

JAMESTOWN BAR ASSOCIATION

STANDARDS FOR EXAMINATION OF REAL ESTATE TITLES

ADOPTED JANUARY 13, 2009

1. The standards for title examination adopted by the New York State Bar Association on January 30, 1976, as amended, are adopted as the standards of the Jamestown Bar Association, unless these rules specifically prescribe different standards.

2. Abstracts of Title made by incorporated abstract companies or Abstracts of Title made upon proper certificate of the County Clerk of the County of Chautauqua are deemed acceptable and sufficient abstracts.

3. Searches for taxes shown by the county records made by an incorporated abstract company, covering the period of at least ten years prior to the examination of title, and receipts for current taxes, should be required.

4. Title Searches, to be deemed acceptable, must show a chain of title beginning with a warranty deed, executor's deed, administrator's deed, trustee's deed or a deed given in a court proceeding. Such deed must have been recorded at least 50 years prior to the date of the projected closing.

5. Certified copies of Abstracts of Title and Title Searches should be accepted under proper certificate of comparison and authenticity. Certification of a copy of a county clerk's Abstract of Title by an incorporated abstract company will be accepted, but certification by the county clerk of Abstracts of Title made by an incorporated company will not be accepted. Certification of the certified copy of an abstract is not acceptable regardless of the certifying agent.

6. Searches for bankruptcies, judgments and other liens in the United States District Court office will not be required. A federal estate tax or a New York estate tax against a deceased tenant by the entirety or a deceased joint tenant may be disregarded on a deed from the surviving tenant.

7. The requirements concerning New York State Estate Tax Proceedings or recorded releases of such taxes in lieu thereof shall be governed by the limitations set forth in Section 975 of the Tax Law at the time of examination of title.

8. All mortgages for which a discharge or release of premises is not provided of record must be discharged by appropriate proceedings except (a) a mortgage recorded more than fifty years prior to the date of closing or (b) a mortgage which has apparently merged with a fee followed by a recorded deed executed by the owner in whom the interest merged, his or her executors, administrators, devisees, distributees or statutory successors in interest or (c) a mortgage having a maturity date more than twelve years prior to the date of examination or having no maturity date recorded more than forty years prior to the date of examination, provided that an affidavit is given in recordable form containing the statement that no payment of any sums has been made pursuant to the terms of said mortgage nor has any demand for such payment been made for twelve years prior to the date of such examination, need not be discharged.

9. Proof of death of a prior owner may be given by recorded death certificate, release of estate lien or by affidavit.

10.

(a) Proof of existence of a corporation, limited liability company, limited partnership or limited

liability partnership may be shown either (a) by the record in the County Clerk's Office where such entity has its principal office or (b) by a Certificate of Good Standing issued by or the Internet database record produced by the Secretary of State of the state where the entity was formed.

(b) The authority for a conveyance by a corporation, limited liability company, limited partnership or limited liability partnership shall be shown by the certificate or affidavit of an officer, member, manager or general partner other than the officer, member, manager or general partner executing the conveyance or by the certificate of the sole shareholder, officer, member, manager or general partner.

(c) When ownership by an entity other than a not-for-profit corporation or a banking institution appears in a chain of title within the past ten years, (a) the property should be released from the lien of any unpaid corporate taxes or (b) evidence should be furnished that there are no unpaid corporate taxes which are a lien on the property or (c) a certificate or affidavit shall be provided that the limited liability company, limited partnership or limited liability partnership has not elected to be taxed as a corporation.

11. Release of dower should not be required where a period of thirty years or more has elapsed since the conveyance, descent or other disposition of the property wherein the possibility of an outstanding dower interest became apparent. A recital in a record deed that the grantor was unmarried shall be accepted as proof of that fact.

12. Objection shall not be made on the ground of the recital of nominal consideration in a deed (a) given by an executor or other fiduciary after the expiration of twenty years from the recording of such deed or after the discharge or release of the fiduciary, (b) given in confirmation of a devise or distribution or the operation of law, (c) if 6 years has elapsed since the recording of the deed given by a grantor other than a fiduciary or (d) if the deed includes an affirmation or if an affidavit is recorded that the grantor is solvent, that the grantor's remaining assets after this conveyance represent reasonably adequate capital for any anticipated transactions or business, that the grantor does not anticipate incurring debts beyond the ability of the grantor to pay, that the grantor has no intent to hinder, delay or defraud any entity to which the grantor is or would become indebted.

13. Where no judgment has been entered in a mortgage foreclosure action, a notice of pendency will be disregarded if the mortgage to which it related has been discharged or merged in the fee or the notice of pendency has become ineffective under CPLR 6513.

14. Objection should not be made where there is a variance of initial between the names of successive grantees and grantors in the chain of title more than 6 years prior to the examination date. All common abbreviations are acceptable as sufficiently establishing the identity of parties. Also, variations in name which are clearly covered by the doctrine of *Idem Sonans* should not be the subject of title requirement.

15. No title to real estate shall be rejected or disapproved because title is derived through an in rem real property tax foreclosure proceeding provided that more than twenty (20) years have elapsed since the recording of the Referee's Deed in the in rem action or because title is derived through a tax deed given pursuant to a tax sale certificate (with no foreclosure) provided that more than thirty (30) years have elapsed since the recording of the tax deed as long as (a) the proceedings or tax deed name the correct owner of the property, (b) the description of the property is substantially consistent in terms of size and location with the premises whose title is dependent upon the tax proceedings or tax deed and (c) the record title does not show any inconsistent claim subsequent to the recording of such deed. Otherwise, title insurance with a covenant of reissuance which may contain a marketability exception may be properly required.

16. We recommend the purchaser's attorney insist upon reasonable effort by the seller's attorney to document the expiration of any Oil and Gas Lease older than its primary term, where there has been no well drilled on the lease premises and no pooling, but that he or she except any doubtful leases in his or her title opinion, unless specifically employed to evaluate the status of such leases.

17.

(a) No probate of heirship proceedings will be required in cases of intestacy of an owner of an interest in the property in questions, where administration proceedings have been conducted.

(b) In the absence of such administration proceedings, recorded affidavits of two persons who know the facts establishing heirship, stating the source of their information regarding the same, will be accepted.

(c) Recitals of heirship in a conveyance recorded in conformity with the provisions of Section 341, Real Property Actions and Proceedings Law, will be accepted as sufficient proof of heirship and the devolution of title by descent, as provided in Section 341.

18. Objection shall not be made on the sole basis of a judgment or tax lien of record against a residuary beneficiary or distributee of the estate containing real property not specifically devised when such property is conveyed by the fiduciary for full consideration and no act to enforce the judgment or lien has been commenced or an unexpired lis pendens has been filed.

19. Objection shall not be made on the basis of a deed made by a party in the chain of title who was identified as a trustee provided such deed by the trustee as grantor has been of record for more than 10 years or if the deed includes an affirmation or an affidavit is recorded as to the continued existence of the trust to the date of the execution of the deed by the trustee, the tenure of the trustee, and the power of the trustee to convey real property under the trust.

20. Where a deed or other instrument in which a life tenancy is reserved or created has been on record for at least 75 years, it may be presumed that the life tenant is deceased and title may be passed. However, the purchaser's attorney may require an affidavit that neither the life tenant nor anyone claiming under the life tenant is in possession of the premises, has made any claim against the premises within the last 10 years and that the affiant has no knowledge that the life tenant is alive.

21. For purposes of these standards, the word *Affidavit* is defined as an original sworn statement, in recordable form, made on personal knowledge of the facts set forth therein. An affidavit or affirmation shall not be made *on information and belief, to the best of affiant's knowledge, or as far as affiant knows* and shall include a statement that the person making it knows that his or her statements will be relied upon by the parties to a specified transaction and all those who subsequently acquire an interest in the property. If a public record is incorporated by reference as a source of knowledge, the affidavit or affirmation shall contain a statement that it is a true and complete copy of all material parts of that record.