee or mortgagee does not receive a complete interest in the property.
- Dower terminates, in all cases, upon the granting of a divorce. But the divorce must be finalized!
- Warning: In an action for “alimony only” or “legal separation,” the judgment does not terminate the marital status, therefore said judgment

does not divest a spouse of any dower right which she may have in the property of her husband.

- Warning – Prenuptial Agreements – If a married individual acquires title to real estate in his or her individual capacity, that person’s spouse has a dower interest in the property, even if a prenuptial agreement was executed by both parties which purports to surrender each of the parties’ dower interests. This is because at the time of conveyance it is not known whether the prenuptial agreement might be ruled invalid at a later date.
- If the spouse with the dower interest dies, dower terminates.
- If the consort dies, dower terminates, (a) except to the extent the property was conveyed by the consort without the relinquishing of dower by the spouse, (b) except to the extent it was encumbered by the consort, or (c) except to the extent the property was transferred by involuntary sale.
- How to Release Dower on a Deed (or Mortgage): (1) Express release of dower on the face of the instrument with the spouse signing the instrument (preferred method of releasing dower); or (2) Include the name of the spouse in the introductory granting clause as one of the grantors and then have the spouse join in the execution of the document. (Not preferred because of potential problems with recording deeds executed in this manner).
- Recitation of Marital Status on Deeds: So that prospective buyers may know whether the spouses of preceding owners in the chain of title have relinquished their dower rights, it is necessary that each deed recite the marital status of each grantor.

Acceptable: John Doe, unmarried
John Doe, single
John Doe and Jane Doe, husband and wife
John Doe, a widower
John Doe and Jane Doe, married to each other
John Doe, divorced and unremarried

Unacceptable: John Doe, divorced
John Doe
John Doe and Jane Doe, married

- **VERY IMPORTANT:** If a deed is recorded without showing the marital status of the grantor or if it is from a married individual without the grantor's spouse having released dower, Title Standard 3.6A requires a 50 year period of time before the title is deemed not to be defective.
- If a deed is recorded without showing the marital status of the grantor, or if it is from a married individual without the grantor's spouse having released dower, the problem can be cured by recording an Affidavit of Facts, a Corrective Deed, a Death Certificate, or can be cured by proper recitation in a subsequent deed.
- Neither spouse can convey his or her dower interest to the other spouse (or any other person) at any time during the marriage.
- As a general rule, there is no need to have grantor's spouse release dower if the grantor holds title as "trustee." Exception: In very rare circumstances where a special kind of affidavit is executed and recorded by the trustee's spouse, putting the public on notice of his/her dower interest. ORC 2103.021.
- Power of Attorney: Dower may effectively be released by the signature of the other spouse (or other third person) acting under a power of attorney to convey or to release dower.

FRACTIONAL INTEREST

- An undivided fractional interest outstanding in the name of a third person and not cut off by operation of the Marketable Title Act constitutes a defect impairing the marketability of title, even though the record thereof may be many years old. Horton v. Matheny, 72 App 187, 51 NE(2d) 41 (Williams 1943).
- Be careful with QCDs. Know how your Auditor treats fractional interests.

WHAT IS A MARKETABLE TITLE?

- “...marketable title is one which imports such ownership as insures to the owner the peaceable enjoyment and control of the land, as against all others. It has also been defined as one which is sufficient to support or defend an action of ejectment. It should show a full and perfect right of possession in the vendor. It should appear reasonably certain that the title will not be called in question in the future, so as to subject the purchaser to the hazard of litigation with reference thereto. It must in any event embrace the entire estate or interest sold, and that free from the lien of all burdens, charges, or encumbrances which present doubtful questions of law or fact.” McCarty v. Lingham, 111 OS 551, 558, 146 NE 64 (1924).
- “A marketable title is one which a purchaser would be compelled to accept in a suit for specific performance...Objections to a title should not be made by an attorney when the irregularities or defects do not impair the title or cannot reasonably be expected to expose the client to the hazard of adverse claims, litigation or expense in clearing the title.” Ohio State Bar Association Standard 1.1.

MARKETABLE TITLE ACT

- The goal is to enhance the marketability of real property titles by declaring that certain outstanding interests and claims in the chain of title are automatically eliminated by the passage of a stated number of years, except for such matters as the claimant shall preserve by filing notice in the county recorder’s office, and except for such interests that are declared to be outside the operation of the cut-off provisions.
- ORC section 5301.48 states “...any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for forty years or more, has a marketable record title to such interest as defined in section 5301.47 of the Revised Code, subject to the matters stated in section 5301.49 of the Revised Code.”
- Per ORC 5301.55, the Marketable Title Act “shall be liberally construed to effect the legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title...”
- Constitutional issues/destruction of rights
- The law is burdensome.
- Safeguards build into the law.

INTERESTS AND CLAIMS CUT OFF BY 40 YEAR PERIOD:

- Ancient mortgages, other than a mortgage in which the scheduled maturity dated is longer than 19 years from the rest of title date. See the 21 year rule from ORC 5301.30.
- Servitudes.
- Easements, other than the 3 types listed in ORC 5301.53(B), (C) and (D).
- Titles by adverse possession, where the right accrued in whole before the date of the root of title of the party now claiming marketable title by recorded instruments.
- Equitable as well as legal interests.
- Future as well as present interests.
- Vested as well as contingent interests.
- Claims held by persons under disability.
- Rights and interests in minerals, other than coal, but including oil, gas, etc.

INTERESTS AND CLAIMS NOT CUT OFF BY 40 YEAR PERIOD:

- Interests preserved in muniments of title.
- Interests preserved by notice or continuous possession.
- Adverse possession (if any of the required period of adverse possession ran subsequent to the effective date of the root of title.
- Interest in title transaction subsequent to the root of title.
- Reversion of lessor, rights of lessee.
- Easement for railroad or public utility.
- Easement observable by use.
- Easement observable by physical facility.
- Coal rights.
- Railroad and public utility mortgages.
- Rights of State of Ohio or United States of America

ROOT OF TITLE

METHODS OF PRESERVING NOTICE

The Marketable Title Act provides 3 methods for continuing a claim or interest which otherwise would be defeated by the 40 year cut-off period.

- Continuous possession by the same record owner for 40 years.
- Reference to the interest or claim in recorded transactions in the chain of title. Easements and use restrictions must be identified specifically, not generally.

- Claimant can file, during the 40 year period immediately following the effective date of the root of title, a verified notice, setting forth the nature of the claim. Required content. Must be recorded. Penalty for false statements.

EXAMPLES OF CLOUDS ON TITLE NOT AFFECTING MARKETABILITY

- Judgment paid but not released. Schaengold v. Dick, 36 App. 78, 172 NE 839 (Hamilton 1929).
- Recorded deed from an apparent stranger in the chain of title to another stranger having no apparent association with the holders of an unbroken chain, or from an apparent stranger to a holder in the chain of title. Horton v. Matheny, 72 App. 187, 51 NE(2d) 41 (Williams 1943).
- The failure of the spouse of a former grantor in a deed of record for the span of more than current, modern life-expectancy to release her inchoate dower interest is not considered such a material cloud on title as will affect marketability. Horton v. Matheny, 72 App. 187, 51 NE(2d) 41 (Williams 1943)
- Omission of marital status – not a problem after 50 years per title standards.
- If, after a foreclosure, the Clerk forgets to file a cancellation of the foreclosed mortgage in the Recorder's Office, does this problem affect the marketability of the title? No. See title standards

CURATIVE ACTS AND REMOVAL OF CLOUDS ON TITLE BY CASE LAW

- Acts that cure certain defects arising prior to a given calendar date.
- Acts that cure certain defects past and prospective by declaring them immaterial whenever they may arise. Examples.
- Acts that cure defects past and prospective by declaring them cured after they have been of record for a given period of time. Examples.

SPECIFIC EXAMPLES OF CURATIVE ACTS:

5301.47-55	Marketable Title Act
5301.011	Omission of prior deed reference does not affect validity.
5301.03	Grantee as trustee or agent.
5301.06	Instruments executed according to the law of place where made.
5301.071	Validity of instruments. Dower. Notary's seal. Notary on separate sheet of paper. Fiduciary signing in individual capacity.
5301.08	Validity of certain leases unaffected.
5301.26	Vendor's lien.
5301.291	Mortgage release, cancellation or satisfaction.
5302.04	All interest conveyed unless otherwise stated.
5301.07	Validating certain deeds of record for 21 + years.
5301.29	Release of mortgages made valid.
5301.30	Expiration of mortgage lien.
2305.26	Statute of limitation on action by state to enforce certain liens
2329.07	Judgment may become dormant.
5731.38	Estate Tax lien – expires after 10 years
5301.252	Affidavit of Facts. Subject matter. Formalities. Must be competent. Must be recorded. Perjury
5301.332	Forfeiture and cancellation of natural gas and oil land leases.
5302.18	Grantor included as grantee

DIFFERENT UNDERWRITERS/TITLE COMPANIES/ATTORNEYS HAVE DIFFERENT SEARCH STANDARDS

- Know what the standards are for each title company/attorney.
- Commercial/Construction
- Sale – Residential Subdivision
- Sale – Residential Metes & Bounds
- Residential Refinance
- Preliminary Judicial Report – Residential Lien Foreclosure
- Preliminary Judicial Report – Commercial
- Opinion Letters

DOCTRINE OF IDEM SONANS

- Latin phrase meaning “sounding the same or alike.”
- A term applied to names which are substantially the same, though slightly varied in the spelling, like “Lawrence” and “Lawrance,” and the like. State v. Culbertson, 6 N.C.App. 327, 170 S.E.2d 125, 127.
- Under the rule of “idem sonans,” variance between allegation and proof of a given name is not material if the names sound the same or the attentive ear finds difficulty in distinguishing them when pronounced. Martin v. State, Tex.Cr.App., 541 S.W.2d 605, 606.
- The rule: absolute accuracy in spelling names is not required in a legal document or proceedings. A variance, to be material, must be such as has misled the opposite party to his prejudice.
- Title examiners must be careful!!

“STARTERS & BACKTITLES”

- What can be used as a starter?
- What a title examiner should do with a starter/backtitle.

TITLE EXAM REPORTS/HOW TO REPORT THE TITLE INFORMATION

- Some title companies require examiners to use a specific form.
- What makes a good title report?
- Consistency is important.

TITLE OPINIONS – FROM ATTORNEYS

EXAMINING/REPORTING KEY INFORMATION

- Type of Instrument – What is it called exactly?
- Exact names of all parties and all signators. Include all variations.
- Status of each and every party/signator.
- Estate or interest created. Fee, life estate, easement, leasehold, etc.
- Legal Description. Examine very carefully. Compare against all available maps and other legal descriptions if necessary.
- Covenants, conditions, restrictions, reservations.
- Term, maturity dates
- Dower release and marital status of all parties.
- Execution. Need witnesses? Don't need witnesses? Proper acknowledgment/notary?
- Date of execution/acknowledgment and date of recording.
- Recording information.
- Any other important information/marginal notations/cross references?

COPIES

RECORDER'S WEBSITES

TITLE PLANTS

RECODAT – FRANKLIN/DELAWARE/FAIRFIELD